

ORDINANCE NO. 2016-10

AN ORDINANCE OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, GRANTING A NONEXCLUSIVE CABLE FRANCHISE AGREEMENT TO COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, PROVIDING FOR FRANCHISE FEES, TERM OF FRANCHISE, FRANCHISE AREA, TECHNICAL STANDARDS AND EVALUATIONS, REPORTING REQUIREMENTS, ACCESS CHANNELS, LIQUIDATED DAMAGES, BOND AND INSURANCE PROVISIONS IN CONNECTION WITH OPERATING A CABLE SYSTEM FOR THE DISTRIBUTION OF TELEVISION SIGNALS; PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

WHEREAS, the City of Bainbridge Island (“City”) is authorized to grant and renew cable franchises for the installation, operation, and maintenance of cable television systems and otherwise regulate cable communications services within the City boundaries by virtue of federal and state statutes, by the City’s police powers, by its authority over its public rights-of-way, and by other City powers and authority; and

WHEREAS, Comcast Cable Communications Management, LLC. (“Grantee”), desires to provide competitive cable communications services and to construct, operate and maintain a competitive cable television system within the City;

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

Section 1. Grant of Franchise. A cable television franchise is hereby granted to Comcast Cable Communications Management, LLC under the terms and conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

Section 2. Compliance with Franchise Terms. As a condition of the franchise granted by this ordinance, Comcast Cable Communications Management, LLC shall provide its written and acknowledged unconditional acceptance and promise to comply with all provisions, terms and conditions of Exhibit A. By the adoption of this Ordinance, the City of Bainbridge Island agrees to comply with all provisions of the same.

Section 3. Performance Bond and Insurance. Comcast Cable Communications Management, LLC shall provide a performance bond and maintain such insurance policy as required by Sections 5.2 and 5.3 in Exhibit A.

Section 4. Acceptance. The rights and privileges granted pursuant to this Ordinance shall not become effective until its terms and conditions are accepted by Comcast Cable Communications Management, LLC. Acceptance shall be accomplished by the submission of a written instrument, executed and sworn to by a corporate officer of the Grantee before a Notary Public, and filed with the City as provided in Section 20.16 of Exhibit A within forty-five (45) days after the effective date of this Ordinance. Such instrument shall evidence the unconditional acceptance of the terms hereof and a promise to comply with and abide by the provisions, terms and conditions hereof.

Section 5. 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.

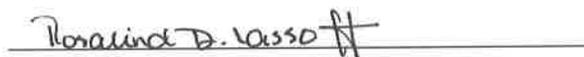
Section 6. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED BY A MAJORITY of the City of Bainbridge Island City Council and signed into authentication this 14th day of June, 2016.

APPROVED:


Val Tollefson, Mayor

ATTEST/AUTHENTICATED:


Rosalind Lassoff, City Clerk

FILED WITH THE CITY CLERK:	May 17, 2016
PASSED BY THE CITY COUNCIL:	June 14, 2016
PUBLISHED:	June 17, 2016
EFFECTIVE DATE:	June 22, 2016
ORDINANCE NUMBER:	2016-10

**CABLE TELEVISION FRANCHISE
BETWEEN BAINBRIDGE ISLAND, WASHINGTON AND
COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC**

April 13, 2016

TABLE OF CONTENTS

SECTION 1. DEFINITIONS	2
“Access or Access Programming”	2
“Access Channel”	2
“Access Fees”	2
“Activation” or “Activated”	2
“Affiliated Entity” or “Affiliate”	2
“Bad Debt”	3
“Basic Service” or “Basic Cable Service”	3
“Broadcast Signal”	3
“Cable Act(s)”	3
“Cable Operator”	3
“Cable Service”	3
“Channel”	3
“City” or “Grantor”	3
“Customer Service Representative”	3
“Demarcation Point”	3
“Designated Access Provider”	3
“Downstream Channel”	4
“Dwelling Unit”	4
“Expanded Basic Service”	4
“FCC”	4
“Fiber Optic”	4
“Franchise”	4
“Franchise Area”	4
“Franchise Fee”	4
“Grantee”	5
“Gross Revenues”	5
“Headend” or “Hub”	5
“Interconnect” or “Interconnection”	5
“Leased Access Channel”	5
“Locally Scheduled Original Programming”	5
“Noncommercial”	6
“Normal Business Hours”	6
“Normal Operating Conditions”	6
“Pay Service” or “Premium Service”	6
“Person”	6
“Rights-of-Way”	6
“School”	6
“Service Interruption”	6
“Standard Installation”	7
“State”	7
“Subscriber” or “Customer”	7

“System” or “Cable System”	7
“Tier”	7
“Video Programming”	7
SECTION 2. GRANT OF FRANCHISE	7
2.1 Grant	7
2.2 Use of Rights-of-Way	9
2.3 Term	10
2.4 Effective Date	10
2.5 Franchise Nonexclusive	10
2.6 Grant of Other Franchises	11
2.7 Familiarity with Franchise	11
2.8 Effect of Acceptance	11
2.9 Police Powers	12
2.10 Franchise Area	12
SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS	12
3.1 Franchise Fee	12
3.2 Payments	12
3.3 Acceptance of Payment	12
3.4 Quarterly Franchise Fee Reports	12
3.5 Audits	13
3.6 Financial Records	13
3.7 Interest on Late Payments	13
3.8 Maximum Franchise Fee	13
3.9 Additional Commitments Not Franchise Fees	14
3.10 Payment on Termination	14
3.11 Bundling	14
3.12 Additional Compensation	14
3.13 Tax Liability	14
SECTION 4. ADMINISTRATION AND REGULATION	15
4.1 Rates and Charges	15
4.2 No Rate Discrimination	15
4.3 Filing of Rates and Charges	15
4.4 Time Limits Strictly Construed	16
4.5 Performance Evaluation	16
4.6 Leased Access Channel Rates	16
4.7 Late Fees	16
SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS	16
5.1 Indemnification	16
5.2 Insurance Requirements	18
5.3 Security	20

SECTION 6. CUSTOMER SERVICE	21
6.1 Customer Service Standards	21
6.2 Subscriber Privacy	21
6.3 Customer Service Location(s).....	21
6.4 Customer Service Agreement and Packet.....	22
SECTION 7. REPORTS AND RECORDS	22
7.1 Open Records.....	22
7.2 Confidential/Proprietary Information.....	23
7.3 Records Required.....	23
7.4 Copies of Federal and State Reports	24
7.5 Complaint File and Annual Reports	24
7.6 Inspection of Facilities and Annual Meeting	24
7.7 False Statements.....	25
SECTION 8. PROGRAMMING	25
8.1 Broad Programming Categories.....	25
8.2 Deletion of Broad Programming Categories.....	25
8.3 Obscenity	25
8.4 Services for the Disabled	26
8.5 Parental Control Device	26
8.6 Complementary Cable Service.....	26
8.7 New Technology.....	26
8.8 Leased Access Channels	27
SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS	27
9.1 Access Channels	27
9.2 Management and Control of Access Channels	30
9.3 Access Channel Identification/Location/Relocation/Bill Insertions	30
9.4 Access Interconnections.....	30
9.5 Support for Capital Costs.....	31
9.6 Technical Quality.....	31
9.7 Return Connectivity	31
SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION	32
10.1 Construction.....	32
10.2 Location of Facilities	33
10.3 Restoration of Rights-of-Way.....	33
10.4 Maintenance and Workmanship	33
10.5 Acquisition of Facilities.....	34
10.6 Reservation of Rights-of-Way	34
10.7 Rights-of-Way Vacation	35
10.8 Removal of Discontinued Facilities.....	35
10.9 Hazardous Substances.....	35
10.10 Undergrounding of Cable.....	36

10.11	Codes.....	37
10.12	Construction and Use of Poles	37
10.13	Tree Trimming.....	37
10.14	Standards.....	37
10.15	Stop Work	38
10.16	Work of Contractors and Subcontractors.....	38
10.17	GIS Mapping.....	39
SECTION 11. CABLE SYSTEM DESIGN.....		39
SECTION 12. TECHNICAL STANDARDS.....		40
SECTION 13. CABLE SYSTEM PERFORMANCE TESTING.....		40
SECTION 14. SERVICE EXTENSION		40
SECTION 15. STANDBY POWER AND EAS		41
15.1	Standby Power	41
15.2	Emergency Alert Capability.....	41
SECTION 16. FRANCHISE BREACHES; TERMINATION OF FRANCHISE.....		42
16.1	Procedure for Remediying Franchise Violations	42
16.2	Alternative Remedies.....	43
16.3	Assessment of Liquidated Damages and Letter of Credit.....	43
16.4	Revocation	45
16.5	Purchase of the Cable System	46
SECTION 17. FRANCHISE TRANSFER		46
SECTION 18. ABANDONMENT		48
SECTION 19. PROHIBITED PRACTICES, LOCAL EMPLOYMENT EFFORTS AND NOTICES		49
19.1	Preferential or Discriminatory Practices Prohibited	49
19.2	Notices	49
SECTION 20. MISCELLANEOUS PROVISIONS		49
20.1	Cumulative Rights	49
20.2	Costs to be Borne by Grantee.....	50
20.3	Binding Effect.....	50
20.4	Authority to Amend	50
20.5	Venue	50
20.6	Governing Laws.....	50
20.7	Captions	50
20.8	No Joint Venture	50

20.9 Waiver50
20.10 Severability51
20.11 Compliance with Federal, State and Local Laws51
20.12 Force Majeure51
20.13 Entire Franchise51
20.14 Attorneys' Fees51
20.15 Action of the City or Grantee51
20.16 Acceptance51

SECTION 21. EFFECTIVE DATE.....52

CABLE TELEVISION FRANCHISE

This Cable Television Franchise ("Franchise") is entered into in Bainbridge Island, Washington, this ____ day of _____, 2016, by and between Bainbridge Island, Washington a municipal corporation, hereinafter ("Grantor" or the "City") and Comcast Cable Communications Management, LLC hereinafter known as ("Grantee"). Grantor and Grantee are sometimes referred to hereinafter collectively as the "parties."

WHEREAS, the City has reviewed Grantee's performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Grantee, and has determined that Grantee's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's proposal to provide cable television service within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of cable communications service, high technical capability and reliability of cable systems in its jurisdiction, the availability of local programming (including public, educational and Governmental Access programming) and quality Customer service; and

WHEREAS, diversity in Cable Service and local and non-local programming is an important policy goal and the Grantee's Cable System should offer a wide range of programming services; and

WHEREAS, Subscriber interests and competitive factors within the Cable Service market should be an essential characteristic of this Franchise; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive Franchises to construct, operate and maintain cable systems within the boundaries of the City; and

WHEREAS, in consideration of the mutual promises made herein, and other good and valuable consideration as provided herein, the receipt and adequacy of which are hereby acknowledged, City and Grantee do hereby agree as follows;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS

For the purposes of this Franchise the following terms, phrases, words and their derivations shall have the meanings given herein when indicated with the text of the Franchise by being capitalized. 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, or those defined, but not capitalized within the text shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

"Access" or "Access Programming" includes Public Access, Educational Access and Governmental Access, collectively, and means the availability for Noncommercial use by various governmental and educational agencies, institutions and organizations, in the community, including City and its designees, of particular channels on the Cable System to receive and distribute Video Programming to Subscribers, as permitted under applicable law, including, but not limited to:

(A) "Public Access" means Access where any member of the general public may be a programmer on a nondiscriminatory basis, subject to operating rules formulated by the City or its designee. Such rules shall not be designed to control the content of public access programming. Such rules shall also address the extent to which and manner in which members of the general public may be programmers on the Access Channel.

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

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

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

"Access Fees" means the capital contributions paid to the City by the Grantee in accordance with Section 9.5.

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

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

“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.

“Basic Service” or “Basic Cable Service” means any Cable Tier that includes, at a minimum, the retransmission of local television Broadcast Signals and Access programming.

“Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes or any other means.

“Cable Act(s)” means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and any amendments thereto.

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

“Cable Service” means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.

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

“City” or “Grantor” means the City of Bainbridge Island, Washington, a municipal corporation, of the State of Washington.

“Customer Service Representative” (or “CSR”) shall mean any person employed by Grantee to assist, or provide service to, Customers, whether by answering public telephone lines, writing service or installation orders, answering Customers’ questions, receiving and processing payments, or performing other Customer service-related tasks.

“Demarcation Point” is located at an Access origination site and shall be the termination panel or point of interconnection between the City’s encoded video and audio and the input to the Grantee’s optical transmitter where the City signal is transmitted over a fiber connection to Grantee’s Headend.

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

“Downstream Channel” means a Channel capable of carrying a transmission from the Headend to remote points on the System or to Interconnection points on the Cable System.

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

“Expanded Basic Service” means cable programming services not included in the Basic Service and excluding premium or pay-per-view services.

“FCC” means the Federal Communications Commission or its lawful successor.

“Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying electric light-wave impulses.

“Franchise” means the document in which this definition appears, that is executed between City and Grantee, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.

“Franchise Area” means the incorporated area within the jurisdictional boundaries of the City, including any areas that become incorporated due to annexation by the City during the term of this Franchise.

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

(A) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment on both utilities and Cable Operators or their services, but not including a tax, fee, or assessment that is unduly discriminatory against Cable Operators or cable Subscribers);

(B) Capital costs that are required by the Franchise to be incurred by the Grantee for Public, Educational or Governmental Access facilities, including the support required in Section 9.5.

(C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

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

“Grantee” means Comcast Cable Communications Management, LLC or its lawful successor, transferee or assignee.

“Gross Revenues” means any and all revenue derived directly or indirectly by Grantee, or by Grantee’s Affiliates from the operation of the Grantee’s Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly and other fees charged Subscribers for Cable Services including Basic Service, Expanded Basic Service, any expanded Tiers of Cable Service, other Tiers of Cable Service, optional Premium Service, pay-per-view and per-program Channels, Cable Service installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, remote control rental fees, late fees and administrative fees or other consideration received by the Grantee from programmers for carriage of Cable Services on the Cable System and recognized as revenue under generally accepted accounting principles (GAAP), revenues from rentals of converters or other Cable System equipment, advertising sales revenues (including local, regional and a pro rata share of national advertising carried on the Cable System in the Franchise Area), net of commissions due to advertising agencies that arrange for the advertising buy, revenues from program guides, additional outlet fees, revenue from the sale or carriage of other Cable Services, and revenues from home shopping. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Grantee that are imposed directly on any Subscriber or user by the State, City or other governmental unit and that are collected by the Grantee on behalf of said governmental unit; or (iii) the capital contributions as required by Section 9.5 of this Franchise. The Franchise Fees are not a tax and are therefore included in Gross Revenues.

“Headend” or “Hub” means any Facility for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals and all other related equipment and Facilities.

“Interconnect” or “Interconnection” means the provision of electronic linkage of City Access Channel programming to geographically contiguous cable systems served by Grantee’s Headend located in Kitsap County, including technical, engineering, physical, and other necessary components to accomplish, complete and adequately maintain such provisioning.

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

“Locally Scheduled Original Programming” means Public Access, Government Access or Educational Access programming that is created by the City or their designated access provider(s) including edited coverage of live programming. Such Locally Scheduled Original Programming shall not be considered as qualifying as such after three (3)

cablecasts (initial, first repeat and second repeat). Automated Video Programming filler, such as cablecasts of highways and roads, or video bulletin boards does not constitute Locally Scheduled Original Programming that qualifies herein.

“Noncommercial” means, in the context of Access Channels, those particular products and services that are not promoted or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer from soliciting and receiving contributions used to produce and transmit Video Programming on an Access Channel, or from acknowledging a contribution, in the manner of the Corporation for Public Broadcasting or some similar manner, subject to applicable law.

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

“Normal Operating Conditions” means those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, severe or unusual weather conditions, and availability of materials, equipment or labor. Those conditions that are ordinarily within the control of the Grantee include, but are not limited to peak or seasonal demand periods and maintenance or upgrade of the Cable System.

“Pay Service” or “Premium Service” means Video Programming or other programming service choices (such as movie Channels or pay-per-view programs) offered to Subscribers on a package tier, per-Channel, per-program or per-event basis.

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

“Rights-of-Way” means land acquired for or dedicated to the public or are hereafter acquired or dedicated to the public and maintained under public authority, including but not limited to public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks and areas behind sidewalks, easements, and similar public property located within the Franchise Area.

“School” means any State accredited K-12 public or private educational institution located in the City not including home schools, prisons or jails (provided that state accredited juvenile schools within prisons or jails shall be included).

“Service Interruption” means the loss of picture or sound on one or more cable Channels.

“Standard Installation” means an installation that is within 125 aerial feet or 60 underground feet of Grantee’s trunk or feeder lines which is capable of providing Cable Service.

“State” means the State of Washington.

“Subscriber” or “Customer” means any Person (including those under a bulk billing arrangement) who lawfully receives Cable Services provided by Grantee by means of the Cable System with Grantee’s express permission. Said permission may be withdrawn and the customer disconnected by Grantee at Grantee’s discretion.

“System” or “Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. Section 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term “Cable System” or “System” shall mean Grantee’s Cable System in the Franchise Area unless the context indicates otherwise.

“Tier” means a category of Cable Services provided by the Grantee for which a separate rate is charged.

“Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, or cable programming provider.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

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

(B) The Grantee, through this Franchise, is granted the right to operate its Cable System using the public Rights-of-Way within the Franchise Area in compliance with the Bainbridge Island Municipal Code, as may be amended periodically and all lawfully enacted applicable construction codes and regulations. The Grantee specifically agrees to comply with the provisions of City ordinances provided that in the event of a conflict between the provisions of ordinances and the Franchise, the express provisions of the Franchise shall govern. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its generally applicable regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications unless there is a conflict with Grantee's negotiated rights hereunder. Grantee reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

(C) This Franchise shall not be interpreted to prevent the City from imposing other conditions, to the extent permitted by law.

(D) Grantee agrees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee that is a Cable Operator of the Cable System in the Franchise Area, as defined herein, or directly involved in the management or operation of the Cable System in the Franchise Area, will comply with the terms and conditions of this Franchise.

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

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

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

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

(F) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Ways in which the City has an actual interest. It is not a warranty of title or interest in any Rights-of-Way; it does not provide the Grantee with any interest in any particular location within the Rights-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

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

2.2 Use of Rights-of-Way

(A) Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, through, below and along the Rights-of-Way within the Franchise Area, such wires, cables (both coaxial and Fiber Optic), conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all lawfully enacted and applicable construction codes, laws, ordinances, regulations and procedures regarding placement and installation of Cable System facilities in the Rights-of Way.

(B) Grantee must follow City-established requirements, including the Bainbridge Island Municipal Code, as may be amended periodically, as well as all other City codes, ordinances and other regulations regarding placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way. The Grantee must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the Grantor's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Rights-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by City, or that is installed without prior City approval of the time, place or manner of installation and charge Grantee for all the costs associated with removal; and City may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Grantee shall assume its costs (in accordance with applicable law) associated with any requirement of City in the exercise of its police powers, to relocate its Cable System facilities located in the Rights-of-Way provided the same is consistent with State law.

2.3 Term

This Franchise is and shall remain in full force and effect for a period of five (5) years from and after its adoption and the effective date of this Franchise, subject to acceptance of this Franchise by Grantee and subject to the paragraph below in this Section 2.3.

Except as provided herein, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall commence upon the effective date hereof and shall expire five (5) years from the effective date of this Franchise unless lawfully terminated sooner as hereinafter provided. ~~Provided, however, if both the City and the Grantee mutually agree on extending the Franchise's current terms and conditions and any new terms and conditions to be included in the Franchise, the term of this Franchise shall be extended for an additional five (5) years.~~

2.4 Effective Date

(A) This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall take effect and be in force from and after the effective date of this Franchise as specified in this Section and for the duration of the term as specified in Section 2.3.

(B) The effective date of this Franchise shall be five business days after its adoption.

(C) The grant of this Franchise shall have no effect on the Grantee's duty under any ordinances or franchise in effect prior to the Effective Date of this Franchise or any effect on the Grantee's duty while it continued to be bound by the terms and conditions of such ordinances or franchise between the time of the expiration date of such franchise until the Effective Date of this Franchise to indemnify or insure the Grantor against previous acts and omissions or to pay any Franchise Fees, capital contributions, business and utility taxes or any other payments due under any ordinances or franchise in effect or under any such ordinances or franchise under which Grantee continued to operate the Cable System in the City prior to the Effective Date of this Franchise. Other than as provided herein, Ordinance Number 70-14, Ordinance Number 2001-52, Ordinance Number 2003-26 and Ordinance Number 2007-43 are null and void and of no further force or effect.

2.5 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or franchises granted by City or its predecessors to any Person to use any property, Right-of-Way, easement, including the right of City to use same for any purpose it lawfully deems fit, including the same or similar purposes allowed Grantee hereunder. City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems, as City deems appropriate.

2.6 Grant of Other Franchises

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; public, education and government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

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

(C) In the event that a wireline multichannel video programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably withhold consent to the Grantee's petition.

2.7 Familiarity with Franchise

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

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's

intervening to the extent it is legally entitled to do so in any legal or regulatory proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.9 Police Powers

Grantee's rights hereunder are subject to the police powers of City to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all applicable laws, ordinances and regulations lawfully enacted pursuant to the police powers of City, or hereafter enacted in accordance therewith, by City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary.

2.10 Franchise Area

Grantee shall provide Cable Services, as authorized under this Franchise, within the Franchise Area in accordance with line extension and density provisions as provided herein.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee

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

3.2 Payments

Grantee's Franchise Fee payments to City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after said dates.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim City may have for further or additional sums payable or for the performance of any other obligation of Grantee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by the Grantee was due or such shorter period of time if so provided by law.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to City on a form commonly used by Grantee, verified by an officer of Grantee, containing an accurate statement in

summarized form, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall include all Gross Revenues of the Cable System.

3.5 Audits

On an annual basis, upon thirty (30) days' prior written notice, City shall have the right to conduct an independent audit of Grantee's financial records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided Grantee cooperates in making all relevant records available upon request, City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous six (6) years or such shorter period of time if so provided by law. Any additional amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee, and Grantee's agreement that the audit findings are correct, which notice shall include a copy of the audit findings. If a Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the City receives the payment. If the audit shows that Franchise Fees have been underpaid, by five percent (5%) or more in a calendar year, Grantee shall pay the cost of the audit in an amount up to \$7,500 per audited year.

3.6 Financial Records

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

3.7 Interest on Late Payments

In the event any payment is not received within forty-five (45) days from the end of the scheduled payment period, Grantee shall pay, in addition to the payment or sum due, interest from the due date at the prime rate as listed in the Wall Street Journal on the date the payment was due, until the date the City receives the payment.

3.8 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time throughout the term of this Franchise, City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, the parties hereby agree to amend the Franchise after written notice to Grantee, and a public meeting to discuss same provided that all wireline cable systems in the Franchise Area over which the City has jurisdiction are treated in an equivalent manner. In the event that at any time throughout the term of this Franchise, City is limited by federal law to collecting an amount which is less than five percent (5%) of Gross Revenues in any twelve (12) month period, Grantee may reduce the Franchise

Fee payments to the City in accordance with federal law and the parties hereby agree to amend the Franchise unless the City would be covered under grandfathered provisions under federal law to keep the Franchise Fee at 5% of Gross Revenues.

3.9 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments regarding Access Fees, funding, and Access Channels are excluded from the definition of Franchise Fees herein and are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to City, pursuant to any federal law.

3.10 Payment on Termination

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

3.11 Bundling

In addition to the requirements elsewhere in this Franchise, Grantor acknowledges that, during the term of this Franchise, Grantee may offer to its subscribers, at a discounted rate, a bundled or combined package of services consisting of Cable Services, which are subject to the Franchise Fee referenced above in Section 3.1, and other services that are not subject to that Franchise Fee. To the extent discounts reduce revenues includable for purposes of calculating Franchise Fees, the Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of Franchise Fees to the City. As between Cable Services and non-Cable Services, revenues shall be allocated on a pro rata basis. If a dispute arises between the parties regarding this matter, Grantor and Grantee will meet within ten (10) days' notice and discuss such matters in good faith in an attempt to reach a reasonable compromise thereof.

3.12 Additional Compensation

In the event that Franchise Fees are prohibited by any law or regulation, Grantee shall pay to the City that amount, if any, which is determined by applicable law.

3.13 Tax Liability

The Franchise Fees shall be in addition to and there shall not be any offset against Franchise Fees for generally applicable taxes and fees which are now or hereafter required to be paid by businesses in accordance with the law, including, the City Utility

Tax provided for in City Code subsection 5.08.040 D (or any lawful amendment or modification thereto or any successor provision thereto) or Business or Occupation Tax in City Code chapter 5.05, (or any lawful amendment or modification thereto or any successor provision thereto) sales, use and other taxes, and business license fees.

SECTION 4. ADMINISTRATION AND REGULATION

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

4.1 Rates and Charges

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

Customer billing shall be itemized by service(s) per FCC Regulation 76.309 (B) (ii) (A) and 76.1619 or as amended. Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

4.2 No Rate Discrimination

All Grantee rates and charges shall be published (in the form of a publicly-available rate card), 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. Nothing herein shall be construed to prohibit:

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

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

(C) The offering of rate discounts for either Cable Service generally; or

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

(E) The Grantee continues to offer through a voluntary initiative a discount of 30% from its published rate card rate to Subscribers for Basic Cable Services or the Basic portion of Expanded Basic as part of their service (provided they are not already receiving a package discount) who are deemed low income by City standards and aged 65 years or older or disabled, provided that such individual(s) are the legal owner or lessee/tenant of their Dwelling Unit.

4.3 Filing of Rates and Charges

Throughout the term of this Franchise, Grantee shall maintain on file with City a complete schedule of applicable rates and charges for Cable Services provided under this

Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

4.4 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise.

4.5 Performance Evaluation

(A) Special evaluation sessions may be held at any time upon request by City during the term of this Franchise following Grantee's repeated failure to comply with the terms of this Franchise.

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

(C) Topics that may be discussed at any evaluation session may include those issues surrounding Grantee's failure to comply with the terms of the Franchise provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision herein and further provided that this subsection need not be followed before other legal or equitable remedies within this Franchise are invoked.

4.6 Leased Access Channel Rates

Upon request, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee.

4.7 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however, characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable local, State and federal laws.

(B) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the subscribers.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee, at its sole cost and expense, shall indemnify, defend and hold City, its officers, officials, City Council, boards, commissions, authorized agents, representatives, and employees, harmless from any

action or claim for injury, damage, loss, liability, settlement, proceeding, judgment, or 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, erection, operation, maintenance, repair or reconstruction, or any other act done under this Franchise, by or for Grantee, its authorized agents, or its employees or by reason of any neglect or omission of Grantee its authorized agents or its employees. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Subject to applicable law, Grantee shall indemnify City for any damages, claims, additional costs or expenses payable by City related to, arising solely out of or resulting solely from Grantee's failure to properly install, remove, adjust or relocate any of its facilities in the streets in accordance with any lawful relocation required by City.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold City harmless for any claim for injury, damage, loss, liability, cost and expense, including court and appeal costs and attorneys' fees and expenses in any way arising out of any failure by Grantee to secure consents from the owners, authorized distributors or franchisees/licensors of programs to be delivered by the Cable System, provided however, that Grantee will not be required to indemnify the City for any claims arising out of the use of Access Channels by the City and/or its Designated Access Providers or use by the City of the Emergency Alert System.

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

(E) Duty of Defense. 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. The City shall give the 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, the City or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend any claims arising thereunder, and the City shall cooperate fully therein.

(G) Separate Representation. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and

the counsel selected by Grantee to represent the City, Grantee shall select and pay for other counsel without conflict of interest with the City.

5.2 Insurance Requirements

(A) General Requirement. Grantee shall, at its own expense, purchase and maintain the minimum insurance required herein with companies duly licensed to issue insurance in the State of Washington possessing a current A.M. Best, Inc. Rating of A VII or better and shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than two million dollars (\$2,000,000) per occurrence. The general aggregate limit shall be no less than five million dollars (\$5,000,000). Such insurance shall name the City, the City's officers, officials, City Council, boards, commissions, agents, representatives, volunteers and employees as additional insureds.

(2) Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) aggregate with respect to each of Grantee's owned, hired and non-owned vehicles, or any other vehicles assigned to or used in any activities authorized under or used in conjunction with this Franchise.

(3) Employer's Liability with limits of at least one million dollars (\$1,000,000).

(4) Workers' Compensation insurance shall be maintained during the life of this Franchise to comply with State law for all employees.

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

(B) Each policy shall provide that the insurance shall not be canceled or terminated so as to be out of compliance with these requirements without forty-five (45) days' written notice first provided to the City via mail, and ten (10) days' notice for nonpayment of any premium. If the insurance is canceled or terminated or materially diminished so as to be out of compliance with the requirements of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, until all work required to be performed under the terms of this Franchise is satisfactorily completed and in the event any insurance policy required by this Franchise shall be written on a claims made basis,

Grantee agrees to keep such policy in place as well as Commercial General Liability Insurance, for at least one (1) year past completion and acceptance of Grantee's work or services and one year beyond expiration or termination of this Franchise. Any failure of Grantee to comply with the claim reporting provisions of the policy(ies) or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City. However, if coverage is not afforded under these circumstances, Grantee will indemnify City for losses City otherwise would have been covered for as an additional insured.

~~All insurance policies, except Workers Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its officers, officials, agents, and employees for any claims arising out of Grantee's work or service. Grantee solely shall be responsible for deductibles and/or self-insured retention, and City, at its option, may require Grantee to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable Letter of Credit.~~

(C) Endorsements.

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

(a) The City, and the City's officers, officials, City Council, boards, commissions, agents, representatives, and employees are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, upgrade, maintenance, repair, replacement or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the City, City Council and the City's officers, officials, boards, commissions, agents, representatives and employees. Any insurance or self- insurance maintained by the City, City Council and the City's officers, officials, boards, commissions, agents, representatives, volunteers or employees shall be in excess of the Grantee's insurance and shall not contribute to it, provided the occurrence arises out of Grantee's acts or negligence; and

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

(D) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and an endorsement reflecting additional insured status. The certificates for each insurance policy shall be signed by facsimile signature of a person authorized by the insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City at the time of

acceptance of this Franchise by Grantee with existing insurance coverage to be maintained by Grantee until that date. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

5.3 Security

(A) Grantee shall provide a performance bond in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore City Rights-of-Way and other property. Grantee may be required to obtain additional bonds, such as generally applicable construction bonds, in accordance with the City's ordinary practices. The construction bond and performance bond shall be in a standard industry form. Grantee shall pay all premiums or costs associated with maintaining the bond(s), and shall keep the same in full force and effect at all times. Except as expressly provided herein, the Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence.

(B) The bond shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without forty-five (45) days written notice first being given to Grantor. If the bond is cancelled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, Grantee shall provide a replacement bond.

(C) If there is uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may request and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of twenty-five thousand dollars (\$25,000).

(D) After the giving of notice by the City to Grantee, and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes that include, but are not limited to the following:

- (1) Failure of Grantee to pay the City sums due under the terms of this Franchise;
- (2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee; and
- (3) Liquidated damages assessed against Grantee as provided in this Franchise.

(E) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within ten (10) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise. Grantee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

(F) Grantee agrees to maintain continuous uninterrupted letter of credit and bonds in the amounts required for the duration of this Franchise or as otherwise specified in this Franchise.

(G) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. After a determination by the City Council, Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal on the date the City withdrew funds from the Letter of Credit or Performance Bond until the date the City returns the money to Grantee.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards as provided in FCC Standards and Regulations 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619.

6.2 Subscriber Privacy

Grantee shall comply with privacy rights of Subscribers in accordance with applicable law.

6.3 Customer Service Location(s)

For a period of two (2) years from the Effective Date, the Grantee must maintain, at a minimum, one (1) Customer service location as prescribed herein conveniently located within Kitsap County that will be open during Normal Business Hours, to provide Subscribers the opportunity to pick up (certain types of equipment depending upon size and subject to storage availability on site) and return Subscriber equipment and to make bill payments. Sixty (60) days prior to any closure of such Customer Service location, the City and the Grantee agree to meet to discuss any prospective closure. In addition, Grantee shall at all times maintain a Customer support center where Customers may access information related to services and products, make bill payments or "speak" with a Customer Service Representative. Grantee is encouraged to provide a website whereby Customers can request service credits and make payments.

6.4 Customer Service Agreement and Packet

(A) Grantee shall provide to Subscribers an accurate, comprehensive service agreement (currently called the work order) and Customer installation packet (currently called the Install Package) for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

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

(B) A copy of the installation packet shall be available to each Subscriber at the time of initial installation and at the Customer service office and during any reconnection or Cable Service upgrade requiring a home visit by the Grantee (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Within thirty (30) days following material policy changes, information regarding the changes will be provided in writing to Subscribers.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

(A) Books and Records. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an

inspection by the City shall be retained by the Grantee for a minimum period of six (6) years.

If any books or records of Grantee are not kept in a local office and if Grantor determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses, not to exceed Grantee's internal guidelines for travel expense, incurred in making such examination shall be paid by Grantee.

(B) File for Public Inspection. Throughout the term of this Franchise, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

7.2 Confidential/Proprietary Information.

Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. That said, Grantee does agree to provide all information reasonably required to verify compliance with the material terms of the Franchise. City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. If City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time.

7.3 Records Required

Grantee shall at all times maintain:

(A) Access to a full and complete set of plans, records and "route" maps showing the location of all Cable System equipment installed or in use in the Rights-of-Way, that are generated in Grantee's normal course of business;

(B) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates that relate to the operation of the Cable System in the Franchise Area;

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

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

(E) Financial records as referred to in this Franchise.

7.4 Copies of Federal and State Reports

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

7.5 Complaint File and Annual Reports

Grantee shall keep an accurate and comprehensive compilation of any and all Customer complaints received and Grantee's actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. Grantee shall provide an executive summary report to the City on an annual basis within ninety (90) days of the end of each year that shall include the following information:

- (A) Nature and type of Customer complaints;
- (B) A summary of unplanned Service Outages in excess of 2 or more hours, including the date and duration;
- (C) Average response time for service calls;
- (D) Phone activity report consistent with Grantee's regular business practices;
- (E) A description of major planned construction, if known; and
- (F) A summary of the previous year's activities regarding the development of the Cable System, including, beginning and ending plant miles constructed, any technological changes occurring in the Cable System and the number of subscribers for each class of Cable Service (i.e., Basic, Expanded Basic Service, premium, etc.);

7.6 Inspection of Facilities and Annual Meeting

Grantor, consistent with the other provisions herein, may inspect any of Grantee's facilities and equipment located in the Rights-of-Way or on other public property at any reasonable time during business hours upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice.

Throughout the term of the Franchise, Grantee shall, upon written request, meet with the City on an annual basis upon fifteen (15) days prior written notice from City. Matters to be discussed include, but are not limited to Customer service, Cable System performance, technical issues and other matters related to Grantee's operation of the Cable System.

7.7 False Statements

Any intentional false or misleading statement or representation in any report required by this Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, that are available to City under this Franchise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide at least the following initial broad categories of programming to the extent such categories are reasonably available.

- (A) Government programming;
- (B) News, weather and information;
- (C) Sports;
- (D) General entertainment including movies;
- (E) Children and family oriented;
- (F) Arts;
- (G) Foreign language;
- (H) Science/technology.

8.2 Deletion of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without prior written notice to the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee shall follow the guidelines of Federal law.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State or local laws.

8.4 Services for the Disabled

Grantee shall comply with the Americans With Disabilities Act and any amendments or successor legislation thereto.

8.5 Parental Control Device

Upon request by any Subscriber, Grantee shall make available at no charge a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and upon request from a Subscriber periodically thereafter.

8.6 Complementary Cable Service

City acknowledges that complimentary services reflect a voluntary initiative on the part of Grantee. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to applicable law, should Grantee elect to offset governmental complimentary cable services against franchise fees, Grantee shall first provide Grantor with ninety (90) days prior notice. Grantor reserves its rights to challenge the value of and what items are included in Governmental Complimentary Cable Service. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Service and set top box to those City buildings now existing, acquired or hereafter constructed provided that the buildings are either owned and occupied or leased and occupied by the City for administrative or educational purposes, fire station(s), police station(s), libraries and School(s) and provided further that they are already served or are within 125 aerial service feet or 60 underground trench feet (a Standard Installation) of its Cable System, excluding those buildings or portions of buildings that house or occupy prison/jail populations. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. In the case of leased facilities, the recipient of service is responsible for securing approval for appropriate right of entry suitable to the Grantee in its reasonable discretion. The Cable Service provided shall not be used for commercial purposes and the City shall take reasonable steps to limit display in public areas to the City Access Channels. The City shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. To the extent not inconsistent with other provisions in this Franchise, the City shall hold the Grantee harmless from any and all liability or claims arising out of the use of Cable Service at City facilities and other facilities identified in this Section. For new hookups, the Grantee shall not provide an outlet to such buildings where a non-Standard Installation is required, unless the City or building owner/occupant agrees to pay the cost of any necessary Cable System extension and non-Standard Installation.

8.7 New Technology

(A) If there is a new technology, Cable Service program offering, programming delivery method or other such new development that Grantee in its sole discretion decides to beta test or trial on a limited basis in the marketplace, and such a test

or trial is suited to the size and demographics of the City, Grantee shall be allowed by City to conduct the trial or beta test in the City so long as such a test is technically feasible.

(B) If there is a new technology that in City's opinion would enhance substantially the quality or quantity of programming available to Subscribers on the Cable System, Grantee shall, at the request of the City, investigate the feasibility of implementing said technology and report to City the results of such investigation within ninety (90) days from the date of such request.

8.8 Leased Access Channels

The Grantee shall provide leased access channels as required by Federal Law.

SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 Access Channels

(A) All assigned Access Channels can be used to transmit programming in any format which is technically compatible with the Cable System, including, by way of example and not limitation, video and audio, audio only, secondary audio and/or text (character generated) messages. Such uses must be in furtherance of Access purposes. During the term of this Franchise, Grantee shall provide, as part of the Basic Service package, at no charge, the following Access Channels:

(B) Standard Definition ("SD") Digital Access Channel.

(1) Grantee shall provide one (1) Activated Downstream Channel for PEG Access use in a standard definition ("SD") digital format in Grantee's Basic Service ("SD Access Channel"). Grantee shall carry all components of the SD Access Channel Signal provided by Grantor including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Grantor shall be responsible for providing the SD Access Channel Signal in an SD format to the Demarcation Point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channel with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry a SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Grantee shall carry all components of the SD Access Channel signal provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by Grantor, Grantee shall verify signal delivery to Subscribers with the Grantor, consistent with the requirements of this Section 9.1(B).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the Demarcation Point. The Grantor shall be responsible for costs associated with SD Access signal transmission on its side of the Demarcation Point.

(4) SD Access Channel may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which SD channels are made available. Grantee is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(C) High Definition (“HD”) Digital Access Channel.

(1) Within one hundred eighty (180) days of written notice, Grantee shall activate one (1) HD Access Channel, within the complete Franchise Area of Grantor, for which the Grantor may provide Access Channel signal in HD format to the Demarcation Point at the designated point of origination for the Access Channel. Activation of such HD Access Channel shall only occur after the following conditions are satisfied:

(a) The Grantor shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly activated HD Access Channel; and,

(b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.

(2) The Grantor shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channel with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signal provided by the Designated Access Provider including, but not

limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the Grantor, Grantee shall verify signal delivery to Subscribers with the Grantor, consistent with the requirements of this Section 9.1(C).

(4) HD Access Channel may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(D) Grantee shall simultaneously carry the HD Access Channel provided for in Section 9.1(C) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channel provided pursuant to Subsection 9.1.

(E) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement SD and HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial SD and/or HD channels carried on the Cable System and so long as there is no material signal degradation due to Grantee implementing other manners of SD and HD carriage of the PEG Channel. In the event the Grantor believes that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

(F) In the event Grantee makes any change in the Cable System and related equipment and facilities or in signal delivery technology, which change directly or indirectly affects the signal quality or transmission of any Access Channel programming or services, the Grantee shall, at its own expense, take necessary technical steps, acquire new equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access Video Programming signals is not diminished or adversely affected including, among other things, so that live and recorded programming can be cablecast with as good signal quality than existed prior to such change.

(G) Such HD Channel will be assigned a number near the other HD Local Broadcast Stations, if such a channel location is available. If not, the HD Channel shall be assigned a Channel Location near other HD news/public affairs programming or as reasonably close as available channel numbering will allow.

(H) The Grantee shall include appropriate designation for the PEG Channels on channel cards and other channel listings provided to Subscribers.

9.2 Management and Control of Access Channels

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

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

9.3 Access Channel Identification/Location/Relocation/Bill Insertions

Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall keep PEG Channels on the lowest Tier consistent with applicable law. Subject to applicable law, it is acknowledged that Grantor and Grantee each reserve their rights with respect to whether PEG Channels may be required to be kept on the lowest Tier under effective competition as provided by law. Grantee shall provide to the City a minimum of sixty (60) days notice, and use its best efforts to provide ninety (90) days notice, prior to any relocation of its Access Channels, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. Grantee shall reimburse the City up to three thousand dollars (\$3,000.00) for the necessary cost of replacing printed materials in the event that the Access Channel is moved.

Grantee, upon request, and when space is available, shall provide the City the opportunity to include two bill insertions per year. The City or Designated Access Providers shall be responsible for the costs of printing its bill insertions, the cost of inserting the information into Grantee's bills and for any incremental postage costs. Bill insertions must conform to Grantee's reasonable mailing requirements. Grantee shall be provided an opportunity to review and approve all Access bill insertions.

9.4 Access Interconnections

(A) Grantee shall, in accordance with this Franchise, continue throughout the term of this Franchise to maintain the existing Interconnection with the adjacent cable systems owned and operated by Grantee or an Affiliate of Grantee. Grantee, at its expense shall take all necessary technical steps to ensure that downstream transmissions provide an adequate signal quality in accordance with FCC regulations.

(B) Grantee shall, in accordance with this Franchise, continue throughout the term of this Franchise to maintain the existing Interconnect with the adjacent cable system not owned or operated by Grantee or an Affiliate of Grantee.

(C) Nothing in this section alters Grantee's Channel obligations for Access programming delivered to Subscribers within the Franchise Area.

(D) It is not the Grantee's responsibility to ensure that the signals provided to the existing Interconnection by another Interconnecting cable system meet industry standards.

(E) Any equipment and construction costs borne by Grantee in connection with the obligation to provide for Access Channel Interconnection shall be considered a capital cost. City agrees that such cost is an "external cost" as such term is used in 47 C.F.R. Section 76.922(f) on the date of this Franchise, and as such, the cost is permitted under federal law and regulation to be passed through to Subscribers, to the extent and in a manner provided for in federal regulations governing the same.

9.5 Support for Capital Costs

Within sixty (60) days of the Effective Date of this Franchise, Grantee shall commence paying to the City an Access Fee for educational and government access capital expenditures in an amount of forty-one cents (\$.41) per Subscriber per month. This amount may be changed by City during the term of the Franchise via written notice to Grantee by the Grantor. Grantee shall begin remitting such changed amount, up to a maximum of forty-one cents (\$.41) per Subscriber per month, within sixty (60) days of the written notice. Grantee shall make such payments quarterly, no later than thirty (30) days following the end of the quarter. The City agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the Access Fees to the price of Cable Services and to collect the Access Fees from Subscribers. In addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the Access Fees may be separately stated on Subscriber's bills as a government access capital equipment fee.

9.6 Technical Quality

The Grantee shall maintain all Access channels and Interconnections as required by FCC standards.

9.7 Return Connectivity

(A) Throughout the term of this Franchise, Grantee at its cost and expense shall continue to provide and maintain a fiber optic local origination return line (and associated optical transmitter and receiver, fiber optic path and any necessary repeaters, transport and other equipment) from the origination point located within the Grantor's City Hall located at 280 Madison Avenue North, to the Kitsap County Fairgrounds and from the Fairgrounds to its Headend. Such fiber optic line and equipment shall have sufficient capacity to deliver signal quality as described in this Franchise without signal degradation. The Grantor will provide Grantee with an encoded signal for insertion to the fiber optic transmitter and shall utilize the local origination return line for the transmission of PEG programming for the Access Channel only and shall be responsible for the cost of the encoder at City Hall. Upon written request of the Grantor, Grantee shall construct and maintain additional fiber-optic return connectivity from other locations within the Franchise Area, for the purpose of delivering Access programming. All return connectivity engineering and construction costs for additional fiber optic connectivity shall be paid by the Grantor at a cost mutually agreed to between the Grantor

and Grantee prior to beginning construction, and shall be completed within four (4) months of the year following Grantor's acceptance of Grantee's estimated cost. Grantee must submit to Grantor, all requested estimates, prior to March 1st of each calendar year, and Grantor must respond, to Grantee, with acceptance or refusal prior to June 1st of each calendar year. Grantor shall be responsible for any of Grantee's engineering costs associated with a project requested by Grantor, but not accepted for construction. Grantee may require that a reasonable deposit of the estimated project cost be paid in advance.

(B) After satisfactory completion of work requested by the Grantor for which the Grantor is to reimburse the Grantee and upon submission by Grantee of a proper invoice for payment of the cost reasonably incurred and accompanied by such evidence in support thereof, the Grantor agrees to make payment for the cost reasonably incurred up to the estimated cost for the work; provided, however, that all payments shall be subject to adjustment for any amount found upon audit or otherwise to have been improperly invoiced. All work shall be performed in a cost-effective manner to minimize the costs to the Grantor.

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

10.1 Construction

(A) Grantee shall perform all maintenance, construction, repair, upgrade and reconstruction necessary for the operation of its Cable System in accordance with applicable laws, regulations, ordinances and provisions of this Franchise. To the extent practicable and economically feasible, Grantee's construction and location of its facilities shall be of minimal impact to City streets and sidewalks located within the Rights-of-Way. All construction and maintenance of any and all of 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 City with a construction schedule for work in the Rights-of-Ways as required by City's permitting regulations, obtain all necessary permits and pay all required permit fees, which shall not be offset against the Franchise Fee.

(C) Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System. Prior to doing such work, Grantee shall apply for, and obtain, appropriate permits from City, and give appropriate notices to City, and Grantee shall pay all applicable fees upon issuance of the requisite construction permits by City to Grantee. As a condition of any permits so issued, City 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. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, permittees, licensees, and franchisees so

as to reduce so far as possible the number of Rights-of-Way cuts within the Franchise Area.

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

10.2 Location of Facilities

Within three (3) business days, unless otherwise specified in federal, State or local regulations, after the City or any franchisee, licensee or permittee of the City notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense, mark on the surface all of its located underground facilities within the area of the proposed excavation.

10.3 Restoration of Rights-of-Way

(A) When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way, Grantee shall promptly refill the opening and restore the surface as required by its construction permit.

(B) If Grantee excavates the surface of any Rights-of-Way, Grantee shall be responsible for restoration in accordance with applicable regulations regarding the Rights-of-Way and its surface within the area affected by the excavation. City may, after providing notice to Grantee, and Grantee's failure to respond within the required time, refill or repave any opening made by Grantee in the Rights-of-Way, and the expense thereof shall be paid by Grantee. City may, after providing notice to Grantee, and Grantee's failure to respond within the required time, remove and repair any work done by Grantee that, in the determination of City, does not conform to applicable code. The cost thereof, including the costs of inspection and supervision shall be paid by Grantee. All of Grantee's work under this Franchise, and this Section in particular, shall be done in compliance with all laws, regulations and ordinances of City and State.

10.4 Maintenance and Workmanship

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

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

(C) The Grantee's transmission and distribution Cable System, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere

with the lives of Persons, or to unnecessarily hinder or obstruct the free use of Rights-of-Way, or other public property.

(D) Grantee will maintain membership in good standing with the Utility's Underground Location Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. Grantee shall abide by Washington State's "Underground Utilities" statutes and will further comply with and adhere to procedures and practices relating to the one call locator service program.

(E) When practicable, Grantee shall give reasonable notice to private property owners of construction work in adjacent Rights-of-Way.

(F) Interruptions to be Minimized. The Grantee shall endeavor to schedule maintenance which may cause degradation or interruption to services provided, on its System at times that will minimize the impact of interruptions in service to Subscribers.

10.5 Acquisition of Facilities

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

10.6 Reservation of Rights-of-Way

Nothing in this Franchise shall prevent City from constructing any public work or improvement. If any of Grantee's Cable System interferes with the construction or repair of any Rights-of-Way or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Cable System shall be removed or relocated in the area City shall direct. Any and all such removal or relocation shall be at the expense of Grantee. In the case of a joint relocation project, Grantee shall be responsible for the cost of relocating its facilities. All such removal or relocation shall be preceded by sixty (60) days written notice or such additional time as may be provided by City. Should Grantee fail to remove, adjust or relocate its facilities by the date established by City's written notice to Grantee, City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee.

(A) Movement of Cable System For and By City. The City may remove or disconnect Grantee's facilities and equipment located in the Right-of-Way or on any other property of the City in the case of fire, disaster or other emergency. Except during an emergency, the City shall provide reasonable notice to Grantee prior to taking such action and shall provide Grantee with the opportunity to perform such action. Following notice by the City, Grantee shall remove, replace, relocate, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City, except that the City shall provide at least sixty (60) days' written notice of any major

capital improvement project that would require the removal, relocation, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee. Grantee shall remit payment to City within thirty (30) days of receipt of an itemized list of those costs.

(B) Movement for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The cost of such temporary change must be paid by the permit holder, and Grantee may require the estimated payment in advance.

10.7 Rights-of-Way Vacation

If any Rights-of-Way or portion thereof used by Grantee is vacated by City during the term of this Franchise, unless City specifically reserves to Grantee the right to continue the use of vacated Rights-of-Way, Grantee shall, without delay or expense to City, remove its facilities from such Rights-of-Way, and restore, repair or reconstruct the Rights-of-Way where such removal has occurred. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by City, to restore, repair or reconstruct such Rights-of-Way, City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by City, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation.

10.8 Removal of Discontinued Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit to the City a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that City allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, City may require Grantee to remove the facility from the Rights of Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by City. Until such time as Grantee removes or modifies the facility as directed by City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for the facility, as well as maintenance of the Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access Channel purposes.

10.9 Hazardous Substances

(A) Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Rights-of-Way.

(B) Grantee shall maintain and inspect its System located in Rights-of-Way. Upon reasonable notice to Grantee, City may inspect Grantee's facilities in Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residues of hazardous substances related thereto.

10.10 Undergrounding of Cable

(A) Wiring.

(1) Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the City. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable City Code requirements and rules and in a manner that allows Grantee to maintain its signal integrity in accordance with FCC requirements. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(2) The Grantee shall utilize existing poles and conduit wherever possible.

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

(4) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. Therefore, if the Grantee further upgrades its Cable System, the Grantee shall submit these plans to the City in accordance with the City's permitting process so that such opportunities may be explored. However, nothing set forth herein shall obligate the Grantee to slow the progress of any future upgrade of the Cable System to accommodate the City. In addition, the Grantee agrees to cooperate with the City in any other construction by the Grantee that involves trenching or boring. If sufficient space is reasonably available and there is no threat of degradation to Grantee's Cable System, the Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares proportionally in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

(5) The City shall not be required to obtain easements for the Grantee.

(B) **Repair and Restoration of Property.** If public property is disturbed or damaged by Grantee arising out of or in connection with the provision of Cable Service, the Grantee shall restore the property to its former condition. Rights-of-Way or other City property shall be restored in a manner and within a timeframe approved by the City's Director of Public Works or his or her designee. If restoration of Rights-of-Way or other property of the City is not satisfactorily performed within a reasonable time, the Director of Public Works may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health, safety or welfare, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall issue payment to the City. If suit is brought by City upon Grantee's failure to pay for repair or restoration, the responsibility for reasonable costs and expenses of the prevailing party including attorney costs and fees, will be determined by a court of competent jurisdiction.

10.11 Codes

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

10.12 Construction and Use of Poles

Whenever feasible, Grantee shall use existing poles when the installation of facilities above-ground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, subject to the terms of any City permit, then it shall be lawful for Grantee to make all needed excavations in the streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System.

10.13 Tree Trimming

Upon obtaining a written permit from City, if such a permit is required, Grantee may prune or cause to be pruned, using proper pruning practices in accordance with such permit, any tree in the Rights-of-Way that interferes with the Cable System.

10.14 Standards

(A) The Grantee must comply with all federal, State and local safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health

Administration (OSHA) Standards. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. Grantee shall ensure that all cable drops are properly bonded and grounded at the home at the time of installation, consistent with applicable code requirements. All non-conforming or nonperforming cable drops shall be replaced by Grantee during the normal course of business.

(B) All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices and of sufficient height to comply with all federal, State and local regulations, ordinances and laws so as not to interfere with the right of the public or individual property owner, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. Grantee shall follow standard industry practices in the burying of service drops and make best efforts to complete burial within three (3) calendar weeks of initial request for service or installation (whichever is later) and at a minimum of twelve (12) inches depth.

10.15 Stop Work

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

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

10.16 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be insured and bonded in accordance with local ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

10.17 GIS Mapping

Grantee shall provide the City with records of Grantee's trunk and distribution facilities within the Franchise Area in a standard geographic information system format (GIS) format which is currently ESRE. All updates of the GIS shall be submitted to the City Public Works & Utilities Department within thirty (30) days upon annual request or sooner as may reasonably be required by the City.

SECTION 11. CABLE SYSTEM DESIGN

Subscriber Network

(A) Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its Cable System to a fiber-to-the-node Cable System architecture, with fiber-optic cable deployed from the Headend to the nodes and tying into a coaxial Cable System already serving Subscribers. Active and passive devices currently are 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 the signal is transmitted. Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise. The Grantee's System shall, at all times during the Franchise term, meet or exceed the following requirements: The System shall be capable of continuous twenty-four (24) hour operation without severe material degradation of service quality except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major System components.

(B) Equipment must be installed so that all closed captioned programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards.

(C) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

(D) Grantee acknowledges that the minimum Cable System design and performance requirements set forth in this Franchise are enforceable, to the extent allowed by law.

(E) System Review. The City may hold a hearing to review whether or not the Cable System and the Cable Services offered by the Grantee are meeting demonstrated community needs and interests, taking into account the cost of meeting those needs and interests. The parties recognize that, as of the Effective Date, the City is not permitted to require the provision of specific Video Programming pursuant to this subsection.

(F) Sixty (60) days prior to Grantee's change in the designation of its principal Headend, it shall notify the City in writing of the proposed change.

SECTION 12. TECHNICAL STANDARDS

Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable technical standards authorized or required by law, including, FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

SECTION 13. CABLE SYSTEM PERFORMANCE TESTING

(A) Grantee shall, at its expense, perform all tests on its Cable System required by the FCC (including FCC required test points located within the City) and shall maintain written records of its test results. Upon request, all FCC required technical performance tests may be witnessed by representatives of the City. Copies of such test results will be provided to the City upon request.

(B) All required technical performance or other Cable System tests shall be at the expense of the Grantee. Upon request, Grantee will notify the City before any required technical proof-of-performance or other testing occurs.

(C) Grantee shall promptly take such measures as are necessary and diligently continue the same until completion in order to correct any performance deficiencies fully and to prevent their recurrence. Grantee's failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

SECTION 14. SERVICE EXTENSION

Service Availability

(A) In general, except as otherwise provided herein, Grantee shall provide a standard aerial installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. For standard underground installations scheduling shall be done within seven (7) days of a request for service. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise.

(2) At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot aerial drop or sixty (60) foot underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations.

(3) At non-discriminatory monthly rates for all Subscribers, excepting commercial Customers, MDU Bulk Customers and other lawful exceptions to uniform pricing.

(B) No Customer shall be refused service arbitrarily. However, for non-Standard Installations of service to Customers, or a density of less than twenty-five (25) residences per 5280 aerial cable-bearing strand feet of trunk or distribution cable, or sixty (60) residences per 5280 underground trench feet of trunk or distribution cable, Cable Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. The Grantee may require that the payment of the capital contribution in aid of construction be borne by such potential Customers and be paid in advance.

(C) The Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise and all applicable laws. Grantee is under no obligation to provide service to dwelling units where there are Homeowner's Associations or Metropolitan Districts that do not allow access to Grantee or where another cable operator is providing cable service.

SECTION 15. STANDBY POWER AND EAS

15.1 Standby Power

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power supplies that will supply back-up power of at least two (2) hours duration throughout the distribution networks, and four (4) hours duration at all nodes and hubs. 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. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request therefore.

15.2 Emergency Alert Capability

(A) In accordance with, and at the time required by, the provisions of FCC Regulations or other federal or state requirements, as such provisions may from time to time be amended, Emergency Alert System ("EAS") implementation will be accomplished by Grantee in compliance with the Washington State EAS Plan and to be in compliance with or further Homeland Security requirements or applications.

(B) Grantee shall ensure that the EAS is functioning properly at all times in accordance with FCC regulations.

SECTION 16. FRANCHISE BREACHES; TERMINATION OF FRANCHISE

16.1 Procedure for Remediating Franchise Violations

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

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

(2) Cure the default; or

(3) Notify City 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 thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify City in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) business days' prior written notice, either City or Grantee may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, City may set a hearing in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

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

(C) If, after the public hearing, City determines that a default still exists, City shall order Grantee to correct or remedy the default or breach within fourteen (14) days of City notification or within such other reasonable timeframe as City shall determine. In

the event Grantee does not cure within such time to City's reasonable satisfaction, City may:

- (1) Assess and collect monetary damages in accordance with this Franchise; and
- (2) Terminate this Franchise; and
- (3) Pursue any other legal or equitable remedy available under this Franchise or applicable law.

(D) The determination as to whether a violation of this Franchise has occurred pursuant to this Section herein shall be within the sole discretion of the City or its designee. Any such determination by City shall be accompanied by a record, to which Grantee's contribution shall not be limited by City (i.e., City shall hear any interested Persons and shall allow Grantee an opportunity to be heard, to cross examine witnesses, to present evidence and to make additions to the hearing record). Any such final determination shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be taken within thirty (30) days of the issuance of the final determination of the City. City shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.

16.2 Alternative Remedies

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

The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, officials, City Council, boards, commissions, agents, or employees under federal, State, or local law including by example Section 635A of the Cable Act. The Grantee shall not have any monetary recourse against the City, or its officers, officials, City Council, boards, commissions, authorized agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof, subject to applicable law.

16.3 Assessment of Liquidated Damages and Letter of Credit

Subject to Section 5.3:

- (A) Grantee shall deliver to the City an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the City, from a National or State bank

subject to reasonable approval by the City, in the amount of twenty-five thousand dollars (\$25,000.00).

(B) The Letter of Credit shall provide that funds will be paid to the City; and in an amount for liquidated damages charged pursuant to this Section, in payment for any monies owed by the Grantee to the City as a result of any material acts or material omissions by the Grantee pursuant to this Franchise or a pattern of repeated violations of any provisions of this Franchise.

(C) In addition to the recovery of any monies owed by the Grantee to the City or damages to the City as a result of any material acts or material omissions by the Grantee pursuant to the Franchise; the City in its sole discretion may, after notice and opportunity to cure as provided in Section 16.1, charge to and collect from the Letter of Credit the following liquidated damages.

(1) For failure to provide data, documents, reports or information or to cooperate with the City during an application process or Cable System review or as otherwise provided herein, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

(2) For failure of Grantee to comply with construction, operation or maintenance standards the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

(3) For failure to provide the Access Fee payments required by this Franchise, and the implementation and the utilization of the PEG Access Channels, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

(4) For failure to comply with any of the material provisions of this Franchise or Customer service standards, or other City ordinance for which liquidated damages is not otherwise specifically provided pursuant to this paragraph (C), the liquidated damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

(D) Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of 120 days.

(E) If any subsequent Letter of Credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or

replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph (A) of this Section.

(F) The City and the Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of the Grantee's breach of this Franchise. Accordingly, instead of requiring such proof of loss or damages, the City and the Grantee agree that the Grantee shall pay to the City the sums set forth above for each day that the Grantee shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the City would suffer in the event of the Grantee's breach of such provisions of this Franchise.

(G) The Letter of Credit referred to in Section 5.3 (A) may be drawn upon by the City for breach of a material provision after notice and opportunity to cure.

The City shall give Grantee written notice of any intent to withdraw under this subsection. Within seven (7) days following receipt of such notice, Grantee shall restore the bond(s) and Letter of Credit to the amount required under this Franchise. Grantee's maintenance of the bond(s) and Letter of Credit shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the bond(s) and Letter of Credit or otherwise to limit the City's recourse to any other remedy available at law or in equity.

Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that a bond or Letter of Credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes a bond or Letter of Credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the bond(s) or Letter of Credit shall be returned to Grantee with interest from the date of withdrawal.

The assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise.

16.4 Revocation

(A) This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured pursuant to Section 16.1, or in the event that:

(1) Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;

(2) Grantee makes a material misrepresentation of fact in the negotiation of this Franchise;

(3) Grantee fails to maintain the required Customer service location as provided in this Franchise in accordance with Section 6.3;

(4) Grantee abandons the Cable System, or terminates the Cable System's operations;

(5) Grantee fails to restore service to the Cable System after three consecutive days of an outage or interruption in service; except in the case of an emergency or during a force majeure occurrence, or when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the Cable System);

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

(B) Additionally, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee (at the option of the City and subject to applicable law) whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

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

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

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

16.5 Purchase of the Cable System

If at any time this Franchise lawfully terminates, the City shall have the option to purchase the Cable System in accordance with the Cable Acts.

SECTION 17. FRANCHISE TRANSFER

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

controlling entity, and the transferee or controlling entity shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance. The approval of any change in control shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise. For purposes herein to the extent that a change of control involves an entity that was not an Affiliate prior to the contemplated transaction, the City's consent shall be required for such change in control.

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

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to Grantee's Affiliates or to an intracompany entity controlling, controlled by or under the same common control as Grantee, provided that except for Grantee or its Affiliates, the proposed assignee or transferee must show financial responsibility, if requested in writing, as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 18. ABANDONMENT

If the Grantee abandons its System during the Franchise term, or fails to operate its System in accordance with any duty to provide continuous service to Subscribers, the provisions of this Franchise and the City Code shall apply and the Grantor, at its option, may operate the System or; designate another entity to operate the System temporarily until the Grantee restores service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new cable operator is selected by the Grantor. If the Grantor designates another entity to operate the System, the Grantee shall reimburse the Grantor for all reasonable costs, expenses and damages incurred, including reasonable attorneys' fees, court expenses and attributed expenses for work conducted by Grantor's staff or authorized agents.

SECTION 19. PROHIBITED PRACTICES, LOCAL EMPLOYMENT EFFORTS AND NOTICES

19.1 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 and non-discrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

19.2 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 Communications Management, LLC
15815 25th Avenue West
Lynnwood, Washington 98087
Attention: Franchising

With a Copy To:

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

City's address shall be:

City of Bainbridge Island, Washington
280 Madison Avenue North
Bainbridge Island, Washington 98110
Attention: City Manager

SECTION 20. MISCELLANEOUS PROVISIONS

20.1 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, 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 the City 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.

20.2 Costs to be Borne by Grantee

Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise.

20.3 Binding Effect

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

20.4 Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

20.5 Venue

The venue for any dispute related to this Franchise shall be in the United States District Court for the Western District of Washington or in the Kitsap County Superior Court.

20.6 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC, and any other applicable local, State and federal laws, rules, regulations (as such now exist, are later amended or subsequently adopted). To the extent there is a conflict between this Franchise and any City Ordinance or Resolution, the terms and provisions of this Franchise shall control.

20.7 Captions

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

20.8 No Joint Venture

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

20.9 Waiver

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

20.10 Severability

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

20.11 Compliance with Federal, State and Local Laws

The Grantee shall comply with applicable federal, state and local laws, now existing or hereafter adopted.

20.12 Force Majeure

The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control, including war or riots, civil disturbances, floods or other natural catastrophes, vandalism, System interferences by third parties, labor stoppages, slow-downs, availability of materials, labor or equipment, power outages exceeding back-up power supplies or work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached.

20.13 Entire Franchise

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written negotiations between the parties.

20.14 Attorneys' Fees

If any action or suit arises in connection with this Franchise, either the City or Grantee, as the case may be, shall be entitled to recover all of its reasonable attorneys' fees, costs and expenses in connection therewith as determined by the court.

20.15 Action of the City or Grantee

In any action by the City or Grantee mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

20.16 Acceptance

Within forty-five (45) days of receipt of the Franchise after its execution by the City, this Franchise shall be accepted by Grantee by filing with the City Clerk an unconditional, written acceptance of all of the terms, provisions and conditions of this Franchise. The failure of Grantee to file such an acceptance shall be deemed a rejection by the Grantee and this Franchise shall then be voidable at the discretion of the City.

SECTION 21. EFFECTIVE DATE.

This Franchise shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

IN WITNESS WHEREOF, this Franchise is signed in the name of Bainbridge Island, Washington this 14th day of June, 2016.

BAINBRIDGE ISLAND, WASHINGTON



City Manager

ATTEST:



Title: City Clerk

APPROVED AS TO FORM:



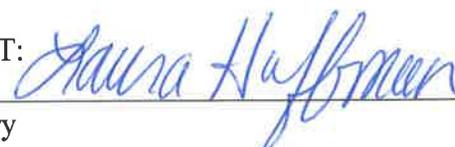
City Attorney

Accepted and approved this 15th day of June, 2016.

COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC



Its: Timothy T. Nester
SVP - Finance and Accounting

ATTEST: 

Secretary

CABLE FRANCHISE BOND

Bond 39BSBHM7765

KNOW ALL BY THESE PRESENTS: That COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC
15815 25th Avenue, W Lynnwood WA 98097, as Principal,
and HARTFORD FIRE INSURANCE COMPANY, as Surety, are
held and firmly bound unto CITY OF BAINBRIDGE ISLAND, WA
, as Obligee,

in the sum of Twenty Five Thousand and 00/100
DOLLARS (\$ 25,000.00), to the payment whereof well and truly to be made to the Obligee, we bind ourselves,
our successors and assigns, firmly by these presents. Sealed with our seals and dated this 16th day of
August, 2016.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the Obligee has granted unto the Principal, a
franchise beginning June 15th, 2016, and whereas the said Principal is required to execute a bond in
the penal sum of Twenty Five Thousand and 00/100
(\$ 25,000.00) in favor of the Obligee, conditioned upon its performance of the obligations of the grantee under said
franchise;

NOW, THEREFORE, if the above bounden Principal shall perform the obligations of the grantee under said franchise, then this
obligation to be void otherwise to remain in full force and virtue. This bond may be canceled by the Surety upon thirty days
notice to the Obligee by registered mail.

ATTEST:

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC
(Principal)

BY: 
Marc A. Frockford
Vice President

HARTFORD FIRE INSURANCE COMPANY


Wayne G. McVaugh Attorney-in-Fact



POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

Bond T-4

One Hartford Plaza

Hartford, Connecticut 06155

call: 888-266-3488 or fax: 860-757-5835)

Agency Code: 39-421678

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of Unlimited**

Colleen A. Locher, Elizabeth Marrero, Jaquanda Martin, Maureen McNeill, Wayne G. McVaugh, Patricia A. Rambo, Marina Tapia, Doug Wheeler of PHILADELPHIA, Pennsylvania

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on August 1, 2009, the Companies have caused these presents to be signed by its Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



John Gray

John Gray, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 12th day of July, 2012, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Kathleen T. Maynard

Kathleen T. Maynard
Notary Public

My Commission Expires July 31, 2016

I, the undersigned, Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of *16th August, 2010*
Signed and sealed at the City of Hartford.



Kevin Heckman

Kevin Heckman, Assistant Vice President