



Meeting Date: January 11, 2010

Agenda Item No: 7:15 A

**Kitsap County Board of Commissioners**

**Department:** Information Services  
**Staff Contact:** George Geyer, 337-4404, MS-21  
**Title:** Cable Television Franchise Ordinance renewing services between Kitsap County and WaveDivision IV, LLC

**Recommended Action:** Move the Board execute and approve the Cable Television Franchise Ordinance renewing services between Kitsap County and WaveDivision IV, LLC

**Summary:** The County held a public hearing on December 7, 2009 to discuss the renewing the franchise which is governed by 47 U.S.C. § 546, chapter 36.55 RCW, KCC 14.32.120. This Ordinance shall become effective January 11, 2010 for a period of 10 years.

**Attachments:** 1. Ordinance

**Fiscal Impact**

<b>Expenditure required for this specific action:</b>	\$0.00
<b>Total cost including all related costs:</b>	\$0.00
<b>Related Revenue:</b>	Fee Income into General Fund
<b>Cost Savings:</b>	\$0.00
<b>Total Fiscal Impact:</b>	Fee income into General Fund
<b>Source of Funds:</b>	Cable Franchise Ordinance

**Fiscal Impact (DAS) Review**

**Departmental Coordination**

<b>Department</b>	<b>Representative</b>	<b>Recommendation/Comments</b>
Information Services	Bud Harris	

**Contract Information**

<b>Contract Number</b>	<b>Date Original Contract or Amendment Approved</b>	<b>Amount of Original Contract Amendment</b>	<b>Total Amount of Amended Contract</b>

ORDINANCE NO. 444 - 2010

**ORDINANCE RENEWING WAVEDIVISION IV, LLC  
CABLE TELEVISION SYSTEM FRANCHISE**

**WHEREAS**, Kitsap County adopted Franchise Ordinance No. 166-1994 on October 24, 1994, granting a 15-year, non-exclusive cable television franchise to Falcon Cable Television; and

**WHEREAS**, WaveDivision IV, LLC is the franchisee successor in interest under Franchise Ordinance No. 166-1994; and

**WHEREAS**, the franchise granted by Franchise Ordinance No. 166-1994 was originally scheduled to expire on October 23, 2009, but was extended to January 23, 2010 by Ordinance No. 436-2009 (attached hereto as Attachment B); and

**WHEREAS**, renewal of the franchise is governed by 47 U.S.C. § 546, chapter 36.55 RCW, KCC 14.32.120 and Ordinance No. 166-1994 § F16; and

**WHEREAS**, the parties have employed the informal renewal process authorized by 47 U.S.C. § 546(h), have reached agreement in principle on renewal, and now wish to renew the franchise for a period of 10 years; and

**WHEREAS**, the County has conducted a public hearing as provided in RCW 36.55.040-.050 and concluded that it is in the public interest to renew the franchise substantially in the form proposed;

**NOW, THEREFORE, BE IT ORDAINED:**

Section 1. WaveDivision IV, LLC is granted a cable television franchise substantially on the terms and conditions set forth in the Cable Television Franchise attached hereto as Exhibit A and incorporated herein by this reference.

Section 2. The Chair of the Board of County Commissioners and the County Administrator, or either of them, are authorized and directed to subscribe the Cable Television Franchise substantially in the form presented, making such typographical, clerical or other nonmaterial modifications prior to subscription as they, or either of them, in consultation with the Kitsap County Prosecuting Attorney's Office, may deem appropriate and in the interest of the County.

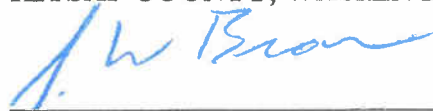
Section 3. This ordinance shall take effect on January 11, 2010, and shall not be codified.

Section 4. If any provision of this ordinance or its application to any person, entity or circumstance is for any reason held invalid, the remainder of the ordinance, or the application of

the provision to other persons, entities or circumstances, shall not be affected.

ENACTED this 11<sup>th</sup> day of January 2010.

**BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON**



Josh Brown, Chair



Charlotte Garrido, Commissioner



Steve Bauer, Commissioner



ATTEST:

  
Opal Robertson, Clerk of the Board

**KITSAP COUNTY, WASHINGTON**

**CABLE TELEVISION FRANCHISE**

**OCTOBER 1, 2009**

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**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" .....2

"Basic Service" .....2

"Broadcast Signal" .....2

"Cable Act" .....3

"Cable Operator" .....3

"Cable Service" .....3

"Cable System" .....3

"Channel" .....3

"County" .....3

"Customer Service Representative" .....3

"Designated Access Provider" .....4

"Downstream Channel" .....4

"Dwelling Unit" .....4

"Expanded Basic Service" .....4

"FCC" .....4

"Fiber Optic" .....4

"Franchise" .....4

"Franchise Area" .....4

"Franchise Fee" .....4

"Fully Allocated Costs" .....4

"Grantee" .....5

"Gross Revenues" .....5

"Headend" or "Hub" .....5

"Incremental Costs" .....5

---

"Institutional Network" .....5

"Interconnect" or "Interconnection" .....6

"Leased Access Channel" .....6

"Locally Scheduled Original Programming" .....6

"Noncommercial" .....6

"Normal Business Hours" .....6

"Normal Operating Conditions" .....6

"Pay Service" or "Premium Service" .....6

"Person" .....6

"Qualified I-NET Users" .....7

"Rights-of-Way" .....7

"School" .....7

"Service Interruption" .....7

"State" .....	7
"Subscriber" or "Customer" .....	7
"Tier" .....	7
"Video Programming" .....	7
<b>SECTION 2. GRANT OF FRANCHISE</b> .....	<b>8</b>
2.1 Grant .....	8
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.....	10
2.7 Familiarity with Franchise.....	11
2.8 Effect of Acceptance.....	11
2.9 Police Powers .....	11
2.10 Franchise Area.....	11
<b>SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS</b> .....	<b>11</b>
3.1 Franchise Fee.....	11
3.2 Payments.....	11
3.3 Acceptance of Payment .....	12
3.4 Quarterly Franchise Fee Reports .....	12
3.5 Audits .....	12
3.6 Financial Records .....	12
3.7 Interest on Late Payments.....	12
3.8 Maximum Franchise Fee .....	13
3.9 Additional Commitments Not Franchise Fees.....	13
3.10 Payment on Termination .....	13
3.11 Service Packages .....	13
3.12 Additional Compensation.....	14
3.13 Tax Liability .....	14
<b>SECTION 4. ADMINISTRATION AND REGULATION</b> .....	<b>14</b>
4.1 Rates and Charges .....	14
4.2 No Rate Discrimination.....	14
4.3 Filing of Rates and Charges.....	15
4.4 Time Limits Strictly Construed .....	15
4.5 Performance Evaluation .....	15
4.6 Leased Access Channel Rates .....	15
4.7 Late Fees.....	15
<b>SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS</b> .....	<b>16</b>
5.1 Indemnification.....	16
5.2 Insurance Requirements.....	17
5.3 Security.....	19

<b>SECTION 6. CUSTOMER SERVICE</b> .....	20
6.1 Customer Service Standards .....	20
6.2 Subscriber Privacy .....	20
6.3 Customer Service Location(s) .....	20
6.4 Customer Service Agreement and Manual .....	21
<b>SECTION 7. REPORTS AND RECORDS</b> .....	21
7.1 Open Records .....	21
7.2 Confidentiality .....	22
7.3 Records Required .....	22
7.4 Copies of Federal and State Reports.....	22
7.5 Complaint File and Reports.....	23
7.6 Inspection of Facilities and Annual Meeting.....	23
7.7 False Statements .....	23
<b>SECTION 8. PROGRAMMING</b> .....	23
8.1 Broad Programming Categories .....	23
8.2 Deletion of Broad Programming Categories .....	24
8.3 Obscenity .....	24
8.4 Services for the Disabled.....	24
8.5 Parental Control Device.....	24
8.6 Complementary Cable Service .....	24
8.7 New Technology.....	25
<b>SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS</b> .....	25
9.1 Access Channels.....	25
9.2 Triggers for Additional Access Channels.....	26
9.3 Management and Control of Access Channels.....	26
9.4 Underutilized Access Channels.....	26
9.5 Access Channel Identification/Location/Relocation/Bill Insertions.....	26
9.6 Access Interconnections .....	27
9.7 Support for Access Capital Costs.....	27
9.8 Access Channels On Lowest Tier.....	28
9.9 Technical Quality.....	29
9.10 Return Connectivity.....	29
<b>SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION</b> .....	29
10.1 Construction .....	29
10.2 Location of Facilities .....	30
10.3 Restoration of Rights-of-Way.....	30
10.4 Maintenance and Workmanship .....	31
10.5 Acquisition of Facilities .....	31
10.6 Reservation of Rights-of-Way .....	31
10.7 Rights-of-Way Vacation.....	32
10.8 Removal of Discontinued Facilities .....	32
10.9 Hazardous Substances .....	33
10.10 Undergrounding of Cable .....	33

10.11	Codes .....	34
10.12	Construction and Use of Poles .....	34
10.13	Tree Trimming.....	35
10.14	Standards .....	35
10.15	Stop Work.....	35
10.16	Work of Contractors and Subcontractors .....	35
10.17	GIS Mapping .....	36
<b>SECTION 11. CABLE SYSTEM DESIGN .....</b>		<b>36</b>
<b>SECTION 12. SCRAMBLED CHANNEL and INSTITUTIONAL NETWORK .....</b>		<b>36</b>
12.1	Scrambled Channel.....	36
12.2	Institutional Network.....	37
12.3	I-Net Models.....	37
12.4	Response to I-Net Proposal .....	38
12.5	Ownership and Right of Use .....	40
12.6	Private Network Status .....	40
12.7	I-Net Force Majeure .....	40
12.8	Service Agreement .....	40
12.9	I-Net Use.....	41
12.10	Warranties/Acceptance.....	42
12.11	Survival of I-Net Obligations .....	42
<b>SECTION 13. TECHNICAL STANDARDS .....</b>		<b>42</b>
13.1	Technical Performance .....	42
13.2	Cable System Performance Testing.....	42
<b>SECTION 14. SERVICE EXTENSION.....</b>		<b>43</b>
14.1	Service Availability .....	43
<b>SECTION 15. STANDBY POWER AND EAS .....</b>		<b>43</b>
15.1	Standby Power .....	43
15.2	Emergency Alert Capability .....	44
<b>SECTION 16. FRANCHISE BREACHES; TERMINATION OF FRANCHISE.....</b>		<b>44</b>
16.1	Procedure for Remedying Franchise Violations.....	44
16.2	Alternative Remedies .....	45
16.3	Assessment of Liquidated Damages and Letter of Credit .....	46
16.4	Revocation.....	48
16.5	Purchase of the Cable System.....	49
<b>SECTION 17. FRANCHISE TRANSFER.....</b>		<b>49</b>
<b>SECTION 18. PROHIBITED PRACTICES, LOCAL EMPLOYMENT EFFORTS AND NOTICES .....</b>		<b>51</b>
18.1	Preferential or Discriminatory Practices Prohibited .....	51



18.2	Notices.....	51
<b>SECTION 19. MISCELLANEOUS PROVISIONS .....</b>		
19.1	Cumulative Rights.....	52
19.2	Costs to be Borne by Grantee .....	52
19.3	Binding Effect.....	52
19.4	Authority to Amend.....	52
19.5	Venue.....	52
19.6	Governing Laws.....	52
19.7	Captions.....	53
19.8	No Joint Venture.....	53
19.9	Waiver .....	53
19.10	Severability .....	53
19.11	Compliance with Federal, State and Local Laws .....	53
19.12	Force Majeure.....	53
19.13	Entire Agreement.....	53
19.14	Attorneys' Fees.....	54
19.15	Action of the County or Grantee .....	54
19.16	Acceptance.....	54
	Signature Page .....	55
	Exhibit I - Customer Service Standards .....	56

## **CABLE TELEVISION FRANCHISE**

This Cable Television Franchise is entered into in Kitsap County, Washington, this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between Kitsap County, Washington a municipal corporation, hereinafter ("County") WaveDivision IV, LLC d/b/a Wave Broadband ("Grantee"). County and Grantee are sometimes referred to hereinafter collectively as the "parties."

WHEREAS, the County 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 County 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 County; and

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

WHEREAS, diversity in Cable Service 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 County is authorized by applicable law to grant one or more nonexclusive Franchises to construct, operate and maintain cable systems within the boundaries of the County.

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NOW, THEREFORE, 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, County and Grantee do hereby agree as follows:

## **SECTION 1. DEFINITIONS**

For the purposes of this Franchise and all Exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein when 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 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 County 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) "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.
- (B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

"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 Contribution paid to the County by the Grantee in accordance with section 9.7.

"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.

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"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" (formally called Expanded) means cable programming services not included in the Limited Service and excluding premium or pay-per-view services.

"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" 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.

"Cable System" means 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" shall mean Grantee's Cable System in the Franchise Area unless the context indicates otherwise.

"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.

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"County" means Kitsap County, 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.

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

"Downstream Channel" means a Channel capable of carrying a transmission from the Headend to remote 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" refer to Basic (name change)

"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 lightwave pulses.

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

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

"Franchise Fee" includes any tax, fee or assessment of any kind imposed by the County 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 Contribution costs that are required by the Franchise to be incurred by the Grantee for educational or Governmental Access facilities, as required in Section 9.7.
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- (C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
  - (D) Any fee imposed under Title 17, United States Code.

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

"Grantee" means WaveDivision IV, LLC, its lawful successors, transferees or assignees.

"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, revenues from rentals of converters or other Cable System equipment, net advertising sales revenues (including local, regional and a pro rata share of national advertising carried on the Cable System in the Franchise Area), 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, County 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 9.7 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.

"Incremental Costs" means the direct and actual material and labor cost (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by Grantee for the County, or for the County's use, excluding the costs that Grantee would otherwise incur to construct, relocate or place ducts, conduit or related structures for the Grantee including, but not limited to, trenching, pipe bedding, backfilling, compacting, restoring the surface, and other charges, costs or expenses.

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"Institutional Network" means that part of the Cable System facilities or capacity designated for use by non-residential Subscribers including communications to, from and among government agencies, Schools, libraries and other public agencies.

"Interconnect" or "Interconnection" means the provision of County Access Channel programming to a geographically contiguous cable system, 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.

"Limited Service" means any Cable Service Tier that includes, at a minimum, the

retransmission of local television Broadcast Signals and Access programming.

"Locally Scheduled Original Programming" means Government Access or Educational Access programming that is created by the County 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, regular peak or seasonal demand periods and routine 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.

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"Qualified I-NET Users" means (i) the County; (ii) other governmental and public agencies, libraries and Schools; and (iii) other entities that Grantee and County agree may use the I-NET.

"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 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.

"State" means the State of Washington.

"Subscriber" or "Customer" means any Person 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 customer disconnected by Grantee at Grantee's discretion.

"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) County 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) Grantee, through this Franchise, is granted the right to operate its Cable System using the Rights-of-Way within the Franchise Area in compliance with the Kitsap County Road Standards, as amended and all lawfully enacted applicable construction codes and regulations. Grantee specifically agrees to comply with the provisions of County ordinances provided that in the event of a conflict between the provisions of ordinances and this 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 County through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of County, except in the lawful exercise of County's police power.
- (C) This Franchise shall not be interpreted to prevent the County 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 County that may be required by the ordinances and laws of the County.
  - (2) Any permit, agreement or authorization required by the County for Rights-of-Way users in connection with operations on or in Rights-of-Way or public property; or
  - (3) Any permits or agreements for occupying any other property of the County or private entities to which access is not specifically

granted by this Franchise.

- (F) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Ways in which the County 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 County 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 County-established requirements, including the Kitsap County Road Standards, as amended, as well as all other County 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 reasonably minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. To protect public health, safety and welfare, the County 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 particular Rights-of-Way; may deny access if Grantee is not willing to comply with County's reasonable requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by County, or that is installed without prior County approval of the time, place or manner of installation and charge Grantee for all costs associated with removal; and

County may require Grantee to cooperate with others to reasonably minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Grantee shall assume its private costs (in accordance with applicable law) associated with any requirement of County in the exercise of its police powers, to relocate its Cable System facilities located in the Rights-of-Way.

### **2.3 Term**

This Franchise shall have a term of 10 (10) years, effective on 11 January, 2010 and terminating on 10 January, 2020; then at any time during the three (3) year franchise renewal period, Grantee may request an automatic extension of the franchise term to 10 January, 2025.

### **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, which shall be the date this Franchise is signed by the Board of County Commissioners, below.
- (C) The grant of this Franchise shall have no effect on any ordinance in effect prior to the effective date of this Franchise to indemnify or insure the County against acts and omissions occurring during the period that the prior Franchise was in effect, nor shall it have any affect upon liability to pay all Franchise Fees (for any prior years) that were due and owed under a prior franchise and the franchise ordinance.

### **2.5 Franchise Nonexclusive**

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or franchises granted by County or its predecessors to any Person to use any property, Right-of-Way, easement, including the right of County to use same for any purpose it lawfully deems fit not incompatible with Grantee's rights granted under this Franchise, including the same or similar purposes allowed Grantee hereunder. County 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 County deems appropriate.

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### **2.6 Grant of Other Franchises**

In the event County enters into a permit, franchise, authorization or other agreement of any kind with any other Person or entity other than the Grantee, including itself, to enter into the County's streets or Rights-of-Way for the purpose of constructing or operating a wireline cable system or providing Cable Service to any part of the Franchise Area in which the Grantee is providing Cable Service under the terms and conditions of this Franchise or is required to extend Cable Service under the provisions of this Franchise, the terms and conditions thereof (unless prohibited by operation of law, regulation or FCC Order), taken as a whole, shall be neither more favorable nor less burdensome to such Person or entity than those contained herein in order that one Cable Operator not be granted an unfair competitive advantage over another.

## **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 County's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the County'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. Should the County intervene in any legal or regulatory proceeding as indicated above, attorney fees shall be awarded in accordance with applicable law.

## **2.9 Police Powers**

Grantee's rights hereunder are subject to the police powers of County 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 County, or hereafter enacted in accordance therewith, by County or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The County 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.

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

### **3.1 Franchise Fee**

As compensation for the use of County's Rights-of-Way, Grantee shall pay as a Franchise Fee to County, 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 County 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 County that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim County 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 County 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, County shall have the right to conduct an independent audit on a non-contingent fee basis 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, (subject to the execution and delivery of an appropriate confidentiality agreement), County 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 County 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 written 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 County 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.

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### **3.6 Financial Records**

Grantee agrees to meet with a representative of the County upon 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 County 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 County receives the payment.

### **3.8 Maximum Franchise Fee**

The parties acknowledge that, at present, applicable federal law limits County 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, County 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 County has jurisdiction are treated in an equivalent manner. In the event that at any time throughout the term of this Franchise, County 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 County in accordance with federal law and the parties hereby agree to amend the Franchise unless the County 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**

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 Capital Contributions re 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 County, pursuant to any federal law. Furthermore, County and Grantee agree that any utility tax, business and occupation tax or similar tax shall be in addition to any Franchise Fees required herein and there shall be no offset against Franchise Fees subject to applicable law.

### **3.10 Payment on Termination**

If this Franchise terminates for any reason, the Grantee shall file with the County within one hundred twenty (120) calendar days of the date of the termination, a financial statement, certified by the Chief Financial Officer of Grantee or his designee., 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 County, Grantee shall pay any unpaid amounts as indicated. If the Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the County may do so by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

### **3.11 Service Packages**

If Grantee offers bundled Cable Services and non-Cable Services to Subscribers, Grantee shall fairly and reasonably allocate revenue with regard to Cable Services. If a dispute arises between the parties regarding this matter, the County and Grantee will meet and discuss such matters in good faith in an attempt to resolve the dispute.

### **3.12 Additional Compensation**

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

### **3.13 Tax Liability**

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the County, the State or the United States including, without limitation, sales, use, utility and other taxes, or business license fees.

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

County shall be vested with the power and right to administer 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 County.

### **4.1 Rates and Charges**

Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by County 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), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions, subject to applicable law. Grantee shall apply its rates in accordance with governing law. Nothing herein shall be construed to require or prohibit:

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- (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 offers to continue through a voluntary initiative a discount of 30% from its published rate card rate to Subscribers for Limited Cable Services or the Limited portion of Basic as part of their service (provided they are not already receiving a package discount) who are deemed low income by the County Information Services Office in accordance with the



standards set forth in Exhibit II.

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

- (A) Throughout the term of this Franchise, Grantee shall maintain on file with County (which may be accomplished by providing the County with a current website address or URL) 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.
- (B) On written request of the County, Grantee shall provide on its website a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels.

#### **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 written request by County 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 alleged 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 therein and further provided that this subsection need not be followed before other legal or equitable remedies within this Franchise.

#### **4.6 Leased Access Channel Rates**

Upon bona fide written request pursuant to FCC regulations, CFR 76.970, 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 County 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 County, its officers, officials, 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 subcontractors, or by reason of any neglect or omission of Grantee its authorized agents or its employees. Grantee shall consult and cooperate with the County while conducting its defense of the County.
- (B) Indemnification for Relocation. Subject to applicable law, Grantee shall indemnify County for any damages, payable by County 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 County. It is further specifically and expressly understood that the indemnification provided in this section constitutes the Grantee's waiver of immunity under industrial insurance and Title 51 RCW solely for the purposes of this indemnification, and this waiver was mutually negotiated by the parties.

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- (C) Additional Circumstances. Grantee shall also indemnify, defend and hold County 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 County for any claims arising out of the use of Access Channels by the County and/or its Designated Access Providers or use by the County of the Emergency Alert Cable System.
- (D) Procedures and Defense. If a claim or action arises, County or any other indemnified party shall tender the defense of the claim or action to

Grantee, which defense shall be at Grantee's expense. County may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims financially affecting County without County'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 County 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 County 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 there under, and the County 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 County and the counsel selected by Grantee to represent the County, Grantee shall select other counsel without conflict of interest with the County.
- (H) The grant of this Franchise shall have no effect on the Grantee's duty under the prior franchises to indemnify or insure the County against acts and omissions occurring during the period that the prior franchises were in effect, nor shall it have any effect upon Grantee's liability to pay all Franchise Fees which were due and owed under prior franchises.

## **5.2 Insurance Requirements**

- (A) General Requirement. Grantee 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 County, the County's officers, officials, 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, 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.

- (B) Each policy shall provide that, should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice (10 days if due to non-payment of premium) to the certificate holder, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives. If the insurance is canceled or terminated 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 case of Commercial General Liability Insurance, for at least one (1) year after expiration 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 County. However, if coverage is not afforded under these circumstances, Grantee will indemnify County for losses County 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 County, 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 County, 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.

Endorsements.

- (1) All policies shall contain, or shall be endorsed so that:
- (a) The County, and the County's officers, officials, boards, commissions, agents, representatives, and employees are to be covered as, and have the rights of, additional insured's 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 County, County Board and the County's officers, officials, boards, commissions, agents, and employees. Any insurance or self insurance maintained by the County, County Board and the County'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 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.

- (2) Verification of Coverage. The Grantee shall furnish the County with certificates of insurance and an endorsement reflecting additional insured status. 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 County 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 County Rights-of-Way and other property. Grantee may be required to obtain additional bonds, such as generally applicable construction bonds, in accordance with the County'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) If there is uncured breach (following written notice and a reasonable opportunity to cure, which should be no less than 30 days) by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the County may request and Grantee shall establish and provide within thirty (30) days from receiving written notice from the County, to the County 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 County in the amount of fifty thousand dollars (\$50,000).
- (C) After the giving of written notice by the County to Grantee, and expiration of any applicable cure period (which shall be no less than 30 days), the letter of credit may be drawn upon by the County for purposes that include, but are not limited to the following:
  - (1) Failure of Grantee to pay the County sums due under the terms of this Franchise;
  - (2) Reimbursement of costs borne by the County to correct Franchise violations not corrected by Grantee; and

- (3) Liquidated damages assessed against Grantee as provided in this Franchise.

- (D) The County shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within ten (10) days following receipt of such written 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 County's recourse to any other remedy available at law or in equity.
- (E) 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.
- (F) Grantee shall have the right to appeal to the County Board for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. After a determination by the County Board, 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 County 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.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

Grantee shall comply with Customer Service Standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619. Additionally, Grantee shall provide its service under Normal Operating Conditions and comply with Customer Service Standards and the County Code as they exist on the date of adoption of this Franchise, as are currently contained in Exhibit I attached hereto and made a part hereof. The Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable Customer Service Standards.

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### **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, 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 County 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.

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

(A) Grantee shall provide to Subscribers an accurate, comprehensive service agreement (which may be available via Grantee's website or in writing upon Subscriber request) 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 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 to Subscribers.

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### **SECTION 7. REPORTS AND RECORDS**

#### **7.1 Open Records**

County shall have access to, and the right to inspect, any books and records, as referred to in Section 7.3, of Grantee and its Affiliates (subject to Section 7.2), if necessary, for the regulation of this Franchise. Grantee shall not deny County access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliated Entity or a third party. County may, in writing, request copies of any such

records or books, and Grantee shall provide such copies within thirty (30) days of the receipt of such request. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days of receipt of such request, that County inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to County upon written request as set forth above, and if County and Grantee agree that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee.

## **7.2 Confidentiality**

County 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 County receives a demand from any Person for disclosure of any information designated by Grantee as confidential, County 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 written Subscriber complaints, actions taken and resolution, and individual records of service calls.
- (E) Financial records as referred to in Section 3.

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

Upon written request, Grantee shall submit to County 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 County no later than thirty (30) days after receipt of County's 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. 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 County upon County's written request.

#### **7.5 Complaint File and 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. On written request by the County, Grantee shall provide an executive summary report to the County 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 written complaints;
- (B) Average response time for service calls;
- (C) Phone activity report;
- (D) 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.);

Complaint and resolution of any individual Subscriber will be made available to the County upon written request.

#### **7.6 Inspection of Facilities and Annual Meeting**

County 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 written notice, or, in case of emergency, upon demand without prior notice.

Throughout the term of the Franchise, Grantee shall meet with the County on an annual basis upon fifteen (15) days prior written notice from County. 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 County 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) Educational programming;
- (B) News, weather and information;
- (C) Sports;
- (D) General entertainment including movies;
- (E) Foreign language programming.

### **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 County.
- (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 knowingly 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.

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### **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 periodically thereafter.

### **8.6 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 County, Grantee shall be allowed by County to conduct the trial or beta test in the County so long as such a test is technically feasible.

- (B) If there is a new technology that in County'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 County and upon mutual agreement, investigate the feasibility of implementing said technology and report to County the results of such investigation within ninety (90) days from the date of such request.

## **SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

### **9.1 Access Channels**

At all times during the term of this Franchise, Grantee shall provide, as part of the Basic Service package, at no charge, the following Access Channels:

One (1) Channel for Governmental and other Access Programming; and

One (1) Digital Channel for the Scrambled Channel.

Additionally, Grantee shall make available at no charge one (1) additional Digital Channel to be triggered for PEG programming in accordance with Section 9.2 herein. It is further agreed that any Access Channel that has Governmental Programming may also be utilized for public access programming.

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 taped programming can be cablecast with as good or better signal quality than existed prior to such change. For example, these provisions shall apply if Limited Service on the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

### **9.2 Triggers for Additional Access Channel**

Pursuant to Section 9.1 (Access Channels), the County may require Grantee to make available an additional activated Digital Downstream Channel when the Access Channel required by Section 9.1 is used for Locally Scheduled Original Programming (excluding character generated and filler programming, e.g. video bulletin board, NASA, AM/FM Radio Programming) during the hours between 10:00 A.M. and 10:00 P.M., Monday through Friday during any consecutive eight (8) week period, Grantee shall make available, upon written request within six (6) months) one additional Access Channel for Access Programming purposes. Therefore, an average of 4.5 hours of non-replay original

programming per day on a five day per week basis for an eight (8) consecutive week period is required to trigger use of an additional Access Channel. The programming of an additional Access Channel required herein must contain distinct and non-repetitive programming of the other Access Channel.

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

- (A) County 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 County 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 County from authorizing itself to be a Designated Access Provider.
  
- (B) Grantee shall cooperate with County and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access Channels.

### **9.4 Underutilized Access Channels**

Grantee and the County agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include allowing the Grantee to use underutilized Access Channels. If Grantee believes that any Access Channel is underutilized, Grantee may file a request with the County to use that Access Channel. The County shall in its sole and absolute discretion render a decision regarding the matter within sixty (60) days of receiving the request. Should the County find that the Access Channel may be used by the Grantee, then Grantee may begin using such Channel ninety (90) days after receipt of the decision.

### **9.5 Access Channel Identification/Location/Relocation/Bill Insertions**

Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall provide to the County a minimum of sixty (60) days written notice, and use its best efforts to provide ninety (90) days written notice, prior to any relocation of its Access Channels, unless the change is required by federal law, in which case Grantee shall give the County the maximum notice possible.

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Grantee, upon request, and when space is available, shall provide the County the opportunity to include two bill insertions per year. The County 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.

### **9.6 Access Interconnections**

- (A) The Access Channels required by this Franchise may, with the approval of the involved municipalities and the availability of Channel capacity, knowing that the involved municipalities may be required to accept deletion of another Channel to further the Interconnection, be

Interconnected with the cable systems of Grantee that serve the City of Port Orchard and the City of Bremerton. 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, including any extension thereof, to maintain the existing Interconnect with the adjacent cable system not owned or operated by Grantee or an Affiliate of Grantee as long as such Interconnect is available and provided without cost to Grantee. If costs for the Interconnect are sought by the adjacent cable system, County and Grantee will review such costs and, if such costs are appropriate, the County may determine that it will make such payments to the adjacent cable system for the duration of the franchise agreement, including any extension thereof. In any event, Grantee will continue to carry the Access Channels either by using the existing Interconnect with the adjacent cable system or through some other means of signal transport.
- (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) County retains the right to contract with other Persons for fiber and lines that are not paid for or provided by Grantee and Grantee acknowledges and agrees that given the complexity of the network in the County, there are and may be situations where Grantee's fiber may be used for transport in addition to other Person's facilities used by the County as long as Grantee has fiber available and such available fiber will be provided to the County at a reasonable cost.
- (F) 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. County 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.

### **9.7 Support for Access Capital Costs**

Grantee shall provide twenty three cents (\$0.23) per month, per residential Subscriber ("the Capital Contribution"). The County may raise this Capital Contribution to twenty five cents (\$0.25) per month per residential Subscriber upon providing Grantee 60 days written notice of this increase. Capital Contributions may only be applied by the County toward capital expenditures related to the Access Channels consistent with federal law.

Capital Contributions are permitted under federal law and regulation to be passed through to Subscribers.

**9.8 Access Channels On Lowest Analog/Digital Tier**

All Access Channels provided to Subscribers under this Franchise shall be included by Grantee, without limitation, on the Tier of Cable Service as required by the FCC.

**9.9 Technical Quality**

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

**9.10 Return Connectivity**

- (A) Upon written request of the County, Grantee shall construct and maintain additional fiber-optic return connectivity from the County to other locations within the Franchise Area, for the purpose of delivering Access programming to the County. All return connectivity engineering and construction costs for additional fiber optic connectivity shall be paid by the County at a cost mutually agreed to between the County and Grantee prior to beginning construction, and shall be completed within four (4) months of the year following County's acceptance of Grantee's estimated cost. Grantee must submit to County, all requested estimates, prior to March 1<sup>st</sup> of each calendar year, and County must respond, to Grantee, with acceptance or refusal prior to June 1<sup>st</sup> of each calendar year. All estimates requested by the County must be submitted with ample time for Grantee to submit its estimate by March 1<sup>st</sup> of each calendar year. County shall be responsible for any of Grantee's engineering costs associated with a project requested by County, 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 County for which the County 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 County 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 County.

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**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 County 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 County with a construction schedule for work in the Rights-of-Ways as required by County's permitting regulations.
- (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 County, and give appropriate notices to Grantee shall pay all applicable fees upon issuance of the requisite construction permits by County to Grantee. As a condition of any permits so issued, County 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 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 may initiate such emergency repairs, and shall apply for appropriate permits within two business days 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 County or any franchisee or permittee of the County provides written notice to 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;

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## **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. County may, after providing written notice to Grantee, and Grantee's failure to respond within the agreed upon time, refill or repave any opening made by Grantee in the Rights-of- Way, and the expense

thereof shall be paid by Grantee. County may, after providing written notice to Grantee, and Grantee's failure to respond within the agreed upon time, remove and repair any work done by Grantee that, in the determination of County, 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 County 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 County, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way by, or under, County's authority.
  - (B) Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's signals so as to prevent injury to County'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 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 Coordinating Board One Call 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 relating to the one call locator service program.
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- (E) Grantee shall give reasonable notice to private property owners of construction work in adjacent Rights-of-Way.

#### **10.5 Acquisition of Facilities**

Upon Grantee's acquisition of facilities in any Rights-of-Way, or upon the addition or annexation to the County of any area in which Grantee owns or operates any facility, 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 County 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 County shall direct. Any and all such removal or relocation shall be at the expense of Grantee; all involved entities may submit for reimbursements on a case by case basis; reimbursement cannot be unreasonably denied where one party has been reimbursed. 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 County. Should Grantee fail to remove, adjust or relocate its facilities by the date established by County's written notice to Grantee, County may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee.

(A) Movement of Cable System For and By County.

The County may remove or disconnect Grantee's facilities and equipment located in the Right-of-Way or on any other property of the County in the case of fire, disaster or other emergency. Except during an emergency, the County shall provide reasonable written notice to Grantee prior to taking such action and shall provide Grantee with the opportunity to perform such action. Following written notice by the County, 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 County, except that the County 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 County's satisfaction, the County may cause such work to be done and bill the cost of the work to the Grantee. Grantee shall remit payment to County 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 written 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.

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**10.7 Rights-of-Way Vacation**

If any Rights-of-Way or portion thereof used by Grantee is vacated by County during the term of this Franchise, unless County specifically reserves to Grantee the right to continue the use of vacated Rights-of-Way, Grantee shall, without delay or expense to County, 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' written notice by County, to restore, repair or reconstruct such Rights-of-Way, County may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by County, 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 County 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 County allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, County 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. County 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 County. Until such time as Grantee removes or modifies the facility as directed by County, 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, County 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) Upon reasonable written notice to Grantee, County 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 residue of hazardous substances related thereto.

#### **10.10 Undergrounding of Cable**

- (A) Wiring.
  - (1) Where electric or telephone utility wiring is installed underground at the time of Cable System construction, or when 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 County. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable County Code requirements and rules. In areas where both electric and telephone utility wiring are 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 County or any other Person.

- (4) The Grantee and the County recognize that situations may occur in the future where the County 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 use commercially reasonable efforts to submit these plans to the County in accordance with the County'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 County. In addition, the Grantee agrees to cooperate with the County in any other construction by the Grantee that involves trenching or boring. If sufficient space is reasonably available, the Grantee shall allow the County to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the County shares 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 County 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 County shall not be required to obtain easements for the Grantee.
- (6) The Grantee may participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being converted to underground facilities.

(B) Repair and Restoration of Property.

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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 County property shall be restored in a manner and within a timeframe approved by the County's Director of Public Works or his or her designee. If restoration of Rights-of-Way or other property of the County is not satisfactorily performed within a reasonable time, the Director of Public Works may, after prior written 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 County. If suit is brought by County 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 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, County 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, 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 County, 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.

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- (B) All installations of equipment shall be permanent in nature, 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.

### **10.15 Stop Work**

On written notice from County that any work is being conducted contrary to the provisions of this Franchise, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by County. 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 in reasonable detail 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 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 comply with County requirements regarding geographic information systems and, per Section 7.3(A) upon thirty (30) days written request, provide paper copies of Grantee's route maps to the County.

**SECTION 11. CABLE SYSTEM DESIGN**

- (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.
- (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 County 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 County is not permitted to require the provision of specific Video Programming pursuant to this subsection.

## **SECTION 12. SCRAMBLED CHANNEL AND INSTITUTIONAL NETWORK**

### **12.1 Scrambled Channel**

Within four (4) months from the effective date hereof, or as soon thereafter otherwise agreed upon by County and Grantee, Grantee shall provide the County with capacity on the digital Tier of the Cable System in the form of a scrambled, encoded digital Channel as provided herein. Such scrambled, encoded digital Channel shall be provided at Grantee's expense at Grantee's Headend and up to and including the termination point at the County's origination sites and with the number of converters described in or referred to herein. Such locations shall be provided one "standard drop" at County's expense for those sites requiring new service installations. Additional outlets shall be at County's expense.

Access to the scrambled, encoded digital Channel will be limited to those locations referred to herein that contain uniquely coded converters, which must effectively descramble and decode the signals at the aforementioned referred to locations. Beyond the 20 converters to be provided at Grantee's expense, additional programmed converters shall be made available to the County, or other institutions authorized by the County, at the advertised retail rate upon the express written request of the County. The converters themselves shall be digital and the signal shall be transmitted in digital format, be addressable and scrambled such that residential and commercial Subscribers will not be able to see, hear or interpret the video or audio. Members of the public shall not be able to discern the programming provided over the scrambled, encoded digital Channel.

Programming provided over the scrambled, encoded digital Channel shall originate from the County and be transported upstream, via ASI over Ethernet or a mutually agreed upon format. This signal will be transported over the existing Fiber Optic connection to Grantee's Headend for subsequent connection to the downstream digital Channel.

### **12.2 Institutional Network.**

Grantee will offer an I-Net to the County according to the following conditions: Upon written request from the County at any time during this Franchise, Grantee shall construct, in accordance with the provisions set forth herein, and the terms and conditions of mutually acceptable I-Net Service Agreements where indicated herein, an Institutional



Network for non-commercial private network communications between Qualified I-Net Users. The I-Net Service Agreement is applicable in the context of a Grantee Managed Network, rather than a County Managed Network. The Grantee shall determine, at its sole discretion, the I-Net design criteria, such design to be at minimal cost to County as current technology then allows. Existing fiber infrastructure shall be made available for County I-Net use as determined by Grantee.

### **12.3 I-Net Models**

Within one hundred twenty (120) days of receipt of the County's written request for an I-Net proposal, which includes the County's I-Net design criteria and a list of I-Net sites, Grantee shall provide a design and cost estimate for the I-Net. The County shall either accept the I-Net proposal or make recommendations for modifications to it. The County may request a proposal for either of the following I-Net models:

- (A) A managed I-Net, owned and operated, maintained and administered by Grantee ("Grantee Managed Network"); or
- (B) A fiber-optic connectivity I-Net infrastructure constructed, maintained and owned by Grantee over which the County may operate and manage an I-Net ("County Managed Network").

### **12.4 Response to I-Net Proposal**

Grantee must submit to County, all requested I-Net design and cost estimates, prior to March 1<sup>st</sup> of each calendar year, but in no event less than 90 days following Grantee receipt of a request and County must respond, to Grantee, with acceptance or refusal prior to June 1<sup>st</sup> of each calendar year. If the County accepts Grantee's proposal, Grantee will proceed with construction within four (4) months of the year following County's acceptance of Grantee's estimated cost, or as soon thereafter otherwise agreed upon by County and Grantee. If the County rejects the proposal, but suggests modifications and both the Grantee and the County are willing to accept a modified proposal, Grantee will proceed based on the defined timelines above. The County shall be responsible for Grantee's engineering costs associated with a project design and cost estimates requested by County, but not accepted for construction.

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- (A) County Managed Network Model. If the County chooses the County Managed Network model, the County will be invoiced for construction costs upon completion of construction and acceptance testing, in an amount not to exceed the estimate, due and payable to Grantee within one hundred twenty (120) days. Additionally, ongoing maintenance and repair of the dedicated I-Net infrastructure, whether scheduled or prompted by an emergency, shall be performed on a time and materials basis. Grantee shall notify County at least two business days in advance of any scheduled maintenance that will include interruption of fiber connectivity or as indicated by an additional Service Agreement as referenced in Section 12.8.

- (1) Construction, Acceptance and Termination. I-Net infrastructure will be constructed, acceptance tested and terminated by Grantee in accordance with standard practices, including but not limited to practices concerning connectorization, and the County agrees to grant Grantee all necessary rights of entry, easements and licenses to accomplish the construction to the I-Net sites. Each fiber I-Net site connection will be terminated at an internal point of demarcation in a standard fiber termination panel, unless the County provides another means of termination, in which case the County will provide all necessary fiber termination equipment. At each fiber termination location the County will provide wall mount backboards and a power source for the basic termination, or such equipment as chosen by the County as a replacement.
- (2) Administration, Maintenance and Management. The County shall be responsible for the ongoing administration, maintenance and management of the I-Net equipment located on the County side of the I-Net fiber termination panel at each I-Net site, and the internal site network itself.
- (3) County I-Net Users to Provide Electronics as Provided Herein. Grantee shall be responsible for supplying and installing the I-Net infrastructure to the specified fiber terminal panel locations only, providing a pathway for I-Net communications between sites. Any active equipment or components on the County's side of the termination panel, including but not limited to computers, network cards, optronics, electronics and equipment racks, required for I-Net use shall be provided at the County's sole expense. Any bandwidth management equipment on the Grantee's side of the Termination panel shall also be the responsibility of the County, and County shall coordinate all active equipment purchases with Grantee to assure compatibility with Grantee's system.

(B) Grantee Managed Network Model. Prior to the County being responsible for making any payments to Grantee, the I-Net would have to perform in accordance with industry standards. If the County chooses a Grantee Managed Network model, the County will pay a recurring monthly per site service fee in accordance with a fully executed I-Net Service Agreement negotiated in good faith by the County and Grantee. Ongoing maintenance and repair of the I-Net and fiber infrastructure, whether scheduled or prompted by an emergency, shall be performed by the Grantee at no additional charge to the County.

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- (1) Construction and Termination. I-Net infrastructure will be constructed and terminated by Grantee in accordance with standard practices, including but not limited to practices concerning connectorization, and the County agrees to grant Grantee all necessary rights of entry, easements and licenses to accomplish the

construction to the I-Net sites. Each fiber connection will be terminated in a standard fiber termination panel. At each fiber termination location, the County will provide wall mount backboards and a power source for the basic termination.

- (2) Grantee to Provide Equipment, Optronics and Electronics. Grantee shall provide all I-Net system and site equipment, optronics and electronics in accordance with a fully executed I-Net service agreement.
- (3) Administration, Maintenance and Management. Grantee shall be responsible for the ongoing administration, maintenance and management of the I-Net equipment, optronics and electronics up to a point of demarcation on the County side of the system equipment. All optronics and electronics located at each I-Net site shall be maintained in accordance with a fully executed I-Net service agreement. All maintenance shall be performed in accordance with industry standards, and all I-Net equipment shall comply in all respects with applicable governmental codes, laws, ordinances or regulations and the National Electric Code and the National Electric Safety Code.

#### **12.5 Ownership and Right of Use**

The County and other Qualified I-Net Users shall have an exclusive right of use of the I-Net for noncommercial private network communications so long as the County has met its financial obligations to Grantee, which right cannot be revoked by Grantee or its successors, if any, during the term of the Franchise. However, Grantee shall at all times own in fee the fiber optic cable infrastructure and associated facilities and equipment up to termination points where physically connected to County owned optronics or electronics, if any.

#### **12.6 Private Network Status**

The I-Net is a private communication network governed by this Franchise and I-Net service agreements, where required, are to be mutually negotiated between County and Grantee. The County will use the I-Net solely for noncommercial applications in accordance therewith and may grant access only to Qualified I-Net Users. To wit, the County and Qualified I-Net Users shall not lease, sublease or resell I-Net capacity or services to a third party for any purpose whatsoever. The County will not attach any equipment or otherwise modify the I-Net in any way that will interfere with the signal quality in the normal operation of Grantee's cable system and Grantee reserves the right to temporarily suspend until rectified, the County's rights granted hereunder in the event such interference should occur. Such unilateral suspension under these circumstances shall not place Grantee in violation of the Franchise.

#### **12.7 I-Net and Force Majeure**

Neither the County nor the Grantee shall be in default or liable to the other for any failure of performance under this Section 12 due to causes beyond its control (except for the

fulfillment of payment obligations as set forth herein) including but not limited to: acts of God, fire, flood or other catastrophes, severely adverse weather conditions, national emergencies, riots, insurrections, wars or strikes, lockouts, work stoppages or other labor difficulties, provided however, the party that is unable to perform its obligations shall promptly notify the other party of such delay and the time period shall be extended for the actual amount of time said party is so delayed.

### **12.8 Service Agreement**

Subject to the other requirements contained herein, a Service Agreement may be developed in good faith between the County and Grantee with respect to a Grantee Managed Network under this Section 12. This Service Agreement will incorporate all the pertinent requirements of this Section 12, and may specify additional and more detailed operation and maintenance responsibilities, standards of reliability and response time for repair, technical network management and status monitoring requirements. If the Service Agreement is established between the County and Grantee, should any additional maintenance requirements be negotiated, such requirements will be in addition to those contained herein and would be incorporated into Grantee's total maintenance responsibilities. Should any additional maintenance requirements be negotiated between the County and Grantee as related to any individual Qualified I-Net User site, the rate due Grantee may be adjusted during such negotiations to compensate Grantee for such additional maintenance responsibilities.

### **12.9 I-Net Use**

#### **Qualified Uses/PEG Origination Uses**

The I-Net may be used by the County and any Qualified I-Net User for any lawful governmental purpose acting in its governmental or proprietary capacity; provided however, the County or any Qualified I-Net user shall not use or permit the use of the I-Net to provide for any services in competition with services provided by Grantee over its facilities or for any third party use of the I-Net.. The County agrees to require all Qualified I-Net Users to stipulate and agree to this limitation. County and Grantee recognize that while the County I-Net will be used for emergency services, Grantee is not liable for any loss of services during system maintenance or due to causes beyond the control of Grantee, or otherwise caused by Force Majeure. The County agrees that all Qualified I-Net Users will be made aware of this limitation. Notwithstanding any other provision of this Franchise, schools and libraries are Qualified I-Net Users and may provide access to Internet services to the schools, libraries and governmental entities.

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GRANTEE SHALL PURCHASE MATERIALS FOR THE I-NET FROM ITS CUSTOMARY SUPPLIERS, AND ALL MANUFACTURER AND SUPPLIER WARRANTIES SHALL CONTINUE TO APPLY. IN NO EVENT SHALL GRANTEE BE LIABLE FOR DEFICIENCIES OR DEFECTS IN THE FIBER FACILITIES CAUSED BY THE COUNTY OR THE COUNTY'S AGENTS' OR EMPLOYEES' MISUSE, UNREASONABLE USE, NEGLIGENCE, ALTERATIONS OR IMPROPER REPAIR. IN NO EVENT SHALL GRANTEE BE LIABLE TO THE COUNTY FOR ANY DIRECT, INDIRECT OR

CONSEQUENTIAL LOSSES OR DAMAGES ARISING IN ANY MANNER FROM THE CONTENT OR SERVICES THAT THE COUNTY CHOOSES TO PROVIDE OVER GRANTEE'S FACILITIES.

Permitted uses of the I-Net include, by way of example and not limitation:

- (A) High-speed transmission of GIS and other data to and from County departments and to and from other organizations and the public;
- (B) Transmitting live and stored instructional materials (whether in the form of data, video or otherwise) for distance learning and staff training purposes to and from schools and to and from other organizations and the public;
- (C) Providing videoconferencing among municipal and educational locations and to other locations for municipal and educational purposes;
- (D) Linking libraries and providing terminals at library locations that allow members of the public to access library databases and other remote databases;
- (E) Providing for remote origination of video programming for Access television and other purposes; and
- (F) Facilitating connections for internal telephone systems, security systems and other critical public entity communications applications.

#### **12.10 Warranties/Acceptance**

The acceptance of the I-Net or any component thereof, or payment for service and equipment, shall not waive any defect in the work or constitute acceptance of work or equipment not in compliance with the applicable design and specification requirements. Grantee shall provide in its contracts for warranties of the work and equipment satisfactory to the County and will provide for the enforcement of such warranties and for the correction of work or equipment not provided in accordance with applicable design and specification requirements or which is otherwise defective.

The County may terminate use of, and payment for, I-Net services or any portion thereof based on demonstrated, verifiable non-performance or non-compliance by Grantee with the terms of this Franchise or the Service Agreement after giving Grantee reasonable written notice and opportunity to correct the problem causing non-performance or non-compliance.

#### **12.11 Survival of I-Net Obligations**

All I-Net obligations herein shall survive throughout the term of this Franchise and remain obligations of the current holder of this Franchise regardless of any sale or transfer of ownership or control of the Cable System.

## **SECTION 13. TECHNICAL STANDARDS**

### **13.1 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 County shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

### **13.2 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 County) and shall maintain written records of its test results. Upon request, all FCC required technical performance tests may be witnessed by representatives of the County. Copies of such test results will be provided to the County upon written request.
- (B) All required technical performance or other Cable System tests shall be at the expense of the Grantee and may be witnessed by representatives of the County. Upon request, Grantee will notify the County 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**

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### **14.1 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 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.

## **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 County 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 or by local requirements, as such provisions may from time to time be amended, Emergency Alert System ("EAS") implementation will be accomplished in compliance with the EAS Plans that apply to the County 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 Remedying Franchise Violations**

- (A) If County believes that Grantee has failed to perform any material obligation under this Franchise or has failed to perform in a timely manner, County 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 written notice to:
- (1) Respond to County, contesting County's assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below;
  - (2) Cure the default; or
  - (3) Notify County 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 County 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 County or Grantee may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, County 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 County orders a hearing in accordance with subsection (A)(3), County shall set a public hearing to investigate said issues or the existence of the alleged default. County 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 written 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, County shall not unreasonably limit Grantee's opportunity to make a record that may be reviewed should any final decision of County 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 County's sole reasonable discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction.



- (C) If, after the public hearing, County determines that a default still exists, County shall order Grantee to correct or remedy the default or breach within fourteen (14) days of County's written notification or within such other reasonable timeframe as County shall determine. In the event Grantee does not cure within such time to County's reasonable satisfaction, County 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 County or its designee. Any such determination by County shall be accompanied by a record, to which Grantee's contribution shall not be limited by County (i.e., County 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 determination of the County. County 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 County specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the County, its officers, officials, Boards, 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 County, or its officers, officials, Board, 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(b):

- (A) Grantee shall deliver to the County an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the County, from a National or State bank subject to reasonable approval by the County, in the amount of fifty thousand dollars (\$50,000.00).
- (B) The Letter of Credit shall provide that funds will be paid to the County ;and in an amount for liquidated damages charged pursuant to this Section, in payment for any monies owed by the Grantee to the County or any Person 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 County or any Person or damages to the County or any Person as a result of any material acts or material omissions by the Grantee pursuant to the Franchise; the County in its sole discretion may, after written 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 County 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 or the provision of the scrambled Channel as provided in Section 12.1, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

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  - (3) For failure to provide the services and the payments required by this Franchise, including, but not limited to, 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 Grantee's breach of any written contract or agreement with or to the County, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such breach occurs or continues.
  - (5) For failure to comply with any of the provisions of this Franchise or Customer service standards, or other County ordinance for which a 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 90 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 County and the Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the County as a result of the Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the County and the Grantee agree that the Grantee shall pay to the County 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 County would suffer in the event of the Grantee's breach of such provisions of this Franchise.
- (G) The bond(s) and Letter of Credit referred to in Section 5.3 (A) may be drawn upon by the County for breach of a material provision after written notice and opportunity to cure.

The County shall give Grantee written notice of any intent to withdraw under this subsection. Within seven (7) days following receipt of such written notice, Grantee shall restore the bond(s) and Letter of Credit to the amount required under this Franchise.

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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 County's recourse to any other remedy available at law or in equity.

Grantee shall have the right to appear to the County Board 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 County 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 County 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 County by reason of the breach of this Franchise.

Grantee's maintenance of the security required herein or by applicable code shall not be construed to excuse unfaithful performance by the Grantee of this Franchise; to limit liability of the Grantee to the amount of the security; or to otherwise limit the County's recourse to any other remedy available at law.

#### **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 County 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 within the County limits 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 County, it being the intent that there shall be continuous operation of the Cable System ); or

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(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 County 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 material part of the plant, property and equipment of Grantee, County may serve written 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 written notice, unless:
  - (1) County 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 County to assume and be bound by all of the terms and provisions of this Franchise.

#### 16.5 Acquisition of the Cable System

County and Grantee shall be subject to the provisions of Section 627 of the Cable Act as amended from time to time. Any provision of this Agreement that purports to diminish the rights of either the County or Grantee under Section 627 of the Act shall be deemed superseded by the Act.

### **SECTION 17. FRANCHISE TRANSFER**

#### **Transfer of Ownership or Control**

- (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 County, which consent shall be by the County Board, acting by ordinance or resolution.
- (B) The Grantee shall promptly notify the County of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the County shall have consented in writing thereto.
- (C) The parties to the sale or transfer shall make a written request to the County for its approval of a sale or transfer or change in control and shall furnish all information required by law.
- (D) In seeking the County's consent to any change in ownership or control, the proposed transferee or controlling entity shall indicate whether it:

- (1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;
  - (2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;
  - (3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system;
  - (4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee or controlling entity, along with any other data that is lawfully required; and
  - (5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.
- (E) The County shall act by ordinance or resolution on the request within one hundred twenty (120) days of receipt of the FCC Form 394 application, provided it has received a complete application. Subject to the foregoing, if the County fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the County agree to an extension of time.
- (F) Within thirty (30) days of any transfer or sale or change in control, if approved or deemed granted by the County, Grantee shall file with the County a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee or 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 County 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 County's consent shall be required for such change in control.
- (G) In reviewing a request for sale or transfer or change in control, the County

may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the County in so inquiring. The County 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 County shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an intracompany entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the County 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 County; 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. PROHIBITED PRACTICES, LOCAL EMPLOYMENT EFFORTS AND NOTICES**

### **18.1 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.

### **18.2 Notices**

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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:

WaveDivision IV, LLC  
4519 SE Mile Hill Drive  
Port Orchard, WA 98528  
Attn: General Manager

With a Copy To:

WaveDivision Holdings, LLC  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attn: Steve Weed and Jim Penney

Notice to one Grantee shall not constitute notice to both.

County's address shall be:

Kitsap County, Washington  
Kitsap County Courthouse  
614 Division Street, MS-21  
Port Orchard, WA 98366

Attention: County Franchise Manager

With a Copy To:

Kitsap County, Washington  
Kitsap County Courthouse  
614 Division Street, MS-21  
Port Orchard, WA 98366

Attention: Department of Administrative Services

## **SECTION 19. MISCELLANEOUS PROVISIONS**

### **19.1 Cumulative Rights**

Subject to applicable law, all rights and remedies given to the County by this Franchise or retained by the County 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 County, 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 County 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.

### **19.2 Costs to be Borne by Grantee**

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

### **19.3 Binding Effect**

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



#### **19.4 Authority to Amend**

This Franchise may be amended at any time by Ordinance once a written agreement between the parties is reached.

#### **19.5 Venue**

The venue for any dispute related to this Franchise shall be in an appropriate court of competent jurisdiction.

#### **19.6 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, as amended, and any other applicable local, State and federal laws, rules, and regulations, as amended. Except as provided in Section 2.4(C) or otherwise in this Franchise, Ordinance No. 166-1994 is hereby superseded. To the extent there is a conflict between this Franchise and Kitsap County Master Ordinance for Cable Franchise Operators No. 159-1994, the terms and provisions of this Franchise shall control.

#### **19.7 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.

#### **19.8 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.

#### **19.9 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 the other 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.

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#### **19.10 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.

#### **19.11 Compliance with Federal, State and Local Laws**

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

**19.12 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, 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.

**19.13 Entire Agreement**

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

**19.14 Attorneys' Fees**

If any action or suit arises in connection with this Franchise, either the County 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.

**19.15 Action of the County or Grantee**

In any action by the County 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.

**19.16 Acceptance**

Per KCC 14.32.060(b), Within forty-five (45) days of receipt of the Franchise after its execution by the County, this Franchise shall be accepted by Grantee by filing with the Clerk of the Board of County Commissioners an unconditional, written acceptance of all of the terms, provisions and conditions of this Franchise, along with all required evidence of insurance coverage and bonds. 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 County.

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IN WITNESS WHEREOF this Franchise is signed in the name of Kitsap County,  
Washington this 11th day of January, 2010.

**WAVEDIVISION IV, LLC**

[Signature]  
Signature

James A. Perry  
Print Name

Executive Vice President  
Title

January 23, 2010

**ATTEST:**  
[Signature]  
Secretary

**KITSAP COUNTY  
BOARD OF COUNTY COMMISSIONERS**

[Signature]  
Josh Brown, Chair

[Signature]  
Charlotte Garrido, Commissioner

[Signature]  
Steve Bauer, Commissioner

**ATTEST:**  
[Signature]  
Opal Robertson, Clerk of the Board



IN WITNESS WHEREOF this Franchise is signed in the name of Kitsap County,  
Washington this 11<sup>th</sup> day of January, 2010.

**WAVEDIVISION IV, LLC**

**KITSAP COUNTY  
BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Signature

[Signature]  
\_\_\_\_\_  
Josh Brown, Chair

\_\_\_\_\_  
Print Name

[Signature]  
\_\_\_\_\_  
Charlotte Garrido, Commissioner

\_\_\_\_\_  
Title

[Signature]  
\_\_\_\_\_  
Steve Bauer, Commissioner

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Secretary

[Signature]  
\_\_\_\_\_  
Opal Robertson, Clerk of the Board



## EXHIBIT I

### CUSTOMER SERVICE STANDARDS

#### **SECTION 1. POLICY**

Grantee should be permitted the option and autonomy to first resolve citizen complaints without delay and interference from the County.

Where a given complaint is not addressed by Grantee to the citizen's satisfaction, the County may intervene, if requested to do so by the citizen. In addition, where a pattern of unremedied complaints or noncompliance with these Standards is identified, the County may prescribe a cure and establish a thirty (30) day deadline for implementation of the cure.

These Standards are intended to be of general application; however, Grantee shall be relieved of any obligations hereunder if it is unable to perform due to a natural emergency in the region, or in the event of force majeure affecting a significant portion of the County. Grantee is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

Grantee is responsible to the County to insure that its agents, contractors and subcontractors comply with all applicable provisions of these Standards.

#### **SECTION 2. CUSTOMER SERVICE.**

##### **2.1. Courtesy**

All employees of Grantee shall use reasonable good faith efforts to provide effective and satisfactory service in all contacts with Customers.

##### **2.2. Accessibility; Cable System office hours and telephone availability**

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(A) Grantee shall maintain a local, toll-free or collect call telephone access line which will be available to its Customers 24 hours a day, seven days a week.

(1) Trained company representatives will be available to respond to Customer telephone inquiries during normal business hours.

(2) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine, ARU or VRU. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(B) Under normal operating conditions, the telephone access line answered by a customer service representative answer time shall not exceed thirty (30)

seconds when the connection is made. If, after initially addressing a caller's concerns, the customer service representative determines that the call should be transferred to another representative of Grantee, the transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

- (C) Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above, unless a historical record of written complaints indicates a clear failure to comply.
- (D) Under normal operating conditions, the Customer will receive a busy signal less than three (3) percent of the time.
- (E) A Customer service center which is encouraged or required by the terms of an agreement with the County will be open during normal business hours.
- (F) During normal operating conditions, the minimum standards set forth in this section shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis.

**2.3. Responsiveness; installations, outages and service calls**

- (A) Under normal operating conditions, each of the following five standards will be met no less than ninety (90) percent of the time measured on a quarterly basis:
  - (1) Standard installation will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet for an aerial installation and 60 underground feet for an underground installation from the existing distribution Cable System.
  - (2) Excluding conditions beyond the control of a Grantee, a Grantee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. Grantee must begin actions to correct other service problems the next business day after notification of the service problem.
  - (3) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. For purposes herein, "normal business hours" shall be between 8:00 A.M. to 5:00 P.M., Monday through Friday. Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the Customer.

- (4) Grantee may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment unless due to extended work at another location.
  - (5) If Grantee's representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Customer.
- (B) Grantee shall meet or exceed technical standards established by the United States Federal Communications Commission (the "FCC"). Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall occur during periods of minimum use of the Cable System, preferably between midnight and six a.m. (6:00 a.m.).
- (C) Grantee's Customer Service Representative shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate.
- (D) Billings, refunds and credits.
- (1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, Grantee must respond to a written complaint from a Customer within thirty (30) days.
  - (2) Refund checks will be issued promptly, but no later than either the Customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or the return of the equipment supplied by Grantee if service is terminated.
  - (3) Credits for service will be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.
- (E) Treatment of Private Property.
- (1) Grantee shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of Grantee during installation or construction shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located.

- (2) Grantee shall, at its own cost and expense, and in a manner approved by the property owner, restore any property to as good condition as before the work causing such disturbance was initiated. Grantee shall repair, replace or compensate a property owner for any damage resulting from Grantee's installation, construction, service or repair activities.
- (3) Except in the case of an emergency involving public safety or service interruption to a large number of Customers, Grantee shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law, easement, and/or an agreement with the County. For the installation of pedestals or other major construction or installation projects on private property, the property owner and/or resident shall also be notified in writing at least forty-eight hours in advance. In the case of an emergency, Grantee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Notwithstanding the foregoing, if another Person's property will be affected by work requested by a Customer or potential Customer, Grantee shall endeavor to provide notice to that Person as well.
- (4) Grantee personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **2.4 Services for Customers with Disabilities**

Grantee will use reasonable good faith efforts to meet the special needs of Customers with disabilities.

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#### **2.5 Notification to Customers**

- (A) Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Customers, and at any time upon request.
  - (1) Products and services offered;
  - (2) Prices and options for programming services and conditions of subscription to programming and other services;
  - (3) Installation and service maintenance policies;
  - (4) Instructions on how to use the cable service;



- (5) Channel positions programming carried on the Cable System; and,
  - (6) Billing and complaint procedures.
- (B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notwithstanding any other provision herein, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, agreement fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal or State agency, on the transaction between Grantee and the Customer.
- (C) All officers, agents, and employees of Grantee or its contractors or subcontractors who are in personal contact with Customers shall have identification cards bearing their name and photograph. Grantee shall account for all identification cards at all times. Every vehicle of Grantee shall be clearly visually identified to the public as working for Grantee. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public.

## **2.6 Customer Privacy**

- (A) Grantee shall not monitor cable television signals to determine the individual viewing patterns or practices of any Customer without prior written consent from that Customer, except as otherwise permitted by Federal Law.
- (B) Grantee shall not sell or otherwise make available Customer lists or other personally identifiable Customer information without prior written Customer consent, except as otherwise permitted by Federal Law. Grantee is permitted to disclose such information if such disclosure is necessary to render, or conduct, a legitimate business activity related to a cable service or other service provided by Grantee to its Customers.

## **2.7 Safety**

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Grantee shall install and locate its facilities, Cable System, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not endanger persons or property. Whenever a Grantee receives notice that an unsafe condition exists with respect to its equipment, Grantee shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

## **SECTION 3. COMPLAINT PROCEDURE**

### **3.1 Complaints to Grantee**

- (A) Grantee shall establish written procedures for receiving, acting upon, and resolving Customer complaints, and crediting Customer accounts and shall publicize such procedures through printed documents at Grantee's sole expense.

- (B) Said written procedures shall prescribe a simple manner in which any Customer may submit a complaint by telephone or in writing to Grantee that it has violated any provision of these Customer Service Standards, or any terms or conditions of the Customer's contract with Grantee.
- (C) At the conclusion of Grantee's investigation of a Customer complaint, but in no more than thirty (30) calendar days after receiving the complaint, Grantee shall notify the Customer of the results of its investigation and its proposed action or credit.

### **3.2 Complaints to the County**

- (A) Any Customer who is dissatisfied with any proposed decision of Grantee or who has not received a decision within the thirty (30) day period as required shall be entitled to have the complaint reviewed by the County or its designee.
  - (B) The Customer may initiate the review by filing a written complaint together with Grantee's written decision, if any, with the County.
  - (C) The Customer shall make such filing and notification within thirty (30) days of receipt of Grantee's decision or, if no decision has been provided, within forty (40) days after filing the original complaint with Grantee.
  - (D) Grantee shall file a written response to the complaint with the County within fifteen (15) days of receipt of a copy of the complaint from the Customer.
  - (E) The County or its designee may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.
  - (F) If the County or its designee determines that the Customer's complaint is valid and that Grantee did not provide the complaining Customer with the proper solution and/or credit, the County or its designee may further pursue the issue with the Grantee and Grantee shall respond to County within 5 business days.
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### **3.3 Overall Quality of Service**

The County may evaluate the overall quality of Customer service provided by Grantee to Customers:

- (A) In conjunction with any performance review provided for in an agreement with the County; and,
- (B) At any other time, at its sole discretion based on the number of Customer complaints received by Grantee and the County, and Grantee's response to those complaints.

### **3.4 Non-Compliance with Customer Service Standards.**

Non-compliance with any provision of these Standards is a violation of these Standards.

## **SECTION 4. MISCELLANEOUS**

### **4.1 Severability**

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

### **4.2 Non-Waiver**

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of Grantee under said provision, or any other provision of these Standards.