

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: A-1

DATE: May 10, 2007

SUBJECT: First Reading Ordinance No. 950-07 Extension of Cable TV Franchise and authorization to approve contract Change Order #2 with River Oaks Communication for Cable Franchise Negotiations not to Exceed \$900.00.

CONTACT PERSON: Deborah Knight, City Administrator

SUMMARY:

Extending Cable TV Franchise Agreement

This report recommends having First Reading of Ordinance No. 950-07 (Attachment A) to extend the cable television franchise agreement with Tele-Vue Systems, Inc. (now Comcast) to September 30, 2007.

The original franchise agreement (Ordinance No. 502 - Attachment B) expired on August 8, 2004. The Cable TV ordinance is codified in Section 5.28 of Sultan Municipal Code. In December 2006, the City Council approved Ordinance No. 946-06 (Attachment C) extending the franchise agreement to March 31, 2007. The City is continueing its negotiations with Comcast. The final issue under negotiation is Section 2.5 Grant of other Franchises/Competitive Equity (See Attachment D). Comcast is concerned about new companies such as telephone and internet carriers entering the cable market. The local cable negotiator has sent the Consortium proposed language to the corporate office in Philidelphia for review. This is likely to hold up negotiations for several months.

Negotiations are expected to be finalized by September 30, 2007.

Cable TV Franchise Negotiations

Since February 2006, the City has been working with its partners in the East County Cable Consortium (Snohomish, Monroe, and Lake Stevens) and a consultant, River Oaks Communications to complete the franchise negotiations with Comcast. Negotiations with Comcast have reached a stalemate on several points and the Consortium is almost to the end of the contractual limit of \$22,500.

The purpose of this report is to provide the City Council with an outline of the remaining points of conflict, provide direction to staff on any of the specific issues, and request authorization for \$900 to continue the negotiations and finalize the agreement and ordinances. Attachment D is final draft of the issues on which Consortium and Comcast have not reached agreement.

Staff foresees one joint session via a conference call with Comcast, two members of the Consortium, and our negotiator. If this session reaches consensus on the remaining issues, then River Oaks would be directed to finalize the franchise agreement and ordinance. If the session does not reach consensus, then we would return to the City Council for direction before authorizing River Oaks to finalize the franchise agreement and ordinance.

FISCAL IMPACT:

In February 2006, the Consortium authorized a professional services contract with River Oak Communications Corporation to represent the Consortium in negotiations with Comcast Cable and complete the franchise agreement and cable ordinance. The contract provided a high estimate of 90 hours of work in an amount not to exceed for \$22,500. The tables below present the allocation of costs for each of the member cities based on the number of cable subscribers.

Initial Contract Allocation

Lake Stevens	1,897	24.90%	\$	5,602.11
Snohomish	2,525	33.14%	\$	7,456.69
Monroe	2,199	28.86%	\$	6,493.96
Sultan	998	13.10%	\$	2,947.24
	<u>7,619</u>	<u>100.00%</u>	<u>\$</u>	<u>22,500.00</u>

Change Order #1

Lake Stevens	1,897	24.90%	\$	1,618.39
Snohomish	2,525	33.14%	\$	2,154.15
Monroe	2,199	28.86%	\$	1,876.03
Sultan	998	13.10%	\$	851.42
	<u>7,619</u>	<u>100.00%</u>	<u>\$</u>	<u>6,500.00</u>

Sultan’s proportionate share of the contract extension with River Oaks Communication was estimated at \$851.42 (See Change Order #1 above). Staff is recommending authorization for an additional \$900.00 to cover any minor work that may need to be done by the consultant specifically to prepare the adopting ordinance for Sultan.

There is money in the 2007 general fund budget to cover 2007 expenses.

BACKGROUND:

As required by federal law, the City of Sultan and its East County Cable Consortium partners formally began the cable franchise renewal process in April 2004. On June 11, 2004, Comcast Cable Communication responded with a proposal.

Based on information gathered by a 2004 regional needs survey, the Consortium issued a request for proposals for a consultant to negotiate with Comcast on behalf of the Consortium. Since then, the Consortium has hired three firms to provide professional services to renew the franchise agreement and ordinance. The owner of the first firm hired by the Consortium passed away and the services of the second firm were not acceptable to the Consortium. River Oak Communications was retained by the Consortium in February 2006.

ANALYSIS:

The negotiating environment has been effected by potential Federal and State legislation and the Consortium's previous compromise points have yielded little from Comcast. Comcast has communicated concerns about the competitive changes within the cable industry by both satellite and telephone cable services and an equal business environment.

The consortium is concerned about the impact of bundling of cable, telephone, and internet services on franchise fees, authorizations for extension of the agreement, cable services to municipal buildings, low income senior discounts, and other issues.

A new condition that will impact the negotiating environment is a recent Washington State Supreme Court decision that has held the City of Renton liability to a contractor for a franchisee's late movement of their infrastructure based on their franchise agreement. City staff will be recommending a contractual hold harmless to address this issue; however, since this is a new and emerging issue, we expect some additional negotiating time with Comcast.

RECOMMENDED ACTION:

- 1. I move that the City Council have First Reading of Ordinance No. 950-07 extending the cable television franchise agreement to October 1, 2007**
- 2. I move that the City Council AUTHORIZE the City Manager to execute a professional services contract change order with River Oaks Communication Corporation in an amount not to exceed \$900.**

ATTACHMENTS:

- A. Ordinance No. 950-07
 - B. Ordinance No. 503 Franchise Agreement (SMC 05.28)
 - C. Ordinance No. 946-06 Franchise Extension
 - D. Cable TV Franchise Draft dated 04-10-07
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COUNCIL ACTION:

DATE:

CITY OF SULTAN
Sultan, Washington

ORDINANCE NO. 950-07

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, AMENDING ORDINANCE NO. 946-06, AS PREVIOUSLY AMENDED BY SUBSEQUENT ENACTMENTS; EXTENDING UNTIL SEPTEMBER 30, 2007 A NONEXCLUSIVE CABLE TELEVISION FRANCHISE GRANTED TO TELE-VUE SYSTEMS, INC., PURSUANT TO CHAPTER 5.28 OF THE SULTAN MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND AUTHORIZING THE MAYOR TO EXECUTE AN ACKNOWLEDGEMENT OF EXTENSION OF CABLE FRANCHISE.

WHEREAS, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, all codified in Title 47 of the United States Code, authorize local Governments to grant franchises for the provision of cable television service within their corporate boundaries, and

WHEREAS, the City of Sultan conferred a non-exclusive cable television franchise to Tele-Vue Systems, Inc. by Ordinance No. 502 (the "Franchise"); and

WHEREAS, on November 18, 2002 the merger of AT&T Corp, with Comcast was completed, and the name of Tele-Vue's ultimate parent changed from AT&T Comcast Corporation to Comcast Corporation, and

WHEREAS, the Franchise expires by its own terms on August 8, 2004; and

WHEREAS, the term of the Franchise was extended by an Acknowledgment of Extension and Ordinance No. 859-04 to November 11, 2004; and

WHEREAS, the term of the Franchise was extended by an Acknowledgement of Extension and Ordinance No. 866-05 to May 12, 2005; and

WHEREAS, the term of the Franchise was extended further by an Acknowledgement of Extension and Ordinance No. 878-05 to November 10, 2005; and

WHEREAS, the term of the Franchise was extended further by an Acknowledgement of Extension and Ordinance No. 878-05 to June 10, 2006; and

WHEREAS, the term of the Franchise was extended further by an Acknowledgement of Extension and Ordinance No. 946-06 to March 31, 2007; and

WHEREAS, the City of Sultan, in conjunction with other cities, has been negotiating a franchise renewal in accordance with Section 626 of the Cable Communications Policy Act of 1994; and

WHEREAS, negotiations with Comcast Cable, Inc. are expected to be complete by September 30, 2007;

NOW, THEREFORE, to provide continued service to the residents of the City and to provide an opportunity to finalize negotiations, it is hereby ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. The Mayor of the City of Sultan is hereby authorized to execute that certain Acknowledgement of Extension of Franchise attached to the Ordinance as Attachment A.

Section 2. Sultan Municipal code Section 5.28.020 (D) is amended to read as follows:

5.28.020(D) Term

This franchise or renewal and all rights, privileges, obligations and regulations pertaining thereto shall commence on the effective date of Ordinance No. xxx-xx and shall expire on September 30, 2007. Notwithstanding 5.28.360 relating to franchise renewal, negotiations for renewal of the franchise agreement shall commence in the year 2001.

Section 3. Should any provision of this Ordinance be declared unlawful, the remaining portions of this Ordinance shall remain fully lawful and in effect.

Section 4. This Ordinance shall become effective five days after publication as required by law.

PASSED by the City Council and APPROVED by the Mayor this 24th day of May 2007.

CITY OF SULTAN

By _____
Benjamin R. Tolson, Mayor

ATTEST:

By _____
Laura Koenig, City Clerk

Approved to Form:

By _____
Thom H. Graafstra, City Attorney

Published: _____

ACKNOWLEDGEMENT OF EXTENSION OF FRANCHISE

This Acknowledgement of Extension of Franchise is made this 24th day of May, 2007 between Comcast of California/Colorado/Texas/Washington, Inc. ("Franchisee") and the City of Sultan, Washington, a Washington Municipal Corporation ("City").

Whereas, the City conferred a franchise on Tele-Vue Systems, Inc. by Ordinance No. 502; and

Whereas, the term of that franchise was extended by Ordinances Nos. 699-99, 859-04, 866-04, 878-05, 896-05, and 946-06; and

Whereas, by assignments the franchise conferred is now held by the Franchisee; and

Whereas, the parties wish to agree to and acknowledge the continued effect of the franchise until September 30, 2007;

Now, therefore, Franchisee and City acknowledge and agree as follows:

1. Term. That certain Franchise conferred by the City by Ordinance No. 502 and extended by Ordinance No. 699-99 and re-extended by Ordinance No. 859-04, and further extended by Ordinance No. 866-04, and further extended by Ordinance No. 878-05 896-05 and 946-06 is hereby acknowledged and agreed to be extended until September 30, 2007.
2. Ratification. All terms and conditions of the Franchise are hereby ratified and confirmed, except the provision for the duration of the Franchise which is hereby acknowledged to be September 30, 2007.

Dated:

FRANCHISEE

By: _____

CITY

City of Sultan

By: _____

Mayor Benjamin R. Tolson

Sultan Municipal Code

Chapter 5.28 CATV SYSTEMS

5.28.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set out in this section.

A. “ Act” means the Cable Communications Policy Act of 1984 and any subsequent amendments.

B. “ Addressability” means the ability of a system allowing the franchisee to authorize by remote control customer terminals to receive, change or to cancel any or all specified programming.

C. “ Affiliate” means an entity which owns or controls, is owned or controlled by, or is under common ownership with franchisee.

D. “ Applicant” means any person or entity that applies for a franchise.

E. “ Basic services” means those broadcast and nonbroadcast services provided by the cable franchisee at the lowest monthly charge as defined by the Act or rules now or subsequently adopted by the FCC.

F. “ Cable services” means (1) the one-way transmission to subscriber of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection by the subscriber of such video programming or other programming service.

G. “ CATV” means a community antenna television system as hereinafter defined.

H. “ Channel” means a single path or section of the spectrum which carries a television signal.

I. “ Combined disposable income” means the disposable income of the person claiming a rate discount, plus the disposable income of his or her spouse, and the disposable income of each co-tenant occupying the residence during the preceding calendar year, less amounts paid by the person claiming the rate discount of his or her spouse during the previous year for the treatment or care of either person in a nursing home.

J. “ Community antenna television system,” “ cable television system” or “ system” means a system of antennas, cables, wires, lines, towers, transmission lines, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying, scrambling and distributing audio, video and other forms of electronic or electrical signals, located in whole or in part in the city.

K. “ Converter” means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and with an appropriate channel selector which also permits a subscriber to view all signals delivered at designated converter dial locations.

L. “ Council” means the present governing body of the city or any future board constituting the legislative body of the city.

M. “ FCC” means the Federal Communications Commission, a regulatory agency of the United States government.

N. “ Franchise” means the nonexclusive right or authority to construct, operate and maintain a cable television system by use of city-owned rights-of-way, easements or other publicly owned properties.

O. “ Franchisee” means the person, firm or corporation to whom or which a franchise, as hereinabove defined, is granted by the council under this chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in city ordinance.

P. “Gross subscriber revenues” means income collected by franchisee for the provision of cable communications service; including basic service, premium services, tiered services, advertising, leased access channels, and all other sources derived from the operation of a cable communications system utilizing the public rights-of-way. Gross subscriber revenues shall not include uncollectable subscriber revenues, nor receipts attributed to taxes on the services furnished by the franchisee and imposed directly on any subscriber in any county, state or other governmental unit and collected by the franchisee for such governmental unit.

Q. “Headend” means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

R. “Interactive services” means services provided to subscribers where the subscriber either (1) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (2) transmits signals to any other location for any purpose.

S. “Office” means the person or entity designated by the city as being responsible for the administration of the franchise for the city.

T. “Operator” means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this chapter.

U. “Property of franchisee” means all property owned, installed or used by a franchisee in the conduct of a CATV business in the city under the authority of a franchise granted pursuant to this chapter.

V. “Public way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other

public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the city in the service area which shall entitle the city and the franchisee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the city within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the city and the franchisee to the use thereof for the purpose of installing or transmitting franchisee' s cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

W. " Subscriber" means a person or entity or user of the cable system who lawfully receives cable services or other service therefrom with franchisee' s express permission.

X. " City" means the city of Sultan, a municipal corporation of the state of Washington. (Ord. 502 § 1, 1988)

5.28.020 Terms of franchise.

A. Authority to Grant Franchises or Licenses for Cable Television. It shall be unlawful to engage in or commence construction, operation or maintenance of a cable communications system without a franchise issued under this chapter. The council may, by ordinance, award a nonexclusive franchise to construct, operate and maintain a cable communications system which complies with the terms and conditions of this chapter. Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the city from granting other or further franchises or permits or preclude the city from using any roads, rights-of-

way, streets or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the city to make all necessary changes, as the city in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all new rights-of-way and thoroughfares and other public properties of any type. In the event the city grants another cable franchise, the new franchise shall be granted on the same terms as the existing franchise.

B. Incorporation by Reference. The provisions of this chapter shall be incorporated by reference in any franchise ordinances or licenses approved hereunder.

C. Nature and Extent of the Grant. Any franchise granted hereunder by the city shall authorize the franchisee, subject to the provisions herein contained:

1. To engage in the business of operating and providing cable service and the distribution and sale of such service to subscribers within the city;

2. To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures and other property as may be necessary and appurtenant, to the cable communications system; and, in addition, so to use, operate and provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other franchisee franchised or permitted to do business in the city. No privilege or exemption shall be granted or conferred upon franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

D. Term. This franchise or renewal and all rights, privileges, obligations and restrictions pertaining thereto shall commence on the effective date of Ordinance No. 502 and shall expire on August 8, 2004. Notwithstanding SMC [5.28.360](#) relating to franchise renewal, negotiations for renewal of the franchise agreement shall commence in the year 2001. (Ord. 699-99 § 1; Ord. 502 § 2, 1988)

5.28.030 Hearing.

Prior to the granting of a franchise, the city council shall conduct a public hearing to determine the following:

A. That the public will be benefited by the granting of a franchise to the applicant;

B. That the applicant has requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area;

C. That the applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the city;

D. That the applicant will comply with all terms and conditions placed upon the franchisee by this chapter;

E. That the applicant is capable of complying with all relevant federal, state and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise. (Ord. 502 § 3, 1988)

5.28.040 Acceptance.

A. No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the ordinance granting same has become effective.

B. Within 30 days after the effective date of the ordinance awarding a franchise, or within such extended period of time as the council in its

discretion may authorize, the franchisee shall file with the city clerk/treasurer its written acceptance, in form satisfactory to the city attorney, of the franchise, together with the insurance policies required by SMC [5.28.430](#). (Ord. 502 § 4, 1988)

5.28.050 Police powers.

In accepting any franchise, the franchisee acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the city pursuant to such power. (Ord. 502 § 5, 1988)

5.28.060 Rules and regulations by the city.

A. In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the city, or agreed to and provided for in a franchise, the right and power is hereby reserved by the city to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers provided they are consistent with the terms and conditions of this chapter and provided further they do not increase the material burdens nor diminish the rights of the franchisee.

B. The city council reserves the right to delegate its authority for franchise administration to a designated agent. (Ord. 502 § 6, 1988)

5.28.070 Technical standards.

A. Franchisee shall comply with FCC Rules, Part 76, Subpart K, Section 76.601 through 76.610 and as amended, at the minimum, the following:

1. Applicable city, county, state and national/federal codes and ordinances;
2. Applicable Utility Joint Attachment Practices;
3. The National Electrical Safety Code; ANSI C2;
4. Local Utility Code Requirements;

5. Local rights-of-way procedures;

6. NCTA Manual 741 Signal Leakage and Interference Control.

B. Preventative Maintenance. A comprehensive routine preventative maintenance program shall be developed, effected and maintained for each system by the respective franchisee to ensure continued top quality cable communications operating standards in conformance with FCC Part 76. (Ord. 502 § 7, 1988)

5.28.080 Coverage.

Within 12 months from the date of the franchise, franchisee shall have completed the installation of cable in all areas of the city subject to the condition of SMC [5.28.190](#). All annexed and newly developed areas shall be provided cable service, if such areas are contiguous to the city limits, within six months from the time of obtaining necessary permits subject to the same conditions. (Ord. 502 § 8, 1988)

5.28.090 Public buildings.

Franchisee shall provide without charge for installation, basic service, outlet and converter at such public buildings as specified in Table 5.28.090 and that may be constructed during the period of the franchise provided that such installation will not require undergrounding cable through or under pavement or other physical obstructions other than open earth, extension of the trunk or distribution lines from the nearest point of connection to the existing cable system, or other modifications, additions or improvements to the existing cable television system which would cost franchisee in excess of normal installation costs.

Table 5.28.090

City-owned and maintained buildings include the following:

Building	Address
Sultan Library	515 Main Street
Museum	102 4th Street
City Hall	703 1st Street
Barricks Building	705 1st Street
Community Meeting Room	707 1st Street
Fire Station	304 Alder Street
School District Properties:	
Administration Building	514 4th Street
Grade School	415 Date Avenue
Present High School – Middle School	301 High Street
New High School (Jan. 1988)	13715 310th Ave. SE

(Ord. 502 § 9, 1988)

5.28.100 Parental control devices.

Franchisee will make available a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber. The fee for this device will be a one-time charge equal to

no more than franchisee' s actual cost for the device. (Ord. 502 § 10, 1988)

5.28.110 Other interactive services.

The city may, at its discretion, require that the franchisee provide such services as addressability, security, computer interaction, banking, shopping, etc. upon a “ two-way” basis at such time as 50 percent of comparable cable systems in cities of comparable size in the state of Washington as determined by trade reference books have installed such system. Demographic factors to be considered are size of the subscriber base and the number of dwelling units passed. Such system upgrade will be completed within 24 months of such final notice and determination to the franchisee. (Ord. 502 § 11, 1988)

5.28.120 Emergency power.

Franchisee shall provide a standby power system to automatically activate equipment at the headends in the event of a primary electrical failure. Such system shall be operational within 36 months from the effective date of the franchise. (Ord. 502 § 12, 1988)

5.28.130 Emergency override.

A. The franchisee will provide emergency override capability from its headend via telephone line from the city of Sultan within 24 months; provided no objections are received from other communities served by the same headend. The city shall file with the franchisee a list of authorized officials who will be granted permission to request the franchisee to transmit such information. Such a request will be made solely in case of extreme local emergency as a form of disaster control only when all other means of notification are inadequate in view of the urgency of a communications crisis. The city of Sultan shall accept full responsibility for any legal consequences that may occur through its use of such system.

B. Extension of the Emergency Override System. In support of the enhancement, the emergency communication goals of the consortium and

with permission of the city of Sultan, franchisee will expand the emergency override capability currently available in the city of Sultan to all consortium member communities. The consortium shall file with the franchisee a list of authorized officials who will be granted permission to access and utilize the system. Access of the emergency override system will be made solely in the case of extreme local emergency as a form of disaster control and/or warning only when all other means of notification are inadequate in view of the urgency of the communication crisis. The consortium shall save, defend, indemnify and hold harmless franchisee for any claims or judgments arising out of operation of the emergency override system. Also, the consortium agrees to test the system yearly and at a time that is least disruptive to the communities. (Ord. 699-99 § 4; Ord. 502 § 13, 1988)

5.28.135 PEG equipment and support.

The franchisee shall contribute to the consortium certain equipment, software and user training to initiate and support public, educational and governmental access not to exceed \$15,000 and as specified in Exhibit A, Capital Contribution*. The cost of additional capital equipment, software or training beyond that described above to enhance PEG access requested by the consortium shall be allocated to the member communities on a per subscriber basis. Once franchisee completes its initial PEG contribution for a PEG access with equipment, software and training, the city agrees that such additional allocated equipment costs paid by the franchisee as the capital contribution may be added to the price of cable services and recovered from customers in the city as “ external costs,” as such term is used in 47 CFR Section 87.022 on the date of the agreement. In addition, all amounts paid as the capital contribution may be separately stated on customer’ s bill as permitted in 47 CFR Section 76.985. (Ord. 699-99 § 3)

*Code reviser's note: Exhibit A, attached to Ordinance 699, is available in the office of the city clerk/treasurer.

5.28.140 Construction standards.

All facilities constructed under this chapter shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of state of Washington and city regulations pertaining to such construction. Whenever the city imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding or permanently or temporarily relocating existing facilities of the cable system, the builder, developer or subdivider shall reimburse the franchisee for all costs of the replacement, undergrounding or relocation. (Ord. 502 § 14, 1988)

5.28.150 Construction notification.

The city may establish reasonable minimum requirements for advance notification to residents adjacent to proposed construction areas. (Ord. 502 § 15, 1988)

5.28.160 Undergrounding.

In those areas and portions of the city where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground or hereafter may be placed underground, then the franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground. Amplifiers and associated equipment in franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground as approved by the city. (Ord. 502 § 16, 1988)

5.28.170 Safety requirements.

A. Franchisee shall, at all times, employ professional care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

B. All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

C. The city reserves the general right to see that the system of the franchisee is constructed and maintained in a safe condition. If an unsafe condition is found to exist by the city, it may order the franchisee to make necessary repairs within 30 days from the receipt of the city' s notification thereof, the city may make the repairs itself or have them made, and collect all reasonable costs thereof from the franchisee. (Ord. 502 § 17, 1988)

5.28.180 New developments.

A. The developer or property owner shall, at its cost, provide the franchisee with sufficient space for conduit, vaults, pedestals and laterals. The franchisee shall provide specifications for such construction as required.

B. The franchisee shall be given written notification of when such trenches will be open. If the franchisee fails to place its equipment in such open construction after five working days, the cost of new trenching shall be borne by the franchisee.

C. The franchisee' s amplifiers and essential connection thereto may be placed in appropriate housing above ground as approved by the city. In any case, the city shall not be responsible for any costs in placing such equipment underground. (Ord. 502 § 18, 1988)

5.28.190 Line extension.

A. Franchisee agrees to provide cable communications service to all areas within the city, subject to the condition that there are at least 50 dwelling units per street mile or one such unit within 150 feet of franchisee' s distribution system as measured from existing system or such ratio thereof.

B. In the event request is made for service by a resident living in an area not meeting such criteria, the franchisee may make such installation available to the requesting subscriber on a time and material cost basis. (Ord. 502 § 19, 1988)

5.28.200 Building moving.

Whenever any person shall have obtained permission from the city to use any street for the purpose of moving any building, the franchisee, upon seven days' written notice from the city, shall raise or remove, at the expense of that person desiring to move the building, any of its or their wires which may obstruct the removal of such building; provided, that the moving of such building shall be done in accordance with regulations and general ordinances of the city. Where more than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference with the lines of franchisee and other franchise holders. It is further provided that the person or persons moving such building shall indemnify and save harmless said franchisee of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of the franchisee. (Ord. 502 § 20, 1988)

5.28.210 Tree trimming.

With city approval, which shall not be unreasonably withheld, the franchisee shall have the authority to trim trees upon and overhanging streets and public ways and places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and

cables of the franchisee and if necessary to clear the microwave path and shall be responsible for debris removal from such activities. At the option of the city, and with advance written notice to the franchisee, such trimming may be done by it or under its supervision and direction, with reasonable costs to be borne by franchisee. (Ord. 502 § 21, 1988)

5.28.220 Rates.

Within 60 days after the grant of any franchise hereunder, franchisee will file with the city a complete schedule of all rates to be charged to all subscribers. Prior to implementation of any change in rates or charges for any service or equipment provided by franchisee, franchisee shall provide the city and all subscribers a minimum of 30 days' prior written notice of such change. However, this requirement shall not pertain to pay-per-view and other like services. (Ord. 502 § 22, 1988)

5.28.230 Discounts.

Franchisee shall offer a discount to those individuals permanently disabled or 62 years or older who are the legal owner or lessee/tenant of their residence; provided, that their combined disposable income from all sources does not exceed the federal poverty level for the current and preceding calendar year. Such discounts will consist eight and one-half percent from the normal charge for basic residential services as well as a 50 percent reduction in normal residential installation charges. The city of Sultan or its designee shall be responsible for certifying to the franchisee that such applicants conform to the specified criteria. (Ord. 502 § 23, 1988)

5.28.240 Franchise fee.

Franchisee shall pay to the city a sum equal to five percent of gross revenues as defined in this chapter. Such payments will be made on a quarterly basis. (Ord. 502 § 24, 1988)

5.28.250 Record inspection.

Subject to statutory and constitutional limits and reasonable advance notice, the city reserves the right to inspect the records of the franchisee at any time during normal business hours; provided, the city shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the franchisee. Such documents shall include such information as financial records, subscriber records within the context of Section 631 of the Act, tax returns and plans. Such data, however, is understood to be limited to such information that pertains solely to the operation and maintenance of the cable television system within the city of Sultan. (Ord. 502 § 25, 1988)

5.28.260 Reports.

The franchisee shall furnish, upon request, a report of its activities as appropriate. Such report may include:

- A. Most recent annual report;
- B. A copy of the 10-K report, if required by the Securities and Exchange Commission;
- C. The number of homes passed;
- D. The number of subscribers with basic services;
- E. The number of subscribers with premium services;
- F. The number of hookups in period;
- G. The number of disconnects in period;
- H. Total number of miles of cable in city;
- I. Summary of complaints received by category, length of time taken to resolve and action taken to provide resolution;
- J. A statement of its current billing practices;
- K. A current copy of its subscriber service contract;

L. Report on operations; such other reports with respect to its operation, affairs, transactions or property that may be appropriate. (Ord. 502 § 26, 1988)

5.28.270 Periodic meetings.

Upon request, the franchisee shall meet with designated city officials and/or designated representative(s) to review the performance of the franchisee over the preceding period. The subjects shall include, but not be limited to those items covered in the periodic reports and performance tests. (Ord. 502 § 27, 1988)

5.28.280 Performance tests.

A. If the city determines that reasonable evidence exists of inadequate cable system performance pursuant to SMC [5.28.070](#), it may require franchisee to perform tests and analyses directed toward such suspected inadequacies at the franchisee' s own expense. Franchisee shall fully cooperate with city in performing such testing and shall prepare results and the report prepared by franchisee shall include at least:

1. A description of the problem in CATV system performance which precipitated the special tests;
2. What CATV system component was tested;
3. The equipment used and procedures employed in testing;
4. The method, if any, by which such CATV system performance problem was resolved;
5. Radiation limits tests, such as those heretofore required by the FCC;
6. Any other information pertinent to said tests and analyses which may be required by the city, or determined when the test is performed.

B. If the results of testing shall indicate that the franchisee was operating within the established parameters as described in SMC

[5.28.070](#); then the city shall be responsible for the costs of such tests. If the technical analysis shows that the franchisee is in violation of such parameters, the franchisee shall reimburse the city for such actual costs of testing. If such violation is shown, franchisee shall correct all violations within 60 days after written notice from the city. (Ord. 502 § 28, 1988)

5.28.290 Customer service.

A. Upon the written request of the city at a time no sooner than five years from the date of the franchise, franchisee shall establish at least a part-time facility to enable residents to exchange converters, pay bills and receive appropriate information. It is contemplated that such a facility would be operated no less than two days a week for three hours per day. However, if at that time, franchisee demonstrates that it is not economically feasible to do so or that suitable alternative methods exist, such requirement shall be waived. Such waiver shall not be unreasonably denied.

B. Franchisee shall render repair service to restore the quality of the signal at no less than the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A written or computerized log shall be maintained for a period of one year for all service interruptions which can be inspected upon notice.

C. An employee of franchisee shall answer and respond to all individual complaints received prior to 5:00 p.m. on weekdays. Franchisee may use an answering service to receive complaints after 5:00 p.m. on weekdays and on weekends and holidays. A standby technician shall check with the answering service until 9:00 p.m. on weekdays and until 5:00 p.m. on weekends and holidays and will respond to any system outage affecting more than two customers.

D. Franchisee shall instruct its answering service to immediately notify a standby technician during the weekend or on a holiday if it receives calls indicating an outage affecting more than two customers.

E. Franchisee will maintain a sufficient repair force to respond to individual customer complaints or requests for repair service within 24 hours, after receipt of the complaint or request except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven days, to the extent reasonable. Upon a request by customer, no charge for the period of the outage shall be made to the customer if the customer was without service for a period exceeding 24 hours, unless the outage was due to acts of God or events beyond the reasonable control of franchisee.

F. A standby technician shall be on call seven days a week. Franchisee shall respond immediately to service complaints involving a system outage affecting more than two customers. For purposes of this section, a system outage shall mean a customer is without all services.

G. Franchisee shall supply at the time of a new connection, and periodically at least once a year, the title, address, and telephone number of the Sultan city official or his/her designee, to whom system subscribers may direct their concerns.

H. All customers and members of the general public may direct comments regarding the company' s service or performance to the city or its designee. The city will provide a method whereby all customers and members of the general public have recourse to a review by the city or its designee regarding any complaints. (Ord. 502 § 29, 1988)

5.28.300 Subscribers' right of privacy.

The franchisee shall comply with all of the provisions of Section 631 of the Act. (Ord. 502 § 30, 1988)

5.28.310 Programming.

For informational purposes only, the franchisee shall file, upon granting of the franchise, a complete listing of its cablecast programs including a breakdown of its basic and premium schedule. Such listing shall become the initial programming and cost schedule to be considered as the basis from which any changes may be contemplated in the future. This information, however, does not accord the city any greater rights of regulation than those granted in the Act. (Ord. 502 § 31, 1988)

5.28.320 Modification.

In the event the franchisee shall seek to have the existing franchise modified, Section 625 of the Act shall govern the procedure for the modification request unless city and franchisee shall otherwise agree. The request, which shall specify all items to be negotiated shall be made upon the other party in writing and both parties shall act in good faith to reach agreement. (Ord. 502 § 32, 1988)

5.28.330 Nondiscrimination.

A. The franchisee shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled; and provided further, that connection and/or service charges may be waived or modified during promotional campaigns of franchisee.

B. Installation and housedrop hardware shall be uniform throughout the city, except that the franchisee shall be free to change its hardware and installation procedure as state of the art progresses.

C. The franchisee will not deny access to cable communications service to any group of potential residential subscribers because of the income of

the residents of the local area in which the group resides. (Ord. 502 § 33, 1988)

5.28.340 Equal employment opportunity.

The franchisee shall comply with all provisions of Section 634 of the Act. (Ord. 502 § 34, 1988)

5.28.350 Continuity of service.

It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to the company are fulfilled.

A. In this regard the franchisee shall act so far as it is within the control of the franchisee so as to ensure that all subscribers receive continuous uninterrupted service during the term of this franchise.

B. In the event the franchisee fails to operate a system for 72 continuous and consecutive hours without prior notification to and approval of the city council or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond franchisee' s control, the city may, after notice and an opportunity for franchisee to commence operations at its option, operate the system or designate someone to operate the system until such time as the franchisee restores service to conditions acceptable to the city council or a permanent franchisee is selected. If the city is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the city for all reasonable costs or damages in excess of revenues from the system received by the city that are the result of the franchisee' s failure to perform. (Ord. 502 § 35, 1988)

5.28.360 Franchise renewal.

The provision of Section 626 of the Act will govern the actions of the city and the franchisee in proceedings relating to franchise renewal. The city expressly reserves the right to establish guidelines and monitoring systems in accordance with the provisions of the Act to measure the

effectiveness of the franchisee' s performance during the term of such franchise. (Ord. 502 § 36, 1988)

5.28.370 Transfer of ownership.

A. Any franchise awarded by the city shall be based upon an evaluation by the city of each application, the qualifications, and other criteria as such pertain to each particular applicant. No franchise can be sold, transferred, leased, assigned or disposed of in whole or in part either by sale, voluntary or involuntary, merger, consolidation or otherwise, unless approval is granted by the city council under the same terms and conditions as the original franchise or as it may be subsequently amended by mutual agreement to insure a review of unforeseen circumstances not present at the time of the original franchise. The city' s approval shall not be unreasonably withheld. Such costs associated with this process shall be reimbursed to the city by the new prospective franchisee.

B. An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of 50 percent or more of the beneficial interests, singly or collectively, are obtained by other parties. The word " control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

C. The franchisee shall promptly notify the city prior to any proposed change in, or transfer of, or acquisition by any other party of control of the franchisee' s company. Every change, transfer or acquisition of control of the franchisee' s company shall make the franchise subject to cancellation unless and until the city shall have consented thereto. In the event that the city adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the city may cancel the franchise unless control by the franchisee is restored to a status acceptable to the city council.

D. Such approval of transfer, subject to conditions enumerated above, shall not be unreasonably withheld. Approval of the city shall not be required if said transfer is from franchisee to another person or entity, controlling, controlled by or under common control with the franchisee. Approval shall not be required for mortgaging purposes provided that less than 50 percent of the beneficial interests, as described above are affected by such mortgage.

E. Upon the commencement of a foreclosure action or other actions which could possibly result in a judicial sale of all or a substantial part of the cable system, the franchisee shall notify the city council of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this chapter governing the consent of the city council to such change in control of the franchisee shall apply.

F. Any transfer or assignment approved by the city shall be evidenced by a written instrument, a duly executed copy of which shall be filed in the office within 60 days after the approval of the transfer or assignment by the city. By said instrument, the assignee shall agree to comply with all terms of the ordinance codified in this chapter, the franchise ordinance and the assignor' s application. The city shall have the right, at its sole discretion, to require that any conditions in the original franchise be fulfilled prior to such transfer. (Ord. 502 § 37, 1988)

5.28.380 Right of city to purchase.

The city reserves the right to purchase the existing system pursuant to Section 627 of the Act. (Ord. 502 § 38, 1988)

5.28.390 Removal and abandonment of property of franchisee.

A. The city may direct the franchisee to temporarily disconnect or bypass any equipment of the franchisee in order to complete street construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the city. Such

removal, relocation or other requirement shall be at the sole expense of the franchisee.

B. In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this chapter or other city ordinances or the ordinance codified in this chapter has been terminated, canceled or has expired, the franchisee shall promptly, upon being given 10 days' notice, remove within 90 days from the streets or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, the franchisee shall promptly restore the street or other areas from which such property has been removed to a condition similar to that condition existing before such removal.

C. Any property of the franchisee remaining in place 90 days after the termination or expiration of the franchise shall be considered permanently abandoned. The city may extend such time not to exceed an additional 90 days.

D. Any property of the franchisee to be abandoned in place shall be abandoned in such manner as the city shall prescribe. Upon permanent abandonment of the property of the franchisee in place, the property shall become that of the city, and the franchisee shall submit to the city clerk/treasurer an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under state, federal law or the Constitution. In the event the city and the franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of this section, either party may invoke arbitration to resolve such question. (Ord. 502 § 39, 1988)

5.28.400 Revocation for cause.

A. Any franchise granted by the city may be terminated during the period of such franchise for the following reasons:

1. Failure by the franchisee to substantially comply with material provisions of this chapter;

2. Failure of the franchisee to comply with FCC regulations, or other provisions of the Act.

B. The procedure to be followed resulting in termination for any of the above reasons, save franchisee's request, will be:

1. City council will direct in writing franchisee to correct such deficiencies or comply with such regulations within 30 days or a reasonable period of time;

2. Failure to do so will cause the matter of termination to be brought before the city council;

3. At such hearing the franchisee and other interested parties may offer evidence explaining or mitigating such noncompliance. The city council in its sole discretion, will make the determination as to whether such noncompliance was without just cause. In the event the city council finds that such noncompliance was without just cause, the city council may at its sole discretion fix an additional time period to cure such deficiency(ies). If the deficiency has not been cured at the expiration of any additional time period or if the council does not grant any additional period, the city council may by ordinance declare the franchise to be terminated and forfeited;

4. If the franchisee appeals the revocation and termination of the franchise through legal remedies, the revocation of such franchise shall be held in abeyance pending such de novo judicial review by a court of competent jurisdiction;

5. Provided, nothing contained in the above subsections of this section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, on satisfactory assurances made to the city council that the terms and conditions of this chapter can be met by the franchisee. (Ord. 502 § 40, 1988)

5.28.410 Effect of termination for noncompliance.

Subject to state and federal law, if any franchise is terminated by the city by reason of the franchisee' s noncompliance, that part of the system under such franchise located in the streets and public property, shall, at the election of the city, become the property of the city at a cost consistent with the provisions of Section 627(b)(1) of the Act. If the city, or a third party, does not purchase the system, the franchisee shall, upon order of the city council, remove the system as required under SMC [5.28.390](#). (Ord. 502 § 41, 1988)

5.28.420 Indemnify and hold harmless.

The franchisee will indemnify and hold harmless the city from any and all liabilities, fees, costs and damages except in the case of negligence or willful misconduct on the part of the city, whether to person or property, or expense of any type or nature which may occur to the city by reason of the construction, operation, maintenance, repair and alterations of franchisee' s facilities or any other actions of franchisee in the city of Sultan. In any case in which suit or action is instituted against the city by reason or damages or injury caused by franchisee, the city shall cause written notice thereof to be given to the franchisee and franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the city. (Ord. 502 § 42, 1988)

5.28.430 Insurance.

A. The franchisee shall concurrently with the filing of an acceptance of award of any franchise granted hereunder, furnish to the city and file with

the city clerk/treasurer and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the city, its officers, boards, commissions, agents and employees, protecting the city and all persons against liability for loss or damage for personal injury, death and property damage, and errors or omissions, occasioned by the operations of franchisee under such franchise, with minimum limits of \$1,000,000 for both personal injury and/or property damage.

B. The policies mentioned in subsection (A) of this section shall name the city, its officers, boards, commissions, agents and employees, as additional insureds and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the city 30 days in advance of the effective date thereof; if such insurance is provided by a policy which also covers franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement. (Ord. 502 § 43, 1988)

5.28.440 Inconsistency.

If any portion of this chapter should be inconsistent with any rule or regulation now or hereinafter adopted by the FCC or other federal legislation, then to the extent of the inconsistency, the rule or regulation of the FCC or other federal legislation shall control for so long, but only for so long, as such rule or regulation shall remain in effect, but the remaining provisions of this chapter shall not hereby be effected. (Ord. 502 § 44, 1988)

5.28.450 Force majeure.

In the event that the franchisee' s performance of any of the terms, conditions, obligations or requirements of this chapter is prevented or impaired due to any cause(s) beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be

excused and no penalties or sanctions shall be imposed as a result thereof. (Ord. 502 § 46, 1988).

CITY OF SULTAN
Sultan, Washington

ORDINANCE NO. 946-06

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, AMENDING ORDINANCE NO. 896-05, AS PREVIOUSLY AMENDED BY SUBSEQUENT ENACTMENTS; EXTENDING UNTIL MARCH 31, 2007 A NONEXCLUSIVE CABLE TELEVISION FRANCHISE GRANTED TO TELE-VUE SYSTEMS, INC., PURSUANT TO CHAPTER 5.28 OF THE SULTAN MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND AUTHORIZING THE MAYOR TO EXECUTE AN ACKNOWLEDGEMENT OF EXTENSION OF CABLE FRANCHISE.

WHEREAS, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, all codified in Title 47 of the United States Code, authorize local Governments to grant franchises for the provision of cable television service within their corporate boundaries, and

WHEREAS, the City of Sultan conferred a non-exclusive cable television franchise to Tele-Vue Systems, Inc. by Ordinance No. 502 (the "Franchise"); and

WHEREAS, on November 18, 2002 the merger of AT&T Corp, with Comcast was completed, and the name of Tele-Vue's ultimate parent changed from AT&T Comcast Corporation to Comcast Corporation, and

WHEREAS, the Franchise expires by its own terms on August 8, 2004; and

WHEREAS, the term of the Franchise was extended by an Acknowledgment of Extension and Ordinance No. 859-04 to November 11, 2004; and

WHEREAS, the term of the Franchise was extended by an Acknowledgement of Extension and Ordinance No. 866-05 to May 12, 2005; and

WHEREAS, the term of the Franchise was extended further by an Acknowledgement of Extension and Ordinance No. 878-05 to November 10, 2005; and

WHEREAS, the term of the Franchise was extended further by an Acknowledgement of Extension and Ordinance No. 878-05 to June 10, 2006; and

WHEREAS, the City of Sultan, in conjunction with other cities, has been negotiating a franchise renewal in accordance with Section 626 of the Cable Communications Policy Act of 1994; and

WHEREAS, negotiations with Comcast Cable, Inc. are expected to be complete by March 31, 2006;

NOW, THEREFORE, to provide continued service to the residents of the City and to provide an opportunity to finalize negotiations, it is hereby ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. The Mayor of the City of Sultan is hereby authorized to execute that certain Acknowledgement of Extension of Franchise attached to the Ordinance as Attachment A.

Section 2. Sultan Municipal code Section 5.28.020 (D) is amended to read as follows:

5.28.020(D) Term

This franchise or renewal and all rights, privileges, obligations and regulations pertaining thereto shall commence on the effective date of Ordinance No. 946-06 and shall expire on March 31, 2007. Notwithstanding 5.28.360 relating to franchise renewal, negotiations for renewal of the franchise agreement shall commence in the year 2001.

Section 3. Should any provision of this Ordinance be declared unlawful, the remaining portions of this Ordinance shall remain fully lawful and in effect.

Section 4. This Ordinance shall become effective five days after publication as required by law.

PASSED by the City Council and APPROVED by the Mayor this 14th day of December 2006.

CITY OF SULTAN

By _____
Benjamin R. Tolson, Mayor

ATTEST:

By _____
Laura Koenig, City Clerk

Approved to Form:

By _____
Thom H. Graafstra, City Attorney

Published: December 19, 2006

ACKNOWLEDGEMENT OF EXTENSION OF FRANCHISE

This Acknowledgement of Extension of Franchise is made this 14th day of December, 2006 between Comcast of California/Colorado/Texas/Washington, Inc. ("Franchisee") and the City of Sultan, Washington, a Washington Municipal Corporation ("City").

Whereas, the City conferred a franchise on Tele-Vue Systems, Inc. by Ordinance No. 502; and

Whereas, the term of that franchise was extended by Ordinances Nos. 699-99, 859-04, 866-04, 878-05, and 896-05; and

Whereas, by assignments the franchise conferred is now held by the Franchisee; and

Whereas, the parties wish to agree to and acknowledge the continued effect of the franchise until March 31, 2007;

Now, therefore, Franchisee and City acknowledge and agree as follows:

3. Term. That certain Franchise conferred by the City by Ordinance No. 502 and extended by Ordinance No. 699-99 and re-extended by Ordinance No. 859-04, and further extended by Ordinance No. 866-04, and further extended by Ordinance No. 878-05 and 896-05 is hereby acknowledged and agreed to be extended until March 31, 2007.
4. Ratification. All terms and conditions of the Franchise are hereby ratified and confirmed, except the provision for the duration of the Franchise which is hereby acknowledged to be March 31, 2007.

Dated:

FRANCHISEE

By: _____

CITY

City of Sultan

By: _____
Mayor Benjamin R. Tolson

THE CITY OF _____, WASHINGTON

CABLE FRANCHISE

Draft Dated ~~3/23/07~~ 04/10/07

|

CABLE FRANCHISE

This Cable Franchise (“Franchise”) is entered into in _____, Washington, this ____ day of _____, 2007, by and between the City of _____, Washington, a municipal corporation, (hereinafter “City”) and Comcast _____ (hereinafter “Grantee”). The City and Grantee are sometimes referred to hereinafter collectively as the “parties.”

WHEREAS, the City has reviewed Grantee’s performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, and has determined that Grantee’s plans for operating and maintaining its Cable System are adequate; and

WHEREAS, the public has had adequate notice and opportunity to comment on this Franchise during a public proceeding; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of Cable Service, the technical capability and reliability of a cable system in the Franchise Area, and quality customer service; and

WHEREAS, diversity in Cable Service is an important policy goal and the Grantee’s Cable System should offer a broad range of programming services; and

WHEREAS, flexibility to respond to changes in Subscriber interests within the Cable Service market is important; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain a cable system within the boundaries of the City.

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

Section 1. Definitions

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meanings given herein. When 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 otherwise not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Access” includes Educational and Governmental Access and means the availability for noncommercial use by various educational and governmental institutions and organizations in the community, including the City and its designees, of a particular Channel on the Cable System to receive and distribute Video Programming to Subscribers, 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.

[Insert “Public Access” concepts for Monroe.]

1.2 “Access Channel” means Channel capacity designated for Educational or Governmental Access use, or otherwise made available to facilitate Access programming.

1.3 “Affiliate” means any entity that owns or controls the Grantee, or is owned or controlled by the Grantee, or otherwise has ownership or control in common with the Grantee.

1.4 “Bad Debt” means amounts lawfully owed by a Subscriber and accrued as revenues on the books of the Grantee but not collected after reasonable efforts by the Grantee.

1.5 “Basic Service” or “Basic Service Tier” means all signals of local television broadcast stations provided to any Subscriber, the Access Channel and any additional Video Programming signals or service added to the Basic Service Tier by the Grantee or as required by federal regulations.

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

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

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

1.9 “Cable System” or “System” means the Grantee’s Facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community.

1.10 “Capital Contribution” means the capital contribution paid to the City by the Grantee in accordance with Section 9.

1.11 “Channel” means a portion of the spectrum which is used in a Cable System and which is capable of delivering a television channel, as television channel is defined by federal regulations.

1.12 “City” means the City of _____, Washington and all territory within its existing and future corporate limits.

1.13 “Complaint” means a Subscriber contact with the Grantee to express a grievance or dissatisfaction concerning Cable Service. Complaints do not include matters not within the regulatory control of the City. A Complaint may be verbal or in writing but need not include initial contacts where an issue is promptly resolved to the Subscriber’s satisfaction.

1.14 “Converter” means an electronic device that converts transmitted signals to a frequency that permits their reception on an ordinary television receiver.

1.15 “Demarcation Point” means the physical point at which the Cable System enters the Subscriber’s home or building.

1.16 “Designated Access Provider” means the entity or entities designated by the City to manage or co-manage Access programming and Facilities. The City may be a Designated Access Provider.

1.17 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and is designed for residential occupancy. Buildings with more than one set of facilities for cooking are multiple unit buildings unless the additional facilities are clearly accessory.

1.18 “Expanded Basic Service” means cable programming services not included in the Basic Service and excluding, for example, premium or Pay-Per-View Services.

1.19 “Facility” or “Facilities” means the component parts of the Cable System whether owned, rented, leased or otherwise controlled by Grantee including, but not limited to, conduit, pedestals, coaxial cable, fiber-optic cable, amplifiers, taps, power supplies and electronics located in the Rights-of-Way.

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

1.21 “Franchise” means the non-exclusive right and authority to construct, maintain and operate a Cable System through use of the Rights-of-Way in the Franchise Area pursuant to this contractual agreement executed by the City and Grantee.

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

1.23 “Gross Revenues” means all revenues or compensation received directly or indirectly by the Grantee or its Affiliates, arising from or in connection with the provision of Cable Services in the Franchise Area as calculated according to “Generally Accepted Accounting Principles” (GAAP).

This definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal and State law, except to the extent specifically excluded in this section, and encompasses revenues that may develop in the future, whether or not anticipated. If a change in State or federal law or a decision of the FCC or a court of competent jurisdiction expands the categories of revenue available to the City for franchise fees beyond those permitted under this definition as of the effective date, that change shall automatically be included in the definition of Gross Revenues under this Franchise, provided that the City imposes the same requirement upon any other similarly situated multichannel video provider over which the City has jurisdiction and authority to impose such fees.

Gross Revenues do not include Bad Debt but shall include any recoveries of Bad Debt. Gross Revenues also do not include the Access advance and monthly Capital Contributions referenced in subsections 9.4 and 9.5 or any sales, excise or other taxes collected by Grantee on behalf of a federal, State, City or other governmental unit. The franchise fees are not such a tax and are therefore included in Gross Revenues.

1.24 “Headend” means a Facility for signal reception and dissemination on the Cable System, including all related equipment.

1.25 “Interconnect” or “Interconnection” means the actual physical linking of the Cable System’s Access Channel with the Access Channel of another cable system, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of Access programming between the Cable System and other cable systems.

1.26 “Leased Access Channel” means a Channel or portion of a Channel made available by Grantee for programming by others for a fee.

1.27 “Person” means any individual, sole proprietorship, partnership, association, corporation or other form of organization or entity.

1.28 “Right-of-Way” or “Rights-of-Way” means all public streets, roads, avenues, alleys and highways in the City.

1.29 “School” means any public educational institution accredited by the State of Washington, including primary and secondary Schools (K-12).

1.30 “Standard Installation” means a one hundred twenty-five (125) foot aerial drop or sixty (60) feet of underground trench connecting to the exterior Demarcation Point for Subscribers.

1.31 “**State**” means the State of Washington.

1.32 “**Subscriber**” means any Person(s) who lawfully elects to receive Cable Services provided by the Grantee by means of the Cable System.

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

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

Section 2. Grant of Franchise

2.1 Grant

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

B. In the event of a conflict between the provisions of the City codes, ordinances, resolutions, standards, procedures and regulations and this Franchise, the express provisions of this Franchise shall govern. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution or other enactment of the City, except in the lawful exercise of the City’s police power. The Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution or other enactment of the City that conflicts with the rights granted by this Franchise, either now or in the future.

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

D. No rights shall pass to the 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 permit, agreement or authorization required by the City for Right-of-Way users in connection with operations on or in the Right-of-Way or other public property, including, by way of example and not limitation, street cut permits; or

2. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise, including,

without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

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

2.2 Use of Rights-of-Way

Within parameters reasonably related to the City's role in protecting the public health, safety and welfare, the City may require that Cable System Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way and may deny access if Grantee is not willing to comply with the City's requirements.

2.3 Term

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

2.4 Effective Date

A. This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the effective date of this Franchise. The effective date of this Franchise shall be _____, 2007.

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

2.5 Grant of Other Franchises Competitive Equity

The City may enter into a cable franchise with any Person other than the Grantee to use the City's Right-of-Way for the purpose of constructing or operating a Cable System to provide Cable Service to all or any part of the Franchise Area in which the Grantee is providing Cable Service under the terms and conditions of this Franchise; provided, however, that no such cable franchise shall contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein. The parties recognize and acknowledge that other cable franchises granted by the City might contain terms and conditions that are different than the terms and conditions the Grantee has negotiated

and accepted in this Franchise.

~~A. The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to: franchise fees; insurance; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.~~

~~B. In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchising Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.~~

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

2.6 Effect of Acceptance

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

Section 3. Franchise Fees and Financial Controls

3.1 Franchise Fees

As compensation for the use of the City's Rights-of-Way, the Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues or such greater or lesser percentage subject to

subsection 3.4 below. Accrual of such franchise fees shall commence as of the effective date of this Franchise.

3.2 Payments

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

3.3 Acceptance of Payment

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

3.4 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits the City to collection of a franchise fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time during the term of this Franchise, applicable federal law authorizes an amount in excess of or less than five percent (5%) of Gross Revenues in any twelve (12) month period, Grantee and City shall modify the franchise fee as authorized by applicable federal law, upon ninety (90) days written notice between the parties, provided the City agrees that all other franchised cable companies in the Franchise Area over which the City has jurisdiction will be treated in an equivalent manner.

3.5 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, containing an accurate statement in summarized form of the Grantee's Gross Revenues and the computation of the payment amount.

3.6 Audits

Once during the term of this Franchise, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of the Grantee's records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. If the Grantee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous six (6) years. Any undisputed amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the City, which notice shall include a copy of the audit findings. If the audit shows that there has been an underpayment of franchise fees by five percent (5%) or more

for the time period covered, then the Grantee shall pay up to fifteen thousand dollars (\$15,000) for the audit period.

If Grantee disputes all or part of the audit findings, then that matter may be referred to non-binding arbitration by either of the parties. Each party shall bear one-half of the costs and expenses of the arbitration proceedings. The decision of the arbitrator(s) shall be subject to judicial review at the request of either party.

3.7 Financial Records

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

3.8 Interest

In the event that any payment is not received by the City by the date due or if an underpayment is discovered as the result of an audit, interest shall be charged from the date due at the maximum allowed rate under State law.

3.9 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise (such as the Access Advance and monthly Capital Contribution) may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, the Grantee agrees that the additional commitments, pursuant to federal law, are not franchise fees. Such additional commitments will not be offset or credited against any franchise fee payments due to the City, nor do they represent an increase in franchise fees to be passed through to Subscribers pursuant to any federal law.

3.10 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within one hundred twenty (120) days of the date of the termination, a financial statement by a certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous calendar year. Within forty-five (45) days of the filing of the certified statement with the City, the Grantee shall pay any unpaid amounts as indicated. If the Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in any security provided by the Grantee, or if there have been franchise fee overpayments, the City shall reimburse the Grantee under these same time constraints.

3.11 Alternative Compensation

In the event the obligation of Grantee to compensate the City through franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City such other compensation as is required by law.

3.12 Taxes

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

3.13 Subscribers' Bills

In no event will Grantee unlawfully evade or reduce applicable franchise fee payments required to be made to the City due to discounted bundled services. Customer billing shall be itemized by service(s), and Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

Section 4. Administration and Regulation

4.1 Rates and Charges

All of Grantee's rates and charges for Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.2 No Rate Discrimination

A. Grantee's rates and charges shall be non-discriminatory so as to not disadvantage any Subscriber. Nothing herein shall be construed to prohibit:

1. The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;
2. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
3. The offering of bulk discounts for Multiple Dwelling Units.

B. The Grantee will provide throughout the term of the Franchise a discount of thirty percent (30%) from its published rate card to Subscribers for Basic Cable Services or the Basic Service portion of Expanded Basic Service (provided they are not already receiving a package discount in other promotional or programming package rates, at which time the promotional or programming package rate will apply) who are age 65 years or older or permanently disabled, provided that such individual(s) are the legal owner or lessee/tenant of the Dwelling Unit and are low income under federal guidelines.

C. Those Subscribers currently receiving any low income discount that differs in terms from the above will continue to receive discounted service on those terms; however, any new applicants will receive a discount based on the terms of this Franchise. The City, its designee or Grantee, at the City's discretion, will be responsible for determining an individual's eligibility under this program.

4.3 Filing of Rates and Charges

A. Throughout the term of this Franchise, the Grantee shall provide to the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise.

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

4.4 Late Fees

If the Grantee assesses any kind of fee for late payment, such fee shall comply with applicable law. The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the income level of the Subscribers.

4.5 Determination of Subscribers Located in the Franchise Area

The City shall provide to the Grantee a current map and address list of the Franchise Area. The City agrees to update the map as necessary to incorporate any annexations and to provide a copy of the updated map to the Grantee. The Grantee shall ensure that franchise fee payments submitted to the City are attributable only to those Subscribers in the Franchise Area.

4.6 Performance Evaluation

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

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

C. Topics that may be discussed at any evaluation session include those issues surrounding Grantee's failure to comply with the terms of the Franchise, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision herein and further provided that the City may seek legal or equitable remedies without first holding a performance evaluation session.

D. During evaluations under this subsection, the Grantee shall fully cooperate with the City and shall provide such information and Franchise compliance documents as the City may require to perform the evaluation.

4.7 Reserved Authority

The City and Grantee reserve all of their rights and authority arising from the Cable Act and any other relevant provisions of federal, State or local laws.

Section 5. Financial and Insurance Requirements

5.1 Indemnification

A. General Indemnification. The Grantee shall indemnify, defend and hold the City and its authorized agents harmless from any claim, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or death to any Persons or accident to any property or equipment arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, relocation or any other act done under this Franchise, by or for the Grantee, its authorized agents, or its employees, or by reason of any neglect or omission of the Grantee, its authorized agents or its employees. The Grantee shall consult with the City while conducting its defense of the City.

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

C. Duty of Defense. The fact that the Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Grantee's duty of defense and indemnification under this subsection.

D. Separate Representation. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by the Grantee to represent the City, the Grantee shall select other counsel not in conflict with the City.

5.2 Insurance Requirements

A. General Requirement. Grantee must have adequate insurance during the entire term of this Franchise to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this Franchise, or involve Grantee or its agents.

B. Minimum Insurance Limits. The Grantee shall maintain the following insurance limits:

1. Commercial General Liability: \$2,000,000 per occurrence, \$2,000,000 general aggregate and \$1,000,000 products/completed operations aggregate.
2. Automobile Liability: \$2,000,000 combined single limit.
3. Workers Compensation Insurance limits in accordance with State law requirements.
4. Excess or Umbrella Liability: \$5,000,000 each occurrence and \$5,000,000 policy limit.

C. Endorsements.

1. Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

- a. The Grantee's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance and shall not contribute to it.
- b. The Grantee's insurance shall not be canceled or the limits reduced, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- c. The Grantee's insurance shall name the City as an additional insured.

2. If the insurance is canceled or reduced in coverage, Grantee shall provide a replacement policy.

D. Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII" that are authorized to insure in the State.

E. Verification of Coverage. The Grantee shall furnish the City with signed certificates of insurance upon acceptance of this Franchise.

F. No Limitation. Grantee's maintenance of insurance policies required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

5.3 Letter of Credit

A. If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit in the amount of twenty thousand dollars (\$20,000).

B. If a letter of credit is furnished pursuant to 5.3 A, the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.

C. After the giving of notice to Grantee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

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

D. Within ten (10) days following notice that a withdrawal from the letter of credit has occurred, Grantee shall restore the letter of credit to the full amount required by 5.3 A. Grantee's maintenance of the letter of credit shall not be construed to limit the liability of Grantee to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

E. Grantee shall first appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Thereafter, Grantee shall have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise.

5.4 Bond(s)

A. The Grantee shall provide a performance bond to ensure Grantee's faithful performance of any and all of the terms and conditions of this Franchise. The Franchise performance bond shall be in the amount of twenty-five thousand dollars (\$25,000).

B. The City reserves the right, consistent with the City Code, to require project specific construction bonds in addition to the bond required in 5.4 A.

C. The 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 during the term of this Franchise.

D. The parties agree that the Grantee's maintenance of the bond(s) shall not limit the liability of the Grantee to the amount of the bond(s) or otherwise limit the City's recourse to any other remedy available at law or equity.

Section 6. Customer Service Standards

The Grantee shall comply with lawful Customer Service Standards as provided in the City Code as it exists on the date of adoption of this Franchise, and as may be lawfully amended from time to time by the City thereafter. The Grantee reserves the right to challenge any Customer Service Standard that it believes is inconsistent with federal law or the contractual rights granted in this Franchise.

Section 7. Reports and Records

7.1 Inspection of Records

The City shall have access to, and the right to inspect, any books and records of Grantee that are not identified as proprietary or confidential which are reasonably necessary to enforce Grantee's compliance with the provisions of this Franchise that directly affect the City, at the Grantee's regional office, during normal business hours, and without unreasonably interfering with Grantee's business operations. The City may, in writing, request copies of any such records or books, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of Grantee. If the requested books and records are too voluminous, or identified as proprietary and confidential, or for security reasons cannot be copied or removed, then the City shall inspect them at Grantee's regional office. If any books or records of Grantee are not kept in a regional office and not made available in copies to the City upon written request as set forth above, and if the City determines 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 Public Records

Grantee acknowledges that information submitted to the City is subject to the Washington Public Disclosures Law, and is open to public inspection.

7.3 Copies of Federal and State Documents

Upon written request, the Grantee shall submit to the City copies of any pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the City. The Grantee shall submit such

documents to the City no later than thirty (30) days after receipt of the City's request. The 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.

7.4 Reports of Regulatory Violations

Grantee shall provide copies to the City of any report, order, consent decree or other formal determination of any regulatory agency having jurisdiction over Grantee pertaining to any alleged violation by Grantee of any applicable rule or law of the agency regarding the Grantee's provision of Cable Service in the Franchise Area.

7.5 Maps and Records Required

Grantee shall provide to the City upon request a route map that depicts the general location of the Cable System Facilities placed in the Rights-of-Way in either electronic format or hard copy, at Grantee's discretion. The route map shall identify Cable System Facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment and service lines to individual Subscribers.

7.6 Annual Reports

Upon request, ninety (90) days after the end of the first quarter, Grantee shall submit to the City a written report, which shall include the following information:

A. A Gross Revenue statement for the preceding calendar year and all deductions and computations for the period, and such statement shall be reviewed by a certified public accountant, who may also be the chief financial officer or controller of Grantee; and

B. A summary of the previous year's activities regarding the development of the Cable System, including, but not limited to, homes passed, beginning and ending plant miles and the number of Subscribers for each class of Cable Service (i.e., Basic, Expanded Basic Service, premium, etc.).

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 the Grantee to any remedy, legal or equitable, which is available to the City under this Franchise.

Section 8. Programming

8.1 Broad Programming Categories

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

- A. News, weather, sports and information;
- B. Education;
- C. General entertainment including movies and family oriented programming; and
- D. Government.

8.2 Deletion of Broad Programming Categories

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

8.3 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, trap or filter 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. Such devices, traps or filters will be provided at no charge to the Subscriber, unless otherwise provided by federal law.

Section 9. Access

9.1 Access Channel

A. The Grantee shall make available and maintain throughout the term of this Franchise one (1) Access Channel which shall be shared with the communities of _____, _____, _____ and be made available as part of the Basic Service Tier.

B. The City acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirement listed above. This is accomplished through the inclusion of other regional access programming within the regional Channel line-up that is available within the Franchise Area. The Grantee will endeavor to provide the Subscribers with the other regional Access Channels so long as the programmers offer them for use on the Cable System.

C. If Grantee makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Grantee shall take all necessary technical steps, including the acquisition of all necessary equipment, up to the point of demarcation to ensure that the capabilities of the Access Channel and delivery of Access programming are not diminished or adversely affected by such change.

D. The Grantee will use reasonable efforts to minimize the movement of the Access Channel assignment. The Grantee shall provide to the City a minimum of sixty (60) days notice

prior to any relocation of the Access Channel unless the movement is required by federal law, in which case Grantee will provide the maximum amount of notice possible.

9.2 Management of Access Channel

A. The City may authorize Designated Access Providers to control, operate and manage the Access Channel. The City or its designee may formulate rules for the operation of the Access Channel, consistent with this Franchise.

B. As of the effective date of this Franchise, the Grantee shall maintain all existing fiber optic return line(s) to facilitate the City's current Access connectivity to Grantee's Headend and hubs. If the City desires to relocate or expand the fiber optic return line(s) to new location(s) over the term of this Franchise, upon one hundred twenty (120) days written request by the City and at the City's cost for Grantee's reasonable time and materials, the Grantee shall construct the requested new fiber optic return line(s).

9.3 Message Insertion

The Grantee, upon request, shall provide the City the opportunity to include one (1) bill insertion message. The City shall be responsible for the costs of printing its bill insertion, the cost of inserting the information into the Grantee's bills and for any incremental postage costs. Bill insertions must conform to the Grantee's reasonable mailing requirements and availability of space.

9.4 Access Advance

Within forty-five (45) days of the City's request, Grantee shall pay to the City a capital advance in the amount of \$ _____ [this figure amounts to \$0.25 times the number of subscribers in each City]. This is an advance payment of the Capital Contribution set forth in subsection 9.5. These funds may be used by the City for capital expenditures related to Access matters, for example, for equipment purchases, facilities, construction and relocation costs. This advance shall in no way be considered in lieu of franchise fees and shall not reduce in any way franchise fees owed to the City under this Franchise.

9.5 Monthly Capital Contributions

Grantee shall provide a monthly Capital Contribution to the City for capital expenditures for Access purposes, for example, for equipment purchases, facilities, construction and relocation costs. The Capital Contribution shall not exceed \$0.25 per Subscriber per month throughout the term of this Franchise. As of the effective date of this Franchise, that figure shall be \$0.25 per Subscriber per month. Upon forty-five (45) days written notice the monthly amount may be adjusted, upon approval by the City Council. Grantee shall not be responsible for paying the Capital Contribution with respect to gratis or Bad Debt accounts. The City shall have discretion to allocate the Capital Contribution in accordance with applicable law and provide to Grantee an annual report within sixty (60) days of the end of the calendar year. To the extent the City makes Access capital investments using City funds after the effective date of this Franchise

and prior to receiving the capital advance or monthly Capital Contribution funds, the City is entitled to apply the subsequent capital advance and monthly Capital Contribution payments from Grantee toward such City capital investments.

Section 10. General Right-of-Way Use and Construction

10.1 Right-of-Way Meetings

Subject to receiving advance notice, Grantee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Cable System.

10.2 Joint Trenching

Grantee agrees to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements where technically and economically feasible.

10.3 Notice to Private Property Owners

Except in the case of an emergency involving public safety, Grantee shall give reasonable advance notice of significant construction work in adjacent Rights-of-Way to private property owners or tenants.

10.4 Poles and Conduits

A. This Franchise does not grant, give or convey to the Grantee the right or privilege to install its Facilities in any manner on poles or equipment of the City or of any other Person.

B. The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own conduit and fiber optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any such construction that involves trenching or boring. The Grantee shall allow the City to lay City conduit and fiber optic cable in the Grantee's trenches and bores, provided that the City and Grantee enter into a mutually acceptable cost sharing arrangement consistent with State law. The City shall be responsible for maintaining its respective conduit and fiber optic cable, which is buried in the Grantee's trenches and bores.

10.5 Movement of Facilities During Emergencies

During emergencies, except those involving imminent danger to the public health, safety or welfare, the City shall provide notice to Grantee, at a designated emergency response contact number, to allow Grantee the opportunity to respond and remedy the problem without disrupting Cable Service. If after providing notice, the Grantee fails to timely respond, the City may move Grantee's Facilities.

10.6 Movement of Cable System Facilities

A. Nothing in this Franchise shall prevent the City or public utilities from constructing any public work or capital improvement. The Grantee shall pay the costs associated with any requirement of the City to relocate its Cable System Facilities located in the Right-of-Way. Following sixty (60) days written notice by the City, the Grantee shall remove, replace, relocate, modify or disconnect any of its Facilities within any Right-of-Way, or on any other property of the City, except that the City shall provide at least one hundred twenty (120) days written notice of any major City capital improvement project which would require the permanent removal, relocation, replacement, modification or disconnection of the Grantee's Facilities or equipment from the Right-of-Way. If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee. The Grantee shall remit payment to the City within forty-five (45) days of receipt of an itemized list of those costs. In the case of fire, disaster or other emergency, the City may remove or disconnect the Grantee's Facilities and equipment located in the Right-of-Way or on any other property of the City. The City shall provide reasonable notice to the Grantee prior to taking such action and shall provide the Grantee with the opportunity to perform such action unless, in the City's sole judgment, the eminent threat to public health safety or welfare makes such notice impractical.

B. If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder(s), Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity, as long as, the other franchise holder(s) pay for the Grantee's time and material costs associated with the project and Grantee is issued a permit for such work by the City.

C. At the request of any Person holding a valid City permit and upon reasonable advance notice, the Grantee shall remove, replace, relocate, modify or disconnect any of its Facilities or temporarily raise, lower or remove its Facilities as necessary to accommodate the work under the permit. Unless the project is identified by the City as a City capital improvement project, the cost must be paid by the permit holder, and the Grantee may require the estimated payment in advance.

10.7 Inspection of Facilities

The City may inspect any of Grantee's Facilities or equipment within the Rights-of-Way and on other public property. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to inspect, repair and correct the unsafe condition if Grantee fails to do so, and to reasonably charge Grantee therefor.

10.8 Stop Work

A. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as reasonably determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the City.

B. The stop work order shall:

1. Be in writing;
2. Be given to the Person doing the work and be posted on the work site;
3. Be sent to Grantee by overnight delivery at the address given herein;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

10.9 Plans and Permits

A. The Grantee shall apply for, and obtain, all permits necessary for construction of any of its Facilities prior to beginning work. The Grantee shall pay all applicable fees upon issuance of the requisite permits by the City.

B. As part of the permitting process, the City may impose, among other things, such conditions as are lawful and necessary for the purpose of protecting any structures in such Right-of-Way, proper restoration of such Right-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic.

C. In the event that emergency repairs are necessary, the Grantee shall immediately notify the City of the need for such repairs. The Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after resolution of the problem.

10.10 Location of Facilities

Upon the City's reasonable request, in connection with the design of any City project, the Grantee will verify the location of its underground System within the Franchise Area by marking on the surface the location of its underground Facilities.

10.11 Restoration of Right-of-Way and Other Public Property

If the Grantee excavates, disturbs or damages any Right-of-Way or other public property, then the Grantee shall be responsible for restoration in accordance with applicable regulations. The City may, after providing notice to the Grantee and a reasonable opportunity to cure, or without notice where the excavation, disturbance or damage may create a risk to public health or

safety, repair, refill, restore or repave any excavation, disturbance or damage. The cost thereof shall be paid by the Grantee.

10.12 Maintenance

A. The 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 the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the Right-of-Way by, or under, the City's authority prior to Grantee's placement of facilities.

B. The Grantee shall repair, renew, change and improve its Facilities to keep them in safe condition.

C. The Grantee will maintain membership in good standing with One Call or other similar or successor organization designated to coordinate underground equipment locations. The Grantee shall abide by Washington State's "Underground Utilities" statutes as they relate to cable systems and will further comply with local procedures relating to the one call locator service program.

10.13 Right-of-Way Vacation

If any Right-of-Way or portion thereof used by the Grantee is vacated by the City during the term of this Franchise, the Grantee shall, without delay or expense to the City, remove its Facilities from such Right-of-Way, and restore, repair or reconstruct the Right-of-Way where such removal has occurred or, with the approval of the City, abandon its Facilities in place. In the event of failure, neglect or refusal of the Grantee, after thirty (30) days' notice by the City, to restore, repair or reconstruct such Right-of-Way, the City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be paid by the Grantee within forty-five (45) days of receipt of an invoice and documentation.

10.14 Undergrounding of Cable

A. In areas of the Franchise Area where electrical or telephone utility wiring is aerial, the Grantee may construct, operate and maintain the Cable System aerially. The Grantee shall utilize existing poles wherever possible.

B. If electric and telephone utility wiring in an area of the Franchise Area is underground at the time of Grantee's initial construction, the Grantee shall locate its Cable System Facilities underground at no cost or expense to the City. Excluding City capital improvement projects, if electric and telephone utility wiring in an area of the Franchise Area is subsequently placed underground, then the Grantee shall locate its Cable System Facilities underground at no cost or expense to the City.

C. In the event of forced relocations that are part of a City capital improvement project that require conversion of overhead facilities to underground, such as projects that may include, but not be limited to, road widening, sidewalk installation, or beautification, Grantee agrees to

bear the costs of converting Grantee's cable system from an overhead system to an underground system. This cost ~~to~~ includes the labor and materials to relocate Grantee's cable system, but does not include costs related to, trenching, backfill, or restoration of any rights-of-way within the project area as defined by project engineering plans.

D. In the event of a Local Improvement District (LID) project that requires relocation of Grantee's facilities, Grantee shall be reimbursed by the LID funding for all expenses incurred as a result of the project.

E. Related Cable System Facilities (such as pedestals, equipment cabinets, etc.) must be placed in accordance with applicable City Code requirements.

10.15 Avoid Interference

In the event of interference with the public health, safety or welfare, the City may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question at Grantee's expense.

10.16 Tree Trimming

The Grantee may trim or prune trees in the Right-of-Way that interfere with the System. Any such trimming or pruning will be performed using standard practices and be in accordance with City regulations.

10.17 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.

B. In the maintenance and operation of its System in the Right-of-Way and other public places, and in the course of any new construction or addition to its Facilities, the Grantee shall proceed so as to cause minimal inconvenience to the general public.

10.18 Work of Contractors and Subcontractors

Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The 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.

Section 11. System Design

A. Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its Cable System to a 750 MHz hybrid fiber coaxial (“HFC”) fiber-to-the-node system architecture. 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 a signal is transported. The Cable System has been activated for bidirectional transmissions. The Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of this Franchise.

B. Throughout the term of this Franchise, Grantee’s Cable System shall reasonably meet the cable related needs and interests of the community, in light of the costs thereof.

C. Regional Cable Services provided by a Grantee from a common Headend or hub shall be deployed and made available in the City as soon as practicable and technically feasible in light of the costs thereof.

Section 12. Technical Standards

12.1 Technical Performance

The City shall have the full authority permitted by applicable law to enforce compliance with FCC technical standards.

12.2 Cable System Performance Testing

All required technical performance or other System tests may be witnessed by representatives of the City. Upon request, the Grantee will notify the City before any required technical proof-of-performance or other testing occurs.

12.3 Standby Power

Grantee shall provide standby power generating capacity at the Headend and hubs of at least twenty-four (24) hours. Grantee shall maintain strategically located standby power supplies throughout the Cable System, rated for at least four (4) hours duration.

12.4 Emergency Alert System

The Grantee is providing an operating Emergency Alert System in accordance with the provisions of State and federal laws, including FCC regulations. Grantee will test the EAS periodically, in accordance with federal regulations.

Section 13. Service Extension and Complimentary Cable Service

13.1 Service Availability

A. The Grantee shall provide an aerial installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area and schedule an underground

installation within seven (7) days if the Person's Dwelling Unit is passed by the Cable System. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified verbal request. The 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, with additional charges for non-standard installations computed according to a non-discriminatory methodology.

B. No customer shall be refused service arbitrarily. However, for a non-Standard Installation, such as the existence of more than one hundred twenty-five (125) feet of aerial distance or sixty (60) feet of underground trench from distribution cable to the exterior Demarcation Point for Subscribers, or a density of less than thirty (30) Dwelling Units per 5280 strand feet or sixty (60) Dwelling Units per 5280 trench feet, service may be made available on a pro rata cost basis of construction including cost of material, labor and easements. Customers who request service hereunder will bear an incremental portion of the construction and other costs. The Grantee may require that the payment of the pro rata cost of construction borne by such potential customers be paid in advance.

13.2 Complimentary Cable Service

The Grantee will provide without charge a Standard Installation, converter and one outlet of Basic Service and Expanded Basic Service to a maximum of three (3) Emergency Operations Center ("EOC") sites in the City.

Also, if The Grantee currently provides, as a voluntary initiative without charge, a Standard Installation, converter and one outlet of Basic Service to non-EOC sites (each fire station, police station, School, public library and municipal building ~~(excluding jails)~~ that are not EOC sites, and provided that the buildings are either already served or are within the Standard Installation guidelines. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the City or building owner/occupant agrees to pay the Incremental Cost (time and materials) of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Cable Service are provided to such buildings beyond those required herein, the building owner/occupant shall pay the usual installation fees associated therewith. The Cable Service provided shall not be used for commercial purposes. The City shall take reasonable precautions to prevent the inappropriate use of the Grantee's Cable System.

Section 14. Franchise Violations

14.1 Non-Material Franchise Violations

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

1. respond to the City, contesting the City's assertion that a default has occurred, and request a meeting in accordance with subsection (B), below; or
2. cure the default; or
3. notify the City that Grantee cannot cure the default within 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 the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting 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 denies the default and requests a meeting in accordance with subsection (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than fifteen (15) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

C. If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or breach within thirty (30) days or within such other reasonable timeframe, beyond thirty (30) days as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may pursue any other legal or equitable remedy available under this Franchise or applicable law.

14.2 Material Franchise Violations

A. The City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the event of a material violation of this Franchise, including:

1. If Grantee willfully fails for more than three (3) continuous days to provide Cable Service;

2. If Grantee attempts to practice any fraud or deceit upon the City or Subscribers;

3. If Grantee fails to provide the insurance, indemnification, performance bond or other security required by this Franchise;

4. If Grantee fails to timely pay its franchise fees to the City and the cure period has expired;

5. If Grantee fails to timely provide the Access Channel, Access Advance or monthly Capital Contributions; or

6. If Grantee fails to timely pay liquidated damages or any other amounts owed under this Franchise.

B. Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a timely and satisfactory response from Grantee, it may then seek a termination of the Franchise in accordance with this subsection and applicable law.

C. The City Council shall conduct a public hearing to determine if revocation of the Franchise is warranted.

1. At least thirty (30) days prior to the public hearing, the City Clerk shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City Council shall hear any Persons interested therein; and provide that the Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

2. A verbatim transcript shall be made by a court reporter of such proceeding and the cost shall be paid by the Grantee.

3. Within thirty (30) days after the close of the hearing, the City Council shall issue a written decision regarding the revocation and termination of the Franchise.

D. Grantee shall be bound by the City Council's decision to revoke the Franchise unless an appeal to a court of competent jurisdiction is filed within thirty (30) days of the date of the City Council's decision. Grantee and the City shall be entitled to such relief as the court may deem appropriate.

14.3 Termination

A. If this Franchise expires without renewal or extension, or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

1. Require Grantee to maintain and operate its Cable System on a month-to-month basis until a new cable operator is selected; or
2. Purchase Grantee's Cable System in accordance with federal law.

B. The City may order the removal of the above-ground Cable System Facilities and such underground Facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment and without affecting electrical or telephone wires or attachments. The indemnification, insurance provisions and letter of credit (if any) shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

C. If Grantee fails to complete any removal required by subsection 14.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs and expenses incurred within thirty (30) days after receipt of an itemized list of the costs and expenses, or the City may recover the costs and expenses through the Grantee's security instruments if Grantee has not paid such amount within the foregoing thirty (30) day time period. Any costs and expenses incurred by the City regarding such removal shall include reasonable attorneys' fees and costs and expenses for work conducted by the City staff or its agents.

14.4 Assessment of Liquidated Damages

A. Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages to the City. To the extent that the City elects to assess liquidated damages as provided in this Franchise, such damages shall be the City's sole and exclusive remedy for such breach or violation and shall not exceed a time period of one hundred eighty (180) days. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.

B. Prior to assessing any liquidated damages, the City shall give Grantee proper notice and a thirty (30) day right to cure or such other time as the parties agree.

C. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day of the violation.

D. Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: two hundred dollars (\$200.00) per day for material departure from the FCC technical performance standards; one hundred dollars (\$100.00) per day for failure to provide the Access Channel or any equipment related thereto or funding which is required; one hundred dollars (\$100.00) per day for each material violation of the Customer Service Standards; fifty dollars (\$50.00) per day for failure to provide reports or notices as required by this Franchise; and one hundred dollars (\$100.00) per day for any material breaches or defaults not previously listed.

14.5 No Offset

No cost to Grantee arising from a breach or violation of the Franchise shall be offset against any sums due the City as a tax or franchise fee regardless of whether the combination of franchise fees, taxes and said costs exceeds five percent (5%) of Grantee's Gross Revenues in any 12-month period unless otherwise permitted by law.

Section 15. Franchise Renewal

Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures or substantive protections set forth therein shall be deemed to be preempted or superseded by the provisions of any subsequent federal or State law.

Section 16. Franchise Transfer

A. The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall not be unreasonably withheld. In the event of a change in control, such consent shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.

B. The Grantee shall promptly notify the City of any actual or proposed sale, change in, transfer of or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stock ownership 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 City shall have consented in writing thereto.

C. The parties to the sale, transfer or change in control of the Cable System shall make a written request to the City for its approval of a sale or transfer or change in control and furnish all information required by law.

D. The City shall act on the request within the timeframe permitted by law, provided it has received a complete application with all information required by applicable law. If the

City fails to render a final decision on the request within such timeframe, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

E. Within thirty (30) days of any transfer, sale or change in control, if approved or deemed granted by the City, Grantee shall notify the City of such sale or transfer of ownership or change in control. In case of a sale or transfer of ownership the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise. 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 this Franchise.

F. In reviewing a request for sale or transfer or change in control, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer or change in control upon such terms and conditions as permitted by applicable law. Additionally, such Person shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary, to cure any violations or defaults.

G. Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an intra-company Affiliate, provided that the Grantee must reasonably notify the City in advance and the Affiliate must have the requisite legal, financial and technical capability and agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City, provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

Section 17. Notices

Throughout the term of this Franchise, each party shall maintain and file with the other an 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:

The Grantee's address shall be:

Comcast _____
P.O. Box 3042
Bothell, WA 98041-3042
Attn: Franchising Department

The City's address shall be:

City of _____

Attention: City Clerk

Section 18. Miscellaneous Provisions

18.1 Discriminatory Practices Prohibited

Throughout the term of this Franchise, Grantee shall fully comply with all equal employment and nondiscrimination provisions of applicable law.

18.2 Cumulative Rights

All rights and remedies given to the City and Grantee by this Franchise shall be in addition to and cumulative with any and all other rights and remedies now or hereafter available to the parties, at law or in equity. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise any other right or remedy.

18.3 Costs to be Borne by the Grantee

The Grantee shall pay for all costs of publication of this Franchise.

18.4 Attorneys' Fees

If any action or suit arises in connection with this Franchise (excluding Franchise renewal proceedings), the court shall determine which party shall be entitled to recover reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

18.5 Binding Effect

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

18.6 Authority to Amend

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

18.7 Venue

The venue for any dispute related to this Franchise shall be in the United States District Court in Seattle, Washington or in the [Snohomish County Superior Court](#) in [Everett](#), Washington.

18.8 Governing Law

The City and Grantee shall be entitled to all rights and be bound by all changes in applicable federal, State and local laws.

18.9 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.

18.10 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.

18.11 Non-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 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.

18.12 Severability

If any section, subsection, paragraph 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 or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

18.13 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, acts of terrorism, civil disturbances, earthquakes or other natural catastrophes, labor stoppages 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, or unavailability of materials.

18.14 Time Limits Strictly Construed

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

18.15 Entire Agreement

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

18.16 Acceptance

After the passage and approval of this Franchise by Ordinance by the City Council and receipt by Grantee, this Franchise shall be accepted by Grantee by filing with the City its written acceptance of all of the provisions of this Franchise. If the acceptance is not filed, this Franchise shall then be voidable at the discretion of the City.

IN WITNESS WHEREOF, this Franchise is signed by the City of _____, Washington this ____ day of _____, 2007.

CITY OF _____, WASHINGTON

By: _____
Title: _____

Attest:

By: _____
City Clerk

Approved as to Form:

By: _____
City Attorney

Accepted and agreed to this ____ day of _____, 2007.

COMCAST _____

By: _____
Its: _____

Attest:

By: _____
Secretary