

AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/WASHINGTON, LLC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF KELSO; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; AND TERMINATING ORDINANCE NO. 99-3444.

WHEREAS, Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC., (“Grantee”) desires to continue operation of a Cable System in the rights-of-way of the City of Kelso “City” under the authority of Section 2.01 and 2.10 of the Kelso City Charter; and

WHEREAS, negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with the guidelines established by the City Code and the federal Cable Act (47 U.S.C. 546); and

WHEREAS, the City Council has reviewed the qualifications of Grantee and the adequacy of its provision of services in the City of Kelso; and

WHEREAS, the franchise granted by Ordinance No. 99-3444 shall be terminated and be replaced by this Franchise; and

WHEREAS, pursuant to Section 2.11(b) of the City Charter, this Franchise was filed with the City Clerk and published once a week for three successive weeks in the City official newspaper; and

WHEREAS, a public hearing was held on the ____ day of _____, 20__;

NOW, THEREFORE, THE CITY OF KELSO DOES ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. That a franchise is hereby granted to Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC to operate and maintain a Cable System in the City of Kelso upon the terms and conditions set forth in the Cable Franchise Agreement between the City of Kelso and Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC., attached hereto as Exhibit “1” and incorporated fully by this reference.

Section 2. City Manager Authorization. That the City Manager is authorized to execute the Cable Franchise Agreement attached hereto as Exhibit “1” and to take such actions as are necessary to effect the Cable Franchise Agreement in accordance with this Ordinance.

Section 3. Ordinance Repealed. That Ordinance No. 99-3444 is hereby repealed and superseded by this Ordinance and the Cable Franchise Agreement attached hereto as Exhibit “1.”

Section 4. Severability. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

Section 5. Effective Date. This Ordinance and the Franchise granted by this Ordinance and the Franchise Agreement attached hereto as Exhibit “1” shall be effective fifteen (15) days from date of final passage by City Council; provided, however, that Grantee shall have sixty (60) days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the City’s discretion if Grantee fails to accept within sixty (60) days.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____,
2015.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED:_____

Exhibit “1”

Comcast Cable Television Franchise Agreement

Between

The City of Kelso

And

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC

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SECTION 1. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Where a term in the Franchise is not defined in this section and there is a definition for the term in the Cable Act, the Cable Act definition shall apply. Other terms in the Franchise which are not defined in this section shall be given their common and ordinary meaning.

1.1 “Access,” “Public, Educational, and Governmental Access” or “PEG Access,” refers to the availability, for non-commercial purposes, of a channel, or channels, on the Cable System for Public, Education or Government programming by various agencies, institutions, organizations, groups, and individuals, including the City.

- (A) “Public Access” or “Public Use” means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;
- (B) “Education Access” or “Education Use” means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and
- (C) “Government Access” or “Government Use” means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.
- (D) “PEG Access” means Public Access, Educational Access, and Governmental Access, collectively.

1.2 “Access Channel” means any Channel or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.

1.3 “Affiliate” means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee and its successor corporations. Affiliate also means any person with whom Grantee contracts to provide Cable Services on the Cable System.

1.4 “Applicable Law” means any federal, State or local statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

1.5 “Basic or Basic Service” means a service tier which includes the retransmission of local television broadcast signals, or as such service tier may be further defined by federal law.

1.6 “Cable Act” means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as amended and any future federal cable television legislation.

1.7 “Cable Operator” means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

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

1.9 “Cable System” means the meaning specified in the definition of “Cable System” in the Cable Act. As used in this Franchise, unless otherwise specified, the term shall refer to the Cable System constructed and operated by the Grantee in the City under this Franchise.

1.10 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.11 “City” means the City of Kelso of the State of Washington and all the territory within its present and future boundaries.

1.12 “City Code” means the Municipal Code of the City of Kelso, Washington, as may be amended from time to time.

1.13 “Designated Access Provider” (“DAP”) means the entity or entities designated by the Grantor to manage or co-manage PEG Access Channels and Access Centers. The Grantor may be a Designated Access Provider, however, any entity designated by the Grantor shall not be a third party beneficiary under this agreement.

1.14 “Day” unless otherwise specified shall mean a calendar day.

1.15 “Effective Date” means this Franchise granted by this Ordinance shall be effective 15 days from date of final passage by City Council; provided, however, that Grantee shall have 60 days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the City’s discretion if Grantee fails to accept within 60 days.

1.16 “Expanded Basic Service” means the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

1.17 “FCC” means the Federal Communications Commission.

1.18 “Franchise” “Franchise Agreement” or “Agreement” means Ordinance No _____, and this Franchise Agreement and the conditions as set forth herein.

1.19 “Franchise Fee” means the fee the City may assess in accordance with Section 622 (g) of the Cable Act (47 U.S.C. 542(g)).

1.20 “Grantee” means Comcast of Colorado/Florida/Michigan/New Mexico, Pennsylvania, Washington, LLC. and permitted successors and assigns.

1.21 “Gross Revenues” means, and shall be construed to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or Affiliate from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area calculated in accordance with Generally Accepted Accounting Principles (“GAAP”).

(A) Gross revenues include, by way of illustration and not limitation:

- 1) Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services

- (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
- 2) Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
 - 3) Converter, remote control, and other Cable Service Equipment rentals, leases, or sales;
 - 4) Payments for pre-paid Cable Services and/or equipment;
 - 5) Advertising revenues as defined herein;
 - 6) Fees including, but not limited to ; (1) late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; (2) Franchise fees; (3) the FCC user fee.
 - 7) Revenues from program guides; and
 - 8) Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.
- (B) "Gross Revenues" shall not be net of; (1) any operating expense; (2) any accrual, including without limitation, for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment.
- (C) "Gross Revenues," however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise.
- (D) "Gross Revenues" shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates.
- (E) "Gross Revenues" shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.
- (F) "Advertising Revenues" shall mean amounts derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and /or advertising interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses, (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Comcast Spotlight or similarly affiliated advertising representations firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.
- (G) "Gross Revenues" shall not include:
- 1) actual cable services bad debt write-offs, except any portion which is subsequently collected with shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;

- 2) any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee shall not be regarded as such a tax or fee;
- 3) launch fees and marketing co-op fees; and
- 4) revenues associated with the provision of managed network services provided under separate business contract; and
- 5) PEG capital fee collected from subscribers.

1.22 "Headend" means the Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennae, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.

1.23 "Institutional Facilities" means City Hall, public libraries, police stations (not including incarceration facilities), fire stations, and City owned buildings; provided however that the term shall not include buildings or sites owned by City that are not used for administrative purposes or by the public, or those buildings owned by the City but leased to third parties at which government administrative employees are not regularly stationed.

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

1.25 "Normal Operating Conditions" means those Cable Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

1.26 "Person" means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization authorized to do business in the State of Washington, and includes any natural person.

1.27 "Premium Service" means a Cable Service (such as movie channels or pay-per-view programs) offered to Subscribers on a per-channel, per-program, or per-event basis.

1.28 "Public Rights of Way" include, but are not limited to, streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. 541(a)(2).

1.29 "State" means The State of Washington.

1.30 "Subscriber" means any Person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of, or in connection with, the Cable System.

1.31 "Video Services" means programming provided by, or generally considered comparable to programming provided by a cable operator as the term "cable operator" is defined in the Cable Act.

SECTION 2. FRANCHISE

2.1 Grant of Franchise

The City hereby grants to the Grantee a non-exclusive and revocable Franchise to occupy or use City Public Rights of Way to construct, operate, and maintain a Cable System within the Franchise Area, subject to (A) the provisions of this Franchise to provide Cable Service within the City; and (B) all applicable provisions of the City Code and other Applicable Law. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from providing services other than Cable Services to the extent not prohibited by Applicable Law. The City hereby reserves all of its rights to regulate such other services to the extent consistent with Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 Police Powers

Notwithstanding any other provision of this Franchise, Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances of general applicability to protect or advance public safety, health, or welfare of the general public. Grantee agrees to comply with all applicable laws, regulations and ordinances enacted by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof; however, nothing herein shall limit Grantee's right to challenge said law, regulation and/or ordinance in the proper forum.

2.3 Franchise Term

The term of the Franchise shall be ten (10) years from the Effective Date, unless extended by mutual written consent or terminated sooner in accordance with this Franchise.

2.4 Franchise Area

The Franchise Area shall be that area within the present or future corporate limits of the City. Cable Service shall be provided to all Persons subject to the service and installation policy outlined in this Franchise Section 10.1.

2.5 Franchise Nonexclusive

The Franchise granted herein shall be nonexclusive and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by City to any Person to use any Public Rights of Way, easement, or property for any purpose whatsoever, including the right of Grantor to use for any purpose it deems fit, including the same or similar purposes allowed by Grantee hereunder. Grantor may at any time grant authorization to use the public rights of way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional Franchises for Cable Systems as City deems appropriate, upon such terms and conditions as City deems appropriate.

2.6 Franchise Acceptance

The Grantee, within sixty (60) days after the tender by the City to Grantee of the Franchise Agreement, adopted by the City, shall file with the City Clerk of the City a written acceptance executed by Grantee, in the form attached hereto as Exhibit "D" Franchise Acceptance. In the event Grantee fails to file the acceptance as required herein this franchise shall be voidable at the discretion of the City.

2.7 Competitive Equity

- (A) The Grantee acknowledges and agrees that the City specifically reserves the right to grant, at any time, such additional franchises or similar lawful authorization for a Cable System or other wireline systems providing video services as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee. Provided, however, that City agrees that, within ninety (90) days of the Grantee's request, the City shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance, system build-out requirements and line extension requirements, uniform service requirements, security instruments; customer service standards; required reports and related record keeping; PEG access channels and fees; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entry, so long as the regulatory and financial burdens on each entity are materially equivalent. The parties agree that, notwithstanding any provision of this subsection, the City shall not be obligated to comply with the provisions of this subsection to the extent doing so would cause the City to violate applicable laws or FCC rules. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this section.
- (B) In the event that a competitive franchise is granted by City as described in Section 2.7(A) above, which contains material terms and conditions that are more favorable or less burdensome than the terms of his Franchise, and notice thereof is duly provided to City, the Grantee shall submit to City in writing (1) the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage, (2) the provisions to be amended; and (3) specific language modifying any such Franchise provisions. City and Grantee shall negotiate in good faith such amendments to the Franchise within ninety (90) days, unless otherwise agreed to by the parties. In the event the parties are not able to reach agreement in information negotiations, Grantee may exercise its rights under subsection (C) below.
- (C) In the alternative to Franchise modification negotiations as provided for in Section 2.7(B), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

2.8 Mid-Term Franchise Review

- (A) Grantor may conduct a Franchise review once every ten years during the term of this Agreement or any extensions of this Agreement. Grantor shall establish a procedure for ensuring an orderly review and full discussion of any matters for review, to include, but not be limited to (1) Grantee's performance; (2) compliance with federal and state laws and regulations; (3) PEG access and community needs and interests; and (4) new developments in cable regulation and technology.
- (B) The purpose of the review shall be to insure, with the benefit of full opportunity for public comment that the Franchise continues to effectively serve the public, in light of new developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests.

- (C) Such review shall be open to the public and shall include at least one public hearing on all matters discussed during the review; which hearing shall be noticed at least one week in advance in a newspaper of general circulation in the Franchise Area.
- (D) If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
- (E) During the evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable to the Grantor's review.

2.9 Transfer or Change of Control

This franchise shall be binding upon, and inure to the benefit of, the successors, legal representatives, and assigns of the Franchisee.

- (A) Neither the Grantee nor any other Person may transfer the Franchise without the prior consent, by ordinance of the City; which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent, by ordinance of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (1) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (2) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the city shall, in accordance with the FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Franchisee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.
- (B) The City's approval shall be based upon the financial responsibility of the party unto whom the franchise is being proposed for sale, assignment, or transfer. The proposed assignee must show it has the financial capability, technical ability, and legal qualifications sufficient to comply with the terms of the franchise as determined by the City, and must agree to comply with all provisions of the franchise.
- (C) The consent or approval of the City to any transfer of the franchise shall not constitute a waiver of release of rights of the City in and to the Public Rights of Way, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this franchise.
- (D) In no event shall a transfer of ownership or control of the franchise be approved without successor in interest becoming signatory to the franchise agreement.

2.10 Renewal

This Franchise shall be renewed in accordance with 47 U.S.C. 546.

2.11 Conditions of Sale

The City may acquire the Cable System as provided 47 U.S.C. 547.

2.12 Right to Require Removal of Property

At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all Public Rights of Way within the Franchise Area. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Grantee effective upon filing of the lien with the Cowlitz County Auditor.

2.13 Continuity of Service Mandatory

Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted Cable Service so long as their financial obligations to Grantee are honored, in the event of purchase, lease-purchase, acquisition, sale, lease, or other transfer to any other Person, including any other operator of a cable communications franchise. Grantee shall cooperate fully to operate the Cable System in accordance with the terms and conditions of this Franchise Agreement through the transition, to maintain continuity of service to all Subscribers.

SECTION 3. CONSTRUCTION AND OPERATION IN PUBLIC RIGHTS-OF-WAY

3.1 Use of Public Rights of Way

Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Public Rights of Way within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to Applicable Law.

3.2 Non-Interference

Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of the Public Rights of Way and the rights and reasonable convenience of property owners who own property that adjoin any such Public Rights of Way. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide at least seventy-two (72) hours advance notice of the same to such affected residents.

3.3 Erection of Poles

If additional poles in an existing aerial utility system route are required, Grantee shall negotiate with the utility company or provider for the installation of the needed poles. Grantee shall not erect, for any reason, any pole on or along any Public Right of Way in an existing aerial utility system unless approved by the City, which approval shall not be unreasonably withheld. The Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, and shall comply with all

Applicable Law. In the event the utility company providing the poles moves its facilities underground, Grantee agrees to underground its facilities at that time.

3.4 Undergrounding

- (A) Grantee shall place underground all of its transmission lines which are located or are to be located above the Public Rights of Way of the City in the following cases:
- 1) All other existing utilities are to be or have been placed underground;
 - 2) Undergrounding of utilities are required by statute, resolution, policy or other Applicable Law;
 - 3) Overhead utility lines are moved and placed underground (Grantee shall bear its proportional share of the cost of such movement of its facilities);
 - 4) Grantee is unable to get pole clearance;
 - 5) Underground easements are obtained from developers of new residential areas; or
 - 6) Utilities are overhead but residents request underground service drops (Underground service drops provided at resident's expense, and undergrounding is technically feasible).
- (B) If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires within such district if requested to do so and place facilities underground. If such undergrounding of Grantee facilities is part of such a project, the costs thereof shall be included in such local improvement district.
- (C) Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used.
- (D) Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.5 Maintenance, Repair, and Restoration

- (A) City Codes Apply. Subject to Section 2.2 herein, in connection with the construction, operation or repair of the Cable System, Grantee shall, in all cases, comply with the City Code and all Applicable law.
- (B) Grantee Responsible. All construction, maintenance, or repair of any and all of Grantee's facilities within City Public Rights of Way shall, regardless of who performs the construction, be and remain Grantee's responsibility.
- (C) Permits. Grantee shall obtain, at Grantee's own cost and expense, all necessary permits, licenses, or approvals for construction, operation, maintenance, or repair of the Cable System facilities prior to the commencement thereof. All work shall be performed in a safe, thorough and reliable manner using materials of good and durable quality.
- (D) Schedule and Inspection. Prior to beginning any construction, Grantee shall provide City with a construction schedule for work in the Public Right of Way. City shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with construction or installation standards of this Franchise or Applicable Law.

- (E) Restoration to Prior Condition. In the event Grantee's work causes any disturbance or damage of any street, pavement, sidewalk, driveway or other public or private property, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, landscaping or property, in as good condition as before said work was commenced and in accordance with standards for such work set by the City and the City Code.
- (F) New Pavement. Grantee is prohibited from disturbing the paved surface of newly constructed or substantially improved streets for a period of five (5) years after completion of construction. In the event of extraordinary circumstances, the City may authorize such work subject to additional conditions for street repair and/or the negotiation of a non-discriminatory damage fee.
- (G) Disputes. In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City of Kelso Department of Public Works subject to appeal by Grantee to Hearings Examiner consistent with Section 7.5 herein.

3.6 Tree Trimming

Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and Public Rights of Way so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. Trimming shall be done only in accordance with Applicable Law.

3.7 Removal and Relocation

- (A) Reservation of Rights. Nothing in this Franchise Agreement shall be construed to prevent any public work of the City, including without limitation grading, paving, repairing or altering any street or constructing, repairing or removing any water or sewer line. In addition, the City may vacate or discontinue use of any Public Right of Way. If any property of Grantee shall interfere with the construction or repair of any street or public improvement, or the vacation or abandonment of any street, then upon reasonable notice from City, all such property shall be removed, replaced or relocated in a timely manner as shall be directed by City; such work shall be at the expense of Grantee.
- (B) Relocation of Facilities. In the event that at any time during the period of the Franchise, the city, county or state shall lawfully elect to alter or change the grade of any street, alley, or other Public Rights of Way, the Grantee, upon reasonable notice by the proper governmental entity, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures within the public right-of-way at its own expense.
- (C) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee.
- (D) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Public Rights of Way along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Public Right of Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right of Way along the extension of cable to be removed. Subject to the City Code and other Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Public Right of Way along the extension

thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Public Right of Way which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

3.8 Movement of Facilities

- (A) Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than fifteen (15) days' notice to the cable company to arrange for such temporary wire changes.
- (B) If any removal, replacement, modification, or disconnection is requested by another franchise holder to accommodate the construction, operation or repair of the facilities or equipment of such other franchise holder, Grantee shall, after at least thirty (30) days' written notice, take action to effect the necessary changes requested by the responsible entity. Grantee and the other franchise holder shall determine how costs associated with the removal or relocation shall be allocated.

3.9 Major Street Improvements

Grantee is required to place conduit into the utility easements at the time new streets are being constructed or there are major improvements being made to existing streets, provided Grantee is provided reasonable notice of the construction or improvements.

3.10 As Built

Grantee shall maintain "as built" drawings of the Cable System and make them available to the City for inspection upon request. The "as built" drawings shall be updated as changes occur to the System. The Grantee shall provide to City, upon request, a copy of drawings showing the location of the Grantee's facilities in the streets and Public Rights of Way.

3.11 Emergencies

In the event of a situation or circumstance which creates or is contributing to an imminent danger to health, safety, or property, the City may remove or relocate Grantee's Cable System without prior notice.

SECTION 4. CABLE SYSTEM CAPACITY AND COMPLIMENTARY SERVICE

4.1 Cable System Capacity

During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 120 channels of video programming to its customers in the Franchise Area, including Basic Cable.

4.2 System Upgrade Requirements

In any rebuild or upgrade of the Cable System, Grantee shall use equipment and materials which meet or exceed general industry standards. The System, as upgraded, shall have the capacity to provide pay-per-view and other premium services with only installation of equipment where the subscriber connects to the system. In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension, and service requirements set forth in this Franchise Agreement.

4.3 Construction Plan and Schedule.

A detailed construction plan and schedule shall be submitted to the City for review and comment no later than thirty (30) days prior to the commencement of any Cable System upgrade construction. At the request of the City, Grantee shall meet with City at any time during the construction period to report on construction progress and the fulfillment of the construction schedule.

4.4 Gratis Cable

- (A) The Grantee, upon request, and as a voluntary initiative only, shall provide without charge, a Standard Installation and one outlet of Basic Cable and expanded basic service or its equivalent to those Institutional Facilities owned and occupied by the Franchising Authority, fire station, police station, public works shop, libraries, K-12 public school(s) and Designated Access Provider that are within the Service Area and within 125 feet of its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations shall be excluded. Cable Service to the Franchising Authority described herein is a voluntary initiative of Grantee. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section 3.11. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable and expanded basic service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.
- (B) New Installations. For new installations or relocation of installations, if the drop line to such building exceeds a Standard Installation drop of one hundred twenty-five (125) feet, the Grantee will accommodate the drop up to two hundred fifty (250) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided the City or other agency agrees to pay the incremental cost of such drop in excess of one hundred twenty-five (125) feet or the necessary distribution line extension of the Cable System, including the cost of such excess labor and materials.
- (C) Grantee does not waive any rights under applicable law regarding Gratis Cable, as set forth in Section 4.4(A). Should Grantee elect to begin offsetting the value of the Gratis Cable against franchise fees, Grantee shall first provide the City with ninety (90) days' prior notice. Upon receipt of such notice, the City shall have the right to waive the requirements of Section 4.4(A), Grantee shall cease to provide

such Gratis Cable, or in the event Grantee shall not cease to provide such Gratis Cable, Grantee shall not offset the value of such Gratis Cable against the franchise fees for those Institutional Facilities.

4.5 Equal and Uniform Service

Subject to Section 2.7 of this document, Grantee shall provide access to equal and uniform Cable Service throughout the Franchise Area to the extent required by applicable law.

4.6 Cable System Specifications

- (A) Cable System Maintenance. In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise Agreement.
- (B) Emergency Alert Capability. Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert System.
- (C) Standby Power. Grantee shall provide standby power generating capacity at the Cable System control center and at all hubs. Grantee shall maintain standby power supplies, rated at least at two hours' duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the City upon request.
- (D) Satellite Earth Stations. Grantee shall provide a sufficient number of earth stations or its equivalent to receive signals from operational communications satellites or its equivalent that carry cable television services accessible to the Grantee throughout the life of the Franchise to carry out its obligations under this Franchise

4.7 Technical Standards

The Grantee shall maintain technical performance of the Cable System in accordance with the Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted. The city may establish reasonable technical standards for the performance of the Cable System if permitted to do so under applicable law.

4.8 Performance Testing

Grantee shall perform all Cable System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. Written records of all Cable System test results performed by or for Grantee shall be maintained and available for City inspection upon request.

The tests may be witnessed by representatives of the City, and Grantee shall inform the City of the time and place of each test no less than three weeks prior to the scheduled compliance test. Written test reports of compliance testing shall be submitted to the City. If more than one of the locations tested fail to meet the

performance standards, Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed. If a second test results in failure of one or more sites, then the City may seek remedies in accordance with Sections 7.5 and 7.6 unless the circumstances of the failure are caused by conditions which are beyond Grantee's control, as determined, acknowledged and verified by the City.

4.9 Status Monitoring

Grantee shall continue to utilize status monitoring of the Cable System which can continually monitor the system for signal quality on the forward and return spectrums of the System. In addition, the Grantee shall maintain status monitoring for all power supplies in its headend(s) and hub(s) as well as the distribution system. Status monitoring shall be capable of notifying the Grantee 24/7 of system problems including utility power outages that will negatively affect its customers.

SECTION 5. PROGRAMMING AND SERVICES

5.1 Categories of Programming Service

Grantee shall provide video programming services in at least the following broad categories:

- News and Information
- Sports
- General Entertainment
- Arts/Performance/Humanities
- Science/Technology
- Children/Family/Seniors
- Foreign Language/Ethnic Programming
- Public, Educational and Governmental Access Programming
- Weather
- Movies
- Religious Programming
- Washington State based News, Information, and Sports, as available
- Travel Information

5.2 Changes in Programming Services

Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without notifying the City. Further, Grantee shall provide at least thirty (30) days' prior written notice to Subscribers and to the City of Grantee's intent to effectively delete any broad category of programming or any channel within its control including all proposed changes in channel allocation, including any new equipment requirements that may occur as a result of these changes.

Subscribers will be notified by Grantee of any changes in programming services or channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. The Grantee shall also give 30 days' written notice to both Subscribers and the City before implementing any service change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.

For purposes of the carriage of digital broadcast signals, the operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain day parts.

5.3 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device that will enable the Subscriber to block all access to any and all channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

5.4 Closed Captioning

Grantee shall at all times comply with the requirements of 47 C.F.R. § 79.1 by providing services for the disabled, including, but not limited to, passing through closed captioning for local programming if provided by City or Designated Access Provider.

SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

6.1 Access Channels

Grantee shall continue to provide three (3) Channels on the Cable System for PEG Access purposes, to be shared by the City of Kelso, the City of Longview, the City of Kalama, and Cowlitz County for so long as the three channels are programmed and utilized according to the franchise requirements contained within the current franchise agreements of those jurisdictions. The City and Grantee understand that the communities of Castle Rock and Woodland receive the Access Channels serving City.

In the event City loses access to all the public access channels it shares with Longview, Kalama, and Cowlitz County, and the City has sufficient original local or regional programming (which is defined as 50 hours per week and not duplicated more than twice per week) the Grantee shall provide to the City, for independent administration by the City or its designee throughout the term of this Franchise, one (1) PEG Channel to be cablecast through the Franchise Area. The channel may be used for a combination of Public, Educational, and Governmental programming based on policy or need. If the City does not provide sufficient original local or regional programming for a period of ten (10) consecutive weeks, Grantee may reclaim this channel for unrestricted use.

6.2 Control and Administration

The control and administration of the PEG access Channels shall rest with the City, and the City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion.

6.3 Cable Guide for PEG

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow City or the Designated Access Provider to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The City or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and the parties agree that the costs related to such formatting shall be a PEG eligible fee.

6.4 Noncommercial Use of PEG

PEG Channels are for noncommercial programming to be promoted and administered by the City or its designee as allowed under Applicable Law. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (A) the identification of financial supporters similar to what is provided on public broadcasting stations; or (B) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (C) programming offered by accredited, non-profit, educational institutions which may offer telecourses over a PEG Channel. Nothing in this Franchise shall prevent the City or its designee from carrying out fundraising activities to supplement access capital or operating funds consistent with applicable federal law and regulation and such fundraising activity shall not constitute a commercial use of Access channels.

6.5 PEG Channel Location

The PEG Channels will be located reasonably close in proximity to other broadcast Channels and/or other commercial video Channels, excluding pay-per-view programming offered by Grantee in the City. Grantee will give City at least 90 day notice prior to changing any PEG channel location or number.

6.6 PEG Fees

- (A) PEG Fee Amounts. Grantee shall pay to the City as capital support for PEG Access facilities and equipment an amount of fifty cents (\$0.50) per month per Subscriber in the Franchise Area ("PEG Fee"). Grantee shall make such payments quarterly, following the Effective Date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter.
- (B) City's use of PEG Fees. In no event shall the City use any portion of the PEG Fee in a manner inconsistent with 47 U.S.C. § 542(g)(2)(C) or any other applicable provisions of the Cable Act and FCC regulations. The City and Grantee agree that the PEG Fee is in addition to the Franchise Fee, and falls within one or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Law.
- (C) City Annual Report to Grantee of PEG Fee Purchases. City or the City's designee shall provide to Grantee, upon Grantee's written request, within ninety (90) days following the end of each calendar year, a report detailing the City's PEG related capital expenditures. If Grantee alleges that City has inappropriately used PEG fees, Grantee agrees to first notify the City of its concern prior to taking any legal action or withholding payment against any other fees owed City.
- (D) Grantee payment of PEG Fees. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise fees required as a result of its obligation to remit the PEG Funds or the

PEG Fee. Should Grantee continue to provide Cable Service after the scheduled expiration of this Franchise, until and unless this Franchise is superseded by a renewed franchise in accordance with Applicable Law, Grantee shall continue to make monthly PEG Fee payments for, and in support of PEG Channels as specified hereinabove. Any PEG Access capital support amounts owing pursuant to this Franchise which remain unpaid more than thirty (30) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at the legal interest rate in the State of Washington.

6.7 Transition to HD Format

Grantee shall provide and activate the Government Access Channel in HD format, for a total of one (1) HD channel, in the manner and conditions set forth in Section 6.7 below:

- (A) The City shall notify Grantee in writing of its need to activate the High Definition (HD) format Access Channel under this section and shall provide notice to Grantee that the following criteria have been met:
 - 1) At least 80% (eighty percent) of the basic service tier channels excluding PEG Access Channels are provided in HD format;
 - 2) At least 80% (eighty percent) of the Access programming carried on Standard Definition (SD) format Channel, which the Grantor has identified as the Channel to be carried in a HD format Channel, has been produced in an HD format for any three-month time period prior to notice provided under this Section;
 - 3) Not more than 50% (fifty percent) of the Access Programming carried on the SD format Channel, which the City has identified as the Channel to be carried in a HD format Channel, is character-generated only Programming for any three-month time period prior to the notice provided under this Section 6.7.
- (B) Each HD format Access Channel provided under this Section will replace one (1) of the SD format Access Channels provided for in Section 6.1. The total number of PEG Access Channels provided in this franchise represents the total number of PEG Access channels available for combined use by the City of Kelso, the City of Longview, the City of Kalama, and Cowlitz County.
- (C) Grantee shall have no more than 120 days from the date of the written notice under Section 6.7 to fully activate the Access Channel from the Designated Access Provider to Subscribers in the HD format. Grantee shall verify HD Channel Signal delivery to Subscribers with the Designated Access Provider. The SD format Access Channel being converted to HD format shall be simulcast for at least ninety (90) days following activation of the HD format Access Channel.
- (D) The City acknowledges that receipt of a HD format Access Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 6.7.
- (E) Grantee shall provide up to two (2) additional Access Channels in HD, replacing the remaining SD format Access Channels, as long as criteria in Section 6.7 is met in addition to the criteria below:
 - 1) At least twenty-five percent (25%) of Grantee's cable subscribers within the franchise area regularly views programming carried on the SD format Channel, which the Grantor has identified as the Channel to be carried in a HD format. For the purpose of this subsection, "regularly views" means viewing programs on the Channel at least twice per month. A

survey of Grantee and City may be conducted, and the cost of the survey shall be shared equally between City and Grantee. In lieu of the survey, the parties may mutually agree to utilize viewership data as may become available to Grantee on its cable system.

6.8 Use of PEG Channels

At any time during the term of this franchise, the Grantee may reclaim one PEG channel, upon 90 days written notice, if the following conditions for programming have not been met:

- 1) Public Access Channels: During any eight (8) consecutive weeks, the Public Access channel is not utilized for Locally Produced, Locally Scheduled Original Programming 60% of the time, seven days per week, for any consecutive six (6) hour block during the hours from 12:00pm to 12:00am; or,
- 2) Educational Access channels: During any eight consecutive weeks, the Educational Access Channel is not in use for Locally Scheduled Original Programming 60% of the time, five (5) days per week, for any consecutive six (6) hour block during the hours from 6:00am to 11:00pm; or
- 3) Governmental Access channels: During any eight (8) consecutive weeks, the Governmental Access channel is not in use for Locally Scheduled Original Programming 60% of the time, five (5) days per week, for any consecutive six (6) hour block during the hours from 6:00am to 11:00pm.

For the purpose of this section:

"Locally Produced" means programming produced in the Cowlitz County, Longview, Kelso, Kalama area; and,

"Original Programming" means Programming in its initial cablecast on the System or in its first or second repeat; and,

"Locally Scheduled" means that the scheduling, selection and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received from and Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any Access channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as a part of its basic or expanded basic Cable Services shall not be considered "Locally Scheduled."

6.9 PEG Signals and Equipment

- (A) All PEG Channels shall be provided as part of Basic Service in accordance with applicable law. All PEG Channels may be delivered by the City to Grantee in standard digital format or in an HD format in accordance with Section 6.7 herein.
- (B) Any and all costs associated with any modification of the PEG Channels or signals after the PEG Channels/signals leave the Designated Access Provider's side of fiber termination panel, or any designated playback center authorized by the City, shall be borne entirely by Grantee and provided free of charge to the City and its designees.

6.10 Technical Quality

- (A) Grantee shall maintain all Upstream and Downstream Access Channels and interconnections of Access Channels at the same or better level of technical quality and reliability provided for its Residential Network and required by this Franchise and all other applicable laws, rules and regulations for Residential Subscriber Channels, Grantee shall provide routing maintenance and shall repair and replace all transmission equipment, including modulators, associated cable and equipment in use upon the effective date of this Franchise, necessary to carry a quality signal to and from Grantor's facilities.
- (B) Grantee shall have no responsibility for the technical production quality of the Access programming distributed on the Access Channels.
- (C) The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel except by specific written permission from the Designated Access Provider.

6.11 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantees signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment at its facilities to ensure that the capabilities of Designated Access Providers are not diminished or adversely affected by such change. Designated Access Providers shall be responsible for acquisition of necessary equipment at their respective facilities.

6.12 Relocation of Grantee's Headend

In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated connection at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards without additional costs to the City.

SECTION 7. REGULATORY PROVISIONS

7.1 Intent

The City retains the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

7.2 Delegation of Authority to Regulate

The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the Cowlitz County region.

7.3 Areas of Administrative Authority

(A) In addition to any other regulatory authority granted to the City by law or franchise, the City or its designee shall have administrative authority in the following areas:

- 1) Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- 2) Coordinating the operation of PEG Channel programming.
- 3) Planning expansion and growth of public access programming.
- 4) Formulating and recommending long-range cable communications policy for the Franchise area.
- 5) Disbursing and utilizing Franchise revenues paid to the City.

(B) Grantee shall cooperate fully in facilitating the City's discharge of its administrative authority.

7.4 Regulation of Rates and Charges

(A) Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City of Kelso at least thirty (30) days' notice of any intended change to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers.

(B) Rate Discrimination Prohibited. Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any Cable Service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations.

7.5 Franchise Violations, Remedies, and Revocation

(A) Remedies

The City shall have the right to assert the remedies set out below in the event Grantee violates any provision of this Franchise. These remedies are intended to embody the City's and/or the public's rights under Washington state law to the extent permitted by Applicable Law.

- 1) To the extent the City deems necessary to remedy the default, proceed against all or any part of any security provided under the City Code or this Franchise, including, without limitation, any bonds, security funds, or other surety;
- 2) Impose liquidated damages as set forth in Section 7.6, but only after the due process provisions outlined herein have been completed;
- 3) Commencing an action at law for monetary damages or seeking equitable relief, including specific performance; or
- 4) In the case of a Grantee's default as to a material provision of the Franchise, undertake the proceeding to revoke the Franchise.

Grantee shall be responsible for all direct and actual costs related to the enforcement action including, but not limited to, legal and administrative costs. In determining which remedy or remedies for Grantee's violation are appropriate, the City shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

(B) Revocation

The City has the right to revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

- 1) Grantee is in violation of any material provision of the Franchise Agreement or has demonstrated a pattern of Franchise violations and fails to correct the violation(s) after written notice of the violation(s) and proposed forfeiture and a reasonable opportunity thereafter to correct the violation(s) as noted in section 7.5 (c); or
- 2) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, to the extent permitted by Applicable Law; or
- 3) Grantee is found to have engaged in any or attempted fraud or deceit upon the City, Persons, or Subscribers; or
- 4) Grantee fails to post a performance bond as required under the terms of this Franchise.

(C) Enforcement Procedures

- 1) Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise or has demonstrated a pattern of Franchise violations, it shall first make contact with Grantee to informally discuss the issue. This informal discussion may be via telephone, email or other electronic means and is intended as a courtesy to Grantee prior to issuing a notice of violation. Thereafter the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default ("Violation Notice").
- 2) Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the Violation Notice to: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. The City shall not unreasonably refuse to accept the Grantee's proposed cure date but such decision shall be the City's alone to make.
- 3) Contested Hearings. In the event the Grantee fails to respond to the Violation Notice or in the event that the alleged default is not remedied as required under this Section 7.5 (c), the City may refer the matter to the City's hearing examiner in accordance with Chapter 2.14 of the City Municipal Code. The Grantee will be provided an opportunity to present evidence to contest the alleged violation. City shall notify Grantee of the hearing in writing. The determination as to whether Grantee is in default of this Franchise shall be determined by the hearing examiner, but any such written decision shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be filed within thirty (30) days of the issuance of the written decision of the hearing examiner. City shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.

- 4) In the event the hearing examiner determines that Grantee is in non-compliance with any provision of the Franchise, the City may impose any of the remedies set out in section 7.5(A).

7.6 Liquidated Damages

- (A) Because Grantee's failure to comply with the provisions of this Franchise will result in damage to the City and because it will be impractical to determine the actual amount of such damages, the City and Grantee hereby agree upon and specify certain amounts set forth hereafter in this section which represent both parties' best estimate of the damages.
- (B) The City shall specify any damages subject to this section and shall include such information in the Violation Notice sent to Grantee required under Section 7.5(C)(1). Such Violation Notice may provide for damages sustained prior to the Violation Notice where so provided, and subsequent thereto pending compliance by Grantee.
- (C) To the extent that the City elects to assess liquidated damages as provided in this section and such liquidated damages have been paid, the parties agree that the assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or Applicable Law.
- (D) Unless otherwise provided, liquidated damages shall accrue once the thirty (30) day cure period has expired following Grantee's receipt of the Violation Notice, unless the City has agreed to extend the thirty (30) day cure period. If Grantee fails to cure within the thirty (30) days, then the liquidated damages accrue from the date of the Violation Notice for a maximum of one hundred-twenty (120) days, whereupon the City shall pursue alternate remedies as provided herein. Nothing in this section prevents the parties from settling any dispute relating to liquidated damages by mutual stipulation.
- (E) Grantee may cure the breach or violation within the time specified in Section 7.5(C)(2) to the City's satisfaction, whereupon no liquidated damages are assessed.
- (F) Schedule of Liquidated Damages. Nothing requires the City to assess liquidated damages, acting in its sole discretion, but such non-assessment does not operate as waiver or estoppel upon the City. Liquidated damages are set as follows:
 - 1) For any non-continuing violation of any material provision, up to \$250.00 per incident.
 - 2) For any continuing violation up to \$500 per incident, not to exceed \$5,000 per year.

7.7 Removal of Cable Following Termination of Franchise

Any order by the City to remove cable or conduit shall be mailed to Grantee not later than thirty (30) calendar days following the final determination of revocation of Grantee's right to occupy public right of way. Grantee shall file written notice with the City not later than thirty (30) calendar days following the date of termination of the Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed no later than twelve (12) months following the date of expiration of the Franchise.

7.8 Failure to Enforce

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

7.9 Alternative Remedies

- (A) As an alternative to the remedy set forth herein, the parties may mutually agree to submit any alleged violation of the provisions of this franchise to arbitration. The matter shall be determined by a board of three arbitrators, all of whom shall be citizens and taxpayers of the State of Washington, and shall be selected as follows: one by the City Council, one by the Grantee, and one by the two so appointed. Should the two arbitrators be unable to name a third, such third arbitrator shall be named by a judge of the Superior Court for Cowlitz County. Said board shall make its decision in writing and file its decision with the parties within sixty (60) days from the date of the appointment of the final arbitrator. The decision of the board shall be by a majority vote and signed by at least two arbitrators. The written decision shall be final and binding upon the parties.
- (B) No provision of this Franchise shall be deemed to bar the right of the parties to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in the Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the parties to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

7.10 Compliance with the Laws; Eminent Domain

Grantee shall comply with all applicable federal and State laws and regulations, including regulations of any administrative agency thereof, as well as all generally applicable ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the term, of this Franchise. Nothing in the Franchise shall expand or limit the City's right of eminent domain under State law. Nothing in the Franchise shall be deemed to waive the requirements of any lawful code, ordinance or resolution of the City requiring permits, fees to be paid, or regulation of construction.

SECTION 8. REPORTING REQUIREMENTS

8.1 Quarterly Revenue Report

Grantee shall submit to the City along with its franchise fee payment a report showing the basis for computation of such fees showing the basis for the computation of the franchise fees and PEG fees paid during that period in a form and substance substantially equivalent to Exhibit A attached hereto. This report shall separately indicate revenues received by Grantee within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.21 of this Franchise.

8.2 Complaint File and Reports

Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System, in a manner consistent with privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those files shall remain open to the City during normal business hours. Upon written request, Grantee shall provide, an executive summary report quarterly (within 45 days of the end of the preceding quarter) to City, which shall include the following information:

- 1) Nature and type of customer complaint;
- 2) Number, duration, general location and customer impact of unplanned service interruptions
- 3) Any significant construction activities which affect the quality or otherwise enhance the service the Cable System;
- 4) Average response time for service calls;
- 5) Phone activity report that includes use of automated response unit or voice response unit in answering and distributing calls from Subscribers at all call centers whether the calls are answered by a live representative, by an automated attendant or abandoned after thirty (30) seconds of call waiting;
- 6) New areas constructed and available for Cable Service, including multiple dwelling units;
- 7) Video programming changes (additions/deletions);
- 8) Such other information about special problems, activities, or achievements as Grantee may want to provide the City.

8.3 Annual Report

Upon written request, on or before May 31st of each year during the term of this Franchise, Grantee shall present a written report to the City or the City's designee which shall include:

- 1) A summary of gross revenue and franchise fee calculations for the previous year.
- 2) A summary of the previous year's activities for the Franchise Area served by Grantee including, but not limited to, the total number of Subscribers for each category of service, the number of homes passed, miles of overhead and underground cable plant.
- 3) A description of all significant changes and modifications to the system or services that have been implemented in the previous year.

8.4 Monitoring and Compliance Reports

Upon written request, but no more than once a year, Grantee shall provide FCC proof of performance test results. Upon written request, Grantee shall make available for City's review, any other technical testing results related to the system serving the City.

8.5 Additional Reports and Information

- (A) Grantee shall at all times maintain and allow the City access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the City and the Grantee.
- (B) Confidentiality. The City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously marking or identifying as "Confidential" on each page that contains confidential or proprietary information. If the City believes it must release any such books and records marked or identified as "Confidential" in the course of enforcing this Agreement, in response to a public record request, subpoena or other court order, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time so Grantee may take appropriate steps to protect the information from disclosure.

8.6 Grantee Report of Communications with State Regulatory Bodies or Committees

Grantee shall notify the City whenever the Grantee names the City in any filings which Grantee may submit to the State of Washington that bear relevance on the terms of this Franchise. Upon request, copies of responses from the State of Washington related to Grantees submittal pertaining to the Cable System serving the City shall likewise be filed.

In addition, Grantee shall within 10 days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the City's administration of this Franchise, provide the City a copy of the communication.

SECTION 9. CUSTOMER SERVICE POLICIES

9.1 Response to Customers and Cooperation with City

Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

9.2 Customer Service

- (A) The Grantee shall comply with all applicable customer service standards established in the Cable Act or federal rules and regulations, including and not limited to FCC Rules and Regulations, Part 76, Subpart H and Subpart T, and Grantor has the authority to enforce such standards. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with deferral law and regulations. Grantee will comply with privacy rights of Subscribers in accordance with federal, state, and local law.
- (B) Throughout the Agreement term, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located in the City of Longview/Cowlitz County Franchise Area which will be open during normal business hours, as defined by the FCC, to provide Subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints. Grantee shall install telephones and other equipment so that customer complaints and service requests can be received by Grantee on a 24-hour basis at a toll-free telephone number. Grantee shall have the option to substitute the service center requirement by providing for pick up or drop off of equipment free of charge in any one of the following manners:
- 1) by having Grantee representative going to the customer's residence, or
 - 2) by using a prepaid mailer.
- (C) Grantee also has the option to provide payment drop off locations within the Franchise Area. Grantee shall provide City and Subscribers with at least sixty (60) days' notice of election to discontinue the service center.
- (D) City hereby adopts the customer service standards set forth in §76.309 of the FCC's rules and regulations, as included in Exhibit B.

SECTION 10. LINE EXTENSION POLICY

10.1 Service and Installation

Grantee shall make service available at standard installation and service rates, for every potential subscriber, pursuant to the following requirements:

- (A) In newly developing underground service areas, where a shared trench is provided, Grantee shall extend and make cable television service available to every dwelling unit in areas having at least twenty (20) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.
- (B) In any area served by overhead facilities Grantee shall extend and make cable television service available to every dwelling unit in areas having at least twenty (20) dwelling units per strand mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.
- (C) In any area served by underground facilities that has existing homes that are not served by Grantee, Grantee shall extend and make cable television service available to every dwelling unit in areas having

at least one-hundred twenty (120) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system.

- (D) Grantee must extend and make cable television service available to any resident requesting connection at the standard connection charge if the connection to the resident would require no more than a standard 125' aerial drop line.
- (E) With respect to requests for connection requiring an aerial drop line in excess of 125', the Grantee must extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by the company for the distance exceeding 125'.
- (F) The Grantee, in its application, may propose a line extension policy which will result in serving more residents of city than as required.

10.2 Annexed Areas and Requirements

- (A) City Notice of Annexation. In the event the City annexes any area which is being provided cable service by Grantee, the City shall provide to Grantee, within (10) ten working days of passage by City Council, a copy of the City ordinance, legal description, if not found in the ordinance, addresses and a map defining the annexed area.
- (B) Grantee Update of Subscriber Information Following Annexation. Grantee shall provide written notice to the City, within one hundred-twenty (120) days following an annexation, indicating that subscriber addresses within the annexation area have been updated to reflect the City as the franchising authority. Grantee shall provide revenue for new subscribers effective from the date of annexation.
- (C) Grantee service to newly annexed areas. Upon the annexation of any additional land area by the City, the following conditions apply:
 - 1) If the annexed area is not currently served by a cable operator, Grantee will be subject to the other provisions of this franchise.
 - 2) If the annexed area is served by a cable operator other than Grantee, the Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so.

SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS

11.1 Franchise Fees

- (A) Fee amount. During the term of the Franchise, in consideration of the grant of this Franchise and permission to use the Public Rights of Way in the Franchise Area, Grantee shall pay to the City a franchise fee of 5% of Gross Revenues. If any such law, regulation or valid rule alters the 5% franchise fee enacted by the Cable Act, then the City shall have the authority to increase or decrease the franchise fee accordingly, provided such change is for purposes not inconsistent with Applicable Law, and Grantee agrees to pay the maximum permissible amount. In the event franchise fee is modified by the City, City agrees to provide Grantee with prompt written notice of such modification.

(B) Bundling. In the event Grantee bundles or combines Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the franchise fee, it shall allocate Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(C) Fee Payment

- 1) Franchise fees shall be paid quarterly for the preceding quarter ending March 31, June 30, September 30, and December 31. At the time of the quarterly payment, the Grantee shall submit a written report to the City, verified by an officer of Grantee, which shall contain an accurate statement of all Gross Revenues related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.
- 2) Neither current nor previously paid franchise fees shall be subtracted from the Gross Revenue amount upon which franchise fees are calculated and due for any period, unless otherwise required by Applicable Law. Nor shall copyright fees or other license fees paid by Grantee be subtracted from Gross Revenues for purposes of calculating franchise fees.
- 3) In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Washington.

(D) Additional Commitments not Franchise Fees.

No term or condition in this Franchise Agreement shall in any way modify or affect Grantee's obligation to pay Franchise Fees to City. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to City. Payment of the Franchise Fees under this Franchise Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee, or other generally applicable fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by City.

(E) City Utility or Business & Occupational Taxes.

In addition to the franchise fee, or as an alternative to all or any part of the Franchise Fee, the City may impose a utility or other tax on the Grantee's Gross Revenues, provided that such utility tax is non-discriminatory. In such event, the City agrees that Grantee's total annual payment obligation to the City, exclusive of any PEG capital fee set forth under this agreement, shall not exceed eight percent (8%) of Grantee's Gross Revenues.

11.2 Auditing and Financial Records

- (A) Grantee shall manage all of its operations in accordance with a policy of keeping relevant books and records open and accessible to the City. The City shall have the right as necessary for effectively enforcing the Franchise, to inspect at any time during Normal Business Office Hours

upon reasonable notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by Grantee and any parent company pursuant to the rules and regulations of the FCC and other regulatory agencies, and other like materials of Grantee and any parent company which relate to the enforcement of the Franchise. Access to the aforementioned records shall not be denied by Grantee to representatives of the City on the basis that said records contain "proprietary" information. However, to the extent allowed by Washington law, the City shall protect the trade secrets and other confidential information of Grantee and any parent company.

- (B) Grantee agrees to meet with representatives of the City upon request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records.
- (C) The City or its designee may conduct an audit of other inquiry in relation to payments made by Grantee no more than once every three (3) years during the Term. As a part of the audit process, the City or its designee may inspect Grantee's books and records relative to the Franchise at any time during regular business hours and after thirty (30) calendar days' written notice. All books and records deemed by the City or its designee to be reasonably necessary for such audit or inquiry shall be made available by Grantee in a mutually agreeable format and location within the service area. Grantee agrees to give its full cooperation in any audit or inquiry and shall provide responses to inquiries within thirty (30) calendar days of written request. Grantee may provide such responses after the expiration of the response period above if the City agrees in writing to provide additional time.
- (D) Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. Enforcement of any overpayment or underpayment shall be undertaken in accordance with Section 7.5 of this Franchise. In the event Grantee has underpaid the City by an amount greater than five percent (5%) underpayment, Grantee agrees to pay the cost of the audit in an amount up to seven thousand five hundred (\$7,500). No such payment shall be required of Grantee until Grantee has exhausted all of its Legal and administrative remedies.
- (E) In the event of an overpayment by Grantee, the City shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days that Grantee withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the City.
- (F) The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement of the Franchise.

11.3 Performance Bond

Within thirty (30) days after the Grantee's acceptance of this Franchise, Grantee shall post a performance bond, in the amount of fifty thousand dollars (\$50,000.00), to ensure Grantee's faithful performance of the terms of this Franchise. Neither the provisions of this section, any bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by Grantee or to limit liability of Grantee under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

11.4 Validity of Bond

If, at any time during the term of the Franchise, the condition of the entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the City, Grantee shall replace such bond by a bond of like amount and similarly conditioned, issued by an entity satisfactory to the City.

11.5 Indemnification by Grantee

Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of, or alleged to arise out of, any claim for damages for Grantee's invasion of the right of privacy, defamation of any person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington or any local agency applicable to Grantee in its business. Nothing herein shall be deemed to prevent the City, its officers, or its employees, from participating in the defense of any litigation by their own counsel, at such parties' expense. Such participation shall not, under any circumstances, relieve Grantee from its duty of defense against liability, or of paying any judgment entered against the City, its officers, or its employees.

Notwithstanding, this Section (11.5) does not include PEG Access programming, operations, administration, or facilities, Access Channel(s), or Designated Access Provider(s), all of which is the City's sole responsibility.

11.6 Grantee Insurance

(A) Grantee shall maintain, throughout the term of the Franchise, liability insurance in the minimum amounts of:

- 1) Commercial General Liability: Two-million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollars (\$2,500,000) aggregate limit;
- 2) Automobile Liability: Two-million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
- 3) Two-million dollars (\$2,000,000) for all other types of liability, including claims for damages for invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or, for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington, or any local agency with jurisdiction.

- (B) Such insurance shall specifically name as additional insured the City of Kelso, its officers, employees and agents, shall further provide that the policy shall not be modified or canceled during the life of this Franchise without giving 30 days. written notice to the City.
- (C) Grantee shall file with the City a certificate of insurance showing up-to-date coverage and additional insured coverage, as set forth above. Coverage shall not be changed or canceled without approval of the City.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 Posting and Publication

Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

12.2 Guarantee of Performance

Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a 10-year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Grantee.

12.3 Entire Agreement

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

12.4 Consent

Wherever the consent or approval of either Grantee or the City is specifically required in this Franchise Agreement, such consent or approval shall not be unreasonably withheld.

12.5 Ordinances Terminated

The cable television franchise as originally granted by Ordinance Nos. 99-3444 is hereby terminated.

12.6 Franchise Acceptance

This Franchise granted by this Ordinance shall be effective fifteen (15) days from date of final passage by City Council; provided, however, that Grantee shall have sixty (60) days to accept the Franchise and

comply with all conditions for such acceptance. This Franchise shall be voidable at the City's discretion if Grantee fails to accept within sixty (60) days.

12.7 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Washington, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

12.8 Work of Contractors and Subcontractors

Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

12.9 Severability

If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court 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.

12.10 Counterparts

This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

12.11 No Waiver of Rights

Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, either City or Grantee may have under Federal or state law unless such waiver is expressly stated herein.

12.12 No Third Party Beneficiaries

Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

12.13 Modification

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

12.14 Notices

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City Manager
City of Kelso
203 Pacific Avenue
P.O. Box 819
Kelso, WA 98626

Non-binding courtesy copy to:

City Attorney
City of Kelso
203 South Pacific Avenue
P.O. Box 819
Kelso, WA 98626

To the Grantee:

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC.
Attention: Government Affairs
9605 SW Nimbus Ave.
Beaverton, Oregon 97008

12.15 Governing Law

Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.

FRANCHISE ACCEPTANCE

The undersigned, Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington LLC, does hereby accept the Franchise granted pursuant to Ordinance No. _____ passed and approved on _____, 201__ and does hereby agree that it will comply with and abide by all of the provisions, terms, and conditions of the Franchise subject to applicable federal, state, and local law.

**Comcast of Colorado/Florida/Michigan/
New Mexico/Pennsylvania/Washington, LLC**

By: _____

Name: _____

Its: _____

Date: _____

City of Kelso

By: _____

Name: Stephen Taylor

Its: City Manager

Date: _____

EXHIBIT A - FRANCHISE FEE PAYMENT WORKSHEET

	Month/Year	Month/Year	Month/Year	Total
Subscriber Revenue				
Basic Service				
Expanded Basic Service				
Bad Debt/Write-offs				
Bulk Revenue				
Digital Cable/Services				
Equipment Revenue				
FCC Fee Revenue				
Franchise Fee Revenue				
Guide Revenue				
Inside Wiring				
Installation Charge				
Late Fee Revenue				
Other Revenue				
Premium Service				
Pay-per-view				
Processing Fees				
Allocated Revenue				
Home Shopping Revenue				
Leased Access				
Other Revenue				
Tower & Rental Income				
Local Advertising				
National Advertising				
Bad Debt on Advertising				
TOTAL REVENUE				
Fee Calculated				

Fee Factor: 5%

EXHIBIT B - FCC CUSTOMER SERVICE STANDARDS

Grantee shall comply in all respects with the following customer service requirements established by the §76.309 of the FCC's rules and regulations:

(1) Cable System office hours and telephone availability:

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(B) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(ii) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(iii) The operator shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during Normal Business Office Hours and will be conveniently located.

(2) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(i) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other Service problems the next business day after notification of the Service problem.

(iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The operator may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between Cable operators and Subscribers:

(i) Refunds. Refund checks will be issued promptly, but no later than either:

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

EXHIBIT C - CHECKLIST OF NOTICES AND REPORTS

This Exhibit provides excerpts from this Agreement related to regular notice and reporting requirements of this document. Other less-routine notice requirements are described in relevant sections of this Agreement and are not listed below.

Reports and notice requirements – Cross-reference – City to Grantee

Section 4.8 – Performance Testing – Grantee shall inform the City of the time and place of each test no less than three weeks prior to the scheduled compliance test

Section 5.2 – Changes in Programming Services – Grantee shall provide at least thirty (30) day's prior written notice to Subscribers and to the City of Grantee's intent to effectively delete any broad category of programming or any channel... including all proposed changes in channel allocation, including any new equipment requirements.... The Grantee shall also give 30 days. written notice to both Subscribers and the City before implementing any service change.

Section 6.5 – PEG Channel Location – Grantee will give the City at least 90 day notice prior to changing any PEG channel location or number.

Section 7.4 – Regulation of Rates and Charges – Grantee shall give the City and all Subscribers within the City of Kelso at least thirty (30) days' notice of any intended change to Subscriber rates or charges.

Section 8.1 – Quarterly Revenue Report

Section 8.2 – Complaint File and Reports

Section 8.3 – Annual Report

Section 8.8 – Grantee report of communications with State regulatory bodies or committees - Grantee shall notify the City whenever the Grantee names the City in any filings which Grantee may submit to the State of Washington that bear relevance on the terms of this Franchise... Grantee shall within 10 days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the City's administration of this Franchise, provide the City a copy of the communication

Section 10.2 – Annexed Areas and Requirements - Grantee shall provide written notice to the City, within one hundred-twenty (120) days following an annexation, indicating that subscriber addresses within the annexation area have been updated to reflect the City as the franchising authority.

Reports and notice requirements – Cross-reference – City to Grantee

Section 6.6 – PEG Fees – City annual report to Grantee of PEG fee purchases - City shall provide to Grantee, within ninety (90) days following the end of each calendar year, a report detailing the City's PEG related capital expenditures.

Section 10.2 – Annexed Areas and Requirements - In the event the City annexes any area which is being provided cable service by Grantee, the City shall provide to Grantee, within (10) ten working days of passage by City Council, a copy of the City ordinance, legal description, if not found in the ordinance, addresses and a map defining the annexed area.

Exhibit D - Franchise Acceptance.

The undersigned, Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington LLC, does hereby accept the Franchise granted pursuant to Ordinance No. _____ passed and approved on _____, 201__ and does hereby agree that it will comply with and abide by all of the provisions, terms, and conditions of the Franchise subject to applicable federal, state, and local law.

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