SPONSORED BY:_____

PROPOSED BY: Executive

INTRODUCTION DATE:_____

ORDINANCE NO. _____

GRANTING COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, A NON-EXCLUSIVE FRANCHISE FOR THE PROVISION OF CABLE SERVICES.

WHEREAS, TCI Cablevision of Washington, Inc. was granted a cable services franchise by Whatcom County under County Ordinance No. 96-005, approved on January 23, 1996;and Comcast Cable Communications Management, LLC, is the successor of that franchise; and

WHEREAS, the Franchise expired on January 1, 2011; and

WHEREAS, Whatcom County and Comcast Cable Communications Management, LLC, have continued to operate under the terms and conditions of the franchise since the expiration of the franchise, and are not aware of any defaults on the part of either party under the terms and conditions of the franchise; and

WHEREAS, Whatcom County and Comcast Cable Communications Management, LLC, began renewal negotiations in accordance with Section 62(h) of Title VI of the Communications Act of 1934, as amended, and the parties continued to reserve all rights under Section 626 during such negotiations; and

WHEREAS, as part of the franchise negotiations, Comcast Cable Communications Management, LLC has applied to the Whatcom County for a the grant, continuation and renewal of its non-exclusive franchise for the right of entry, use, and occupation of the public rights-of-way within the County, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, upon, along and/or across those rights-of-way for purposes of offering and providing cable services utilizing said facilities; and

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by Whatcom County; and

WHEREAS, said application has come on regularly to be heard by the County Council on the ___ day of _____, 2019, and notice of this hearing having been duly published on the _____ day of _____, 2019, and the _____ day of _____, 2019, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the County Council now deems it appropriate and in the best interest of Whatcom County and its inhabitants that a franchise be extended, renewed and granted to Comcast Cable Communications Management, LLC.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a non-exclusive franchise set forth in the language hereinbelow, is hereby granted to Comcast Cable Communications Management, LLC for a period of ten (10) years in order that it may install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, upon, along and/or across those rights-of-way for purposes of offering and providing cable services utilizing said facilities

Adopted this _____ day of _____, 2019.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

_____
Dana Brown Davis, Clerk of the Council

_____
Rud Browne, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

_____
Civil Deputy Prosecutor

_____
Jack Louws, County Executive
( ) Approved ( ) Denied

Date Signed: _____

Whatcom County, Washington, and

Comcast Cable Communications Management, LLC

Cable Television Franchise

Whatcom County
Comcast Cable Television Franchise Agreement
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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," "PEG Access," or "PEG Use"

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 County.

(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.

1.2 "Access Channel"

means any channel or portion of a PEG channel utilized for Video Services, whether by Grantee or in cooperation with, by or through the County, where any resident of the County or any non-commercial organization whose members reside in the County may be a programmer, either without charge or in a non-profit manner, on a non-discriminatory basis.

1.3 "Access Facilities"

means a facility(s) designated for PEG Use, and equipment, including, but not limited to, modulators, demodulators and transmitters, as well as production facilities and equipment for PEG Use of PEG Channels.

1.4 "Access Provider"

means an entity designated by the County to provide PEG programming and the provision of any facilities, equipment or other services for the purpose of facilitating such programming.

1.5 "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.

1.6 "Basic or Basic Service"

means any service tier which includes the retransmission of local television broadcast signals.

1.7 "Cable Service"

means:

(a) The one-way transmission to Subscribers of (1) video programming, or (2) other programming services; and

(b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

1.8 "Cable Act"

means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

1.9 "Cable System"

means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the County, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with Section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system. For the purposes of this Franchise, Cable System means Grantee's system serving the County.

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 Commission by regulation).

1.11 "County"

means Whatcom County of the State of Washington and all the unincorporated territory within its present and future boundaries.

1.12 "County Code"

means the Municipal Code of Whatcom County, Washington, as may be amended from time to time.

1.13 "Grantee"

means Comcast Cable Communications Management, LLC, a Washington Corporation and permitted successors and assigns.

1.14 "Day"

unless otherwise specified shall mean a calendar day.

1.15 "Demarcation Point"

means the physical point at which the Cable System enters a subscriber's home or building.

1.16 "Digital Services"

means services offered over the Cable system including the transmission of audio and video by discrete (digital) signals including standard definition and high definition signals consistent with the standards developed by the Advanced Television Systems Committee for digital television transmission over terrestrial, cable, and satellite networks.

1.17 "Effective Date"

means this Franchise granted by this Ordinance shall be effective upon Grantee's acceptance and no sooner than ten (10) days from date of final passage by County 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 County's discretion if Grantee fails to accept within sixty (60) days.

1.18 "Expanded Basic Service"

Refers to the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

1.19 "Franchise"

means this Ordinance and conditions as set forth herein.

1.20 "Franchise Fee"

means the fee the County may assess in accordance with Section 622 (g) of the Cable Act (47 U.S.C. 542(g)).

1.21 "Gross Revenues"

means all revenue derived by Grantee, or any affiliate of Grantee or any other person who would constitute a cable operator of the Cable System under the Cable Act, from the operation of the Cable System to provide Cable Service in the County. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any tier of Cable Services including Basic Service, optional Premium Service or Digital Services; pay-per-view services;, installation, disconnection, reconnection and change-in-service fees, Leased Access channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the County, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenues from home shopping and other revenue-sharing arrangements.

Gross revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a Subscriber or user by a city, county, State or other governmental unit, and collected by Grantee for such entity. The Franchise fee is not such a tax. Gross revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in gross revenues for the period in which they are collected.

Gross Revenues shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees, however, amounts included in gross revenues shall not be counted more than once; therefore, amounts included once in Grantee's gross revenues shall not be added to gross revenues again if they are received by an affiliate of Grantee in payment for programming or other goods or services supplied to Grantee.

1.22 "Headend"

means the control center of the Cable System where incoming signals are amplified, converted, processed, and combined for transmission to the Subscriber.

1.23 "Indefeasible Right of Use"

means the exclusive, irrevocable right to use specified fiber subject to the terms and conditions of this Franchise, and any extensions or renewals thereof.

1.24 "Leased Access"

means Channel capacity designated for commercial use by Persons unaffiliated with Grantee, in accordance with section 612 of the Cable Act.

1.25 "Municipal buildings"

means those buildings owned or leased and occupied by the County for government administrative purposes.

1.26 "MVPD"

means "multichannel video programming distributor." As used in this Franchise MVPD means a cable operator or a multichannel multipoint distribution service, that makes available for purchase, by Subscribers, multiple Channels of video programming.

1.27 "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.

1.28 "Normal Operating Conditions"

means those 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.

1.29 "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.

1.30 "PEG"

means public, educational and governmental.

1.31 "Person"

means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

1.32 "Subscriber"

means any person who legally receives Grantee's Cable Services over the Cable System.

1.33 "State"

means The State of Washington

1.34 "Road"

means the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all unincorporated areas of the County.

1.35 "Transfer"

means any transaction in which:

(a) All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Roads);

(b) There is any change, acquisition, or direct or indirect transfer of control of the Grantee;

(c) The rights and/or obligations held by the Grantee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or

(d) The transfer of stock in a corporation so as to create a new controlling interest constitutes a "transfer." The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

1.36 "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 County hereby authorizes Grantee to occupy or use the County's Roads subject to (A) the provisions of this non-exclusive Franchise to provide Cable Service within the County; and (B) all applicable provisions of the County Code. 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 County 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

The Grantee, through this Franchise, is granted the right to operate its Cable System using the Roads within the Franchise Area in compliance with the County Code, as may be amended periodically. The Grantee specifically agrees to comply with the lawful provisions of the County Code and lawful applicable regulations of the County, and subject to the police power exception below, in the event of a conflict between the lawful provisions of the County Code or lawful applicable regulations of the County and this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the County through subsequent amendment to the County Code or any regulation of County, except in the lawful exercise of County's police power. Grantee acknowledges that the County may modify its generally applicable regulatory policies by lawful exercise of the County's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications. Grantee reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law. The County reserves all of its rights and defenses to such challenges whether arising in contract or at law.

2.3 Franchise Term

The term of the Franchise shall be ten (10) years, 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 unincorporated limits of the County. 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. The County specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate

provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee. If following the execution of this agreement, any other wireline MVPD enters into any agreement with the County to provide Video Services to Subscribers in the County, the County, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide Video Services to Subscribers in the County under a substantively similar agreement as applicable to the new MVPD, if permissible under Applicable Law. Within one hundred and twenty (120) Days after the Grantee submits a written request to the County, the Grantee and the County shall enter into an agreement or other appropriate authorization (if necessary) containing the exact same terms and conditions as are applicable to the new wireline MVPD.

2.6 Competition from Wireline MVPD

If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a wireline MVPD to provide Cable Service or similar Video Service to Subscribers in the County, or that otherwise changes the nature or extent of the obligations that the County may request from or impose on a wireline MVPD providing Cable Service or Video Service to subscribers in the County, the County agrees that if another wireline MVPD avails itself of such new law and provides Cable Service or Video Service in the County, upon Grantee's written request, the County shall permit the Grantee to terminate this Franchise and, subject to Applicable Law, provide Cable Service or Video Service to Subscribers in the County on substantively similar terms and conditions as are applicable to the other wireline MVPD under the changed law. The County and the Grantee shall implement the provisions of this Section within one hundred and twenty (120) Days after the Grantee submits a written request to the County. The County shall have the same right of termination of this Franchise should the changed law be more advantageous to the County, in the County's sole discretion.

2.7 Franchise Renewal or New Franchise

The County may establish appropriate requirements for new franchises or franchise renewals consistent with Applicable Law.

2.8 Periodic Public Review of Franchise

(a) Upon thirty (30) days written notification, the County may hold performance evaluation sessions, no more than once every twelve months, whenever necessary to ensure proper performance of the provisions of this Franchise.

(b) All evaluation sessions shall be open to the public.

(c) Topics which may be discussed at any evaluation session include, but are not limited to, construction issues, Cable Service rate structures, Franchise Fee payments, liquidated damages, free or discounted Cable Service, application of new technologies, Cable System performance, Cable Services currently provided and programming offered, future plans of Grantee for new services or programs, Subscriber Complaints, privacy, modifications to this Franchise, judicial and FCC rulings, line extension policies and the City's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(d) During evaluations under this subsection, Grantee shall fully cooperate with the County and shall provide such information and documents as the County may reasonably require to perform the evaluation.

2.9 Transfer or Change of Control

Neither the Grantee nor any other Person may Transfer the Cable System or the Franchise without the prior written consent of the County, which consent shall not be unreasonably withheld. No consent shall be required, however, for (i) 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 (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. In any event of transfer or change of control in which the consent of the County is not required, Grantee shall nonetheless promptly inform the County of the transfer (ii) above and the identity of the transferee. If Grantee submits an application for approval of any Transfer in accordance with federal regulations (47 C.F.R. Section 76.502) the County shall process said application in accordance with those regulations. Applications for approval of any Transfer shall also be filed, and the County shall process such applications, in accordance with procedures set out in the County Code so long as they are not in conflict with Applicable Law. A Transfer without the prior written approval of the County is a material violation of this Franchise and shall make the Franchise subject to termination by the County.

For the purposes of determining whether it shall consent to a Transfer, the County, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law. The Grantee and any prospective transferees shall assist the County in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, the County shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System as per federal law.

No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the Grantee under this Franchise for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

Approval by the County of a Transfer of a Franchise does not constitute a waiver or release of any of the rights of the County under this Franchise, whether arising before or after the date of the Transfer.

2.10 Renewal

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

2.11 Conditions of Sale

The County 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 per the Cable Act, or upon its forfeiture or revocation as provided for herein, the County shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all roads and public ways within the Franchise area. If Grantee fails to do so, the County 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 Whatcom 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 agreement through the transition, to maintain continuity of service to all Subscribers.

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

3.1 Use of Roads

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 Roads within the County 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 County. 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 Construction or Alteration

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 County Code.

3.3 Non-Interference

Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Roads. 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 make every effort to provide advance notice of the same to such affected residents as per reasonable industry standard.

3.4 Consistency with Designated Use

Notwithstanding the above grant to use Roads, no Road shall be used by Grantee if the County, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such road was created or dedicated, or presently used under Applicable Laws.

3.5 Undergrounding

Grantee shall place underground all of its transmission lines which are located or are to be located above the roads of the County in the following cases:

(a) All other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;

(b) Grantee is unable to get pole clearance;

(c) Underground easements are obtained from developers of new residential areas; or

(d) Utilities are overhead but residents prefer underground service drops (underground service drops provided at cost).

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 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.

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. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 Maintenance and Restoration

(a) Restoration to Prior Condition

Consistent with Section 12.24, 12.27, 12.28, and 12.30 of the County Code, in case of any disturbance of any Road, pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping or surface, in as good condition as before said work was commenced and in accordance with standards for such work set by the County and the County Code.

Grantee shall perform all restoration work promptly.

If Grantee fails, neglects or refuses to make restorations as required under this Section, then the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.

Grantee shall maintain all above ground improvements that it places on County Roads pursuant to this franchise. In order to avoid interference with the County's ability to maintain the Roads, Grantee shall provide and maintain a clear zone of five feet on all sides of such improvements.

If Grantee fails to comply with this provision, and by its failure, property is damaged, then Grantee shall be responsible for all damages caused thereby.

(b) Disputes

In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of Whatcom County

Department of Public Works subject to appeal by Grantee to Hearings Examiner consistent with Section 7.5 herein.

3.7 Tree Trimming

Grantee shall have the authority to trim trees upon and overhanging Roads, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. The Grantee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the County; provided, that the Grantee may so remove or trim when necessary to permit immediate repair of the system in order to restore its signal so long as it gives the County notice thereof as promptly as is reasonably practical. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible, and shall defend and hold County harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed or for any personal injury or property damage resulting from said activities.

3.8 Relocation

(a) Relocation of Facilities

In the event that at any time during the period of the Franchise, county or state shall lawfully elect to alter or change the grade of any road, alley, or other public ways, 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 and within the time frame established by the County Engineer, which time frame shall be reasonably determined and which shall in no event be less than sixty (60) days following the date of written notice of such order. Design locate marks will be placed in the same three (3) day time frame as construction located marks.

All construction or installation of Grantee Facilities, service, repair, or relocation of the same, performed over, above, along or under the Franchise Area shall be done in such a manner as not to interfere unreasonably with the construction and maintenance of other existing utilities, lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of the Franchise Area. The owner of all utilities, public or private, installed in the Franchise Area prior in time to the Grantee Facilities shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee Facilities. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise

Area. Grantee shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in time to Grantee Facilities.

(b) Failure by Grantee to Remove or Relocate

If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the County; or in emergencies or where public health and safety or property is endangered, the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.

(c) Procedure for Removal of Cable

Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the roads which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Subject to the County 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 streets along the extension thereof or otherwise which is ordered to be removed by the County based upon a determination, in the sole discretion of the County, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the roads which is not removed shall be deemed abandoned and title thereto shall be vested in the County.

(d) Aerial and Underground Construction

If all of the distribution lines of all of the wireline service providers, such as telecommunications service providers, as defined in RCW 35.99.010, a utility service provider or a Cable Operator (collectively "Service Providers") in any portion of the Franchise Area are underground, Grantee shall place its Cable System's distribution cables underground within that area; provided that such underground locations are actually capable of accommodating Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any portion(s) of the Franchise Area where the distribution lines of any of the respective Service Providers are both aerial and underground, Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where a Service Provider's wiring is aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear

the additional cost in excess of aerial installation. If funds exist, are set aside for such purpose, or provided by a third party, Grantee shall be entitled to seek reimbursement for its share of funds to offset the cost of placing its facilities underground. Grantee shall utilize existing conduit wherever possible.

The County shall not be required to obtain easements for Grantee. Grantee shall, to the extent economically feasible, participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where utilities are being converted to underground facilities.

Nothing in this Section shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

In the event of a County facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare, Grantee agrees to bear the costs of converting Grantee's Cable System from an overhead system to an underground system as follows:

Utility Trench and Vault/Pedestal Engineering: To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete Cable System related engineering coordination with the other utilities involved in the project.

Conduit and Vaults/Pedestals Placement: Grantee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo cable trench as follows:

(1) If the County contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.

(2) If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the County or its contractor, Grantee shall have the option to hire its own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.

(3) If Grantee chooses to hire its own contractor(s), the County and its contractor(s) are responsible for coordinating with Grantee's contractor(s) to provide reasonable notice and time to complete the

placement of Grantee's conduits and vaults/pedestals in the supplied joint trench.

Within the conversion area, Grantee shall not be responsible for coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to its solo cable trench. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed above.

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

In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all time and material costs associated with the conditioned underground conversion of cable facilities.

Grantee shall utilize existing poles and conduit wherever possible.

3.9 Movement of Buildings

Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the County, 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 County shall require all building movers to provide not less than 15 days' notice to the cable company to arrange for such temporary wire changes.

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 85 channels of video programming to its customers in the Franchise Area, including Basic Cable.

4.2 Complimentary Cable Service in County

As a voluntary initiative, the Grantee will continue to provide free of charge to the County and schools, Cable Service (consisting of the Digital Starter tier, or their reasonable functional equivalent) to each Municipal Building, Institutional Facility and each State accredited and/or Regional accredited K-12 school, not including "home schools," or incarceration facilities, located in the Franchise Area.

(a) County or school responsibilities

In instances wherein the County or school is leasing and occupying the building, the County or school shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building's owner. The Cable Service provided shall not be used for commercial purposes.

(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 County 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 County 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) Alternate Wireline Service Provider

In the event that there is another wireline service provider (or providers) providing Cable Service within the County, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis, in County's sole discretion, in an effort to maintain equitable burdens on each provider.

4.3 Equal and Uniform Service

Subject to density requirements, Grantee shall provide access to equal and uniform Cable Service throughout the franchise area and shall not discriminate in the provision of Cable Services against any Subscriber consistent with applicable federal law.

4.4 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 County upon request.

4.5 Technical Standards

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

4.6 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 County inspection upon request.

The tests may be witnessed by representatives of the County, and Grantee shall inform the County 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 County. 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 County 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 County.

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
Public, Educational and Governmental Access Programming

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 County. Further, Grantee shall provide at least thirty (30) days' prior written notice to Subscribers and to the County 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 County 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 Obscenity

Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States; provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational and governmental access programming.

5.4 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.

5.5 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 County or Access Provider.

SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

6.1 Access Channels

For the purpose of meeting the community's need for Access programming, the Grantee shall make available one (1) Government Access Channel throughout the term of this Franchise. As of the effective date of this Franchise, the County does not control or operate said Government Access Channel. The County collaborates with another neighboring community, serviced by the Grantee, to facilitate the County's needs for Access programming.

If the County opts to control and operate its own Government Access Channel, upon receipt of forty-five (45) days written notice, the County and Grantee shall meet to discuss and mutually agree upon a reasonable implementation plan to activate said Channel, and Grantee will provide such Channel in no event later than two hundred seventy (270) days. Grantee will use good faith efforts to make available the Government Access Channel in advance of the established timeframes and provide monthly reports to the County on its progress. Notwithstanding anything to the contrary set forth herein, if County desires to program said Government Access Channel, the Grantee will implement the County's programming within the existing Access Channel currently airing the local Government Access programming.

The County acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that services the Franchise Area. The Grantee may, but is not required, to provide the Subscribers in the Franchise Area with the other regional access channels so long as the programmers offer them for use on the Cable System.

6.2 Control and Administration

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

6.3 Noncommercial Use of PEG

PEG Access Channels are for noncommercial programming to be promoted and administered by the County as allowed under Applicable Law. Permitted noncommercial uses of the PEG Access 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 County 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.

6.4 Indemnification

The County shall require, through the mutually agreed upon use requirements related to the protection of copyrighted material, that all public access users indemnify and hold the Grantee and the County harmless from all liability of any kind whatsoever, including the costs of legal defense arising from the use of facilities, channel(s) or access time by the user. To the extent allowed by law, the County agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the County's use of the PEG Access Channels required herein.

6.5 PEG Channel Location

Any PEG Access Channel activated hereunder will be provide to all subscriber on the Basic Service tier and 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 County. Grantee will give County at least 90 day notice prior to changing any PEG Access channel location or number.

6.6 PEG Capital Fees

(a) PEG Fee Amounts

If County activates a Access channel per Section 6.1, the Grantee shall collect fees to support PEG capital needs on a per subscriber per month basis.

Within ninety (90) days of Grantee's receipt of the County's advance written request to activate the Government Access Channel, Grantee shall collect on behalf of the County a per Subscriber fee of no more than twenty five cents ($.25) per month ("PEG Fee").

Subject to the preceding requirements of this Section 6.7(a), the County may, at any time over the term of this Franchise, provide Grantee ninety (90) days advance written notice and increase or decrease the PEG Fee as determined in the County's sole discretion. In no event however, may any PEG Fee exceed twenty five cents ($.25)/Subscriber/month.

Any PEG fees collected and shown on Subscriber bills shall appear in a single line on the bill.

(b) County's use of PEG Fees

In no event shall the County 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.

So long as the County uses the PEG fee for capital purposes consistent with federal law and FCC determinations, the County 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) Grantee payment of PEG Fees

Upon activation of PEG Fee, Grantee shall pay the PEG Fee to the County quarterly at the same time as the payment of franchise fees under Section 11.1 of this Franchise. So long as the County uses any PEG fee in a manner consistent with this Franchise, federal law and FCC determinations, 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 forty five (45) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve (12) percent per annum or the prime lending rate published by the Wall Street Journal plus two percent on the day the payment was due, whichever is greater.

6.7 Transition to HD Format for PEG Channel

Upon such time that Grantee provides all programming in an HD only format, Grantee shall provide the County's Access Channel in an HD format as well, provided that it receives an HD signal from the County.

6.8 Fiber Return Line

When the County provides notice to the Grantee concerning its election to program the Government Access Channel under Section 6.1, the County shall designate its proposed Government Access facility location. Within sixty (60) days of receiving notice, the Grantee shall provide an estimate of costs associated with the construction and activation of a fiber optic return line capable of transmitting Video Programming to enable the distribution of the County's Access programming to Subscribers on the provided Access Channel. The return line shall run from a location to be determined by the County to the Grantee's headend facilities. Within a reasonable time-period of receiving the County's directive to construct, the Grantee shall

construct and activate a return line in accordance with the cost estimate previously provided. The County agrees to pay the actual costs of the return line within ninety (90) days of construction / activation and receipt of an invoice from the Grantee. The County may utilize the PEG Fees from Section 6.6 to cover the cost of construction at their sole discretion. Once constructed, the Grantee shall maintain the fiber optic return line to Grantee's Headend. If the County desires to relocate or expand the fiber optic return line to new location(s) over the term of this Franchise, upon one hundred twenty (120) days written request by the County and at the County's cost for Grantee's reasonable time and materials, the Grantee shall construct the requested new fiber optic return line(s).

6.9 PEG Signals and Equipment

All Access Channels shall be provided as part of Basic Service in accordance with applicable law. All Access Channels may be delivered by the County to Grantee in standard digital format

Any and all costs associated with any modification of the Access Channels or signals after the Access Channels/signals leave the Access Provider's side of fiber termination panel, or any designated playback center authorized by the County, shall be borne entirely by Grantee and provided free of charge to the County and its designees.

Grantee shall not cause any programming to override Access programming on any Access Channel, except by oral or written permission from the County, with the exception of emergency alert system signals.

6.10 Technical Quality of PEG Channel Signals

(a) PEG channel signals

The parties agree that it is the responsibility of the designated access provider(s) to provide a quality PEG signal, to the Grantee at the point of demarcation, which meets or exceeds the FCC technical standards. Notwithstanding the forgoing, the Grantee agrees that it will deliver to subscribers a PEG signal of the same quality it receives from the designated Access provider(s) without degradation and in accordance with the FCC technical standards. There shall be no restrictions on Grantee's technology used to deploy and deliver standard digital signals so long as the requirements of the Franchise are otherwise met. FCC technical standards shall be used for all testing and assessment of quality under this section. Grantee shall not impose any additional charges on the County or any access provider(s) after the signal is delivered to Grantee.

(b) PEG Signal – Technical support from Grantee

Within 24 hours of a call from County to the Grantee identifying a technical problem and requesting assistance, Grantee will provide technical assistance or

diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the County in order to determine the course of action to remedy the problem.

6.11 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the County to obtain new equipment in order to be compatible with such change, Grantee shall reimburse the County for such equipment as may be necessary.

SECTION 7. REGULATORY PROVISIONS

7.1 Intent

In accordance with the provisions of Chapter 12.24, 12.27, 12.28, and 12.30 Whatcom County Code and Chapter 36.55 RCW, the County retains the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law, so long as such regulation does not modify or subvert the express provisions of this Franchise.

7.2 Areas of Administrative Authority

In addition to any other regulatory authority granted to the County by law or franchise, the County shall have administrative authority in the following areas:

(a) Administering and enforcing the provisions of this Franchise agreement, including the adoption of administrative rules and regulations to carry out this responsibility.

(b) Coordinating the operation of PEG Channel programming.

(c) Formulating and recommending long-range cable communications policy for the Franchise area.

(d) Disbursing and utilizing Franchise revenues paid to the County.

Grantee shall cooperate fully in facilitating the County's discharge of its administrative authority.

7.3 Regulation of Rates and Charges

(a) Right to Regulate.
The County reserves the right to regulate rates and charges for any Cable Service within the limits of Applicable Law.

(b) Notice of Change in Rates and Charges.
Throughout the term of this Franchise, Grantee shall give the County and all Subscribers within Whatcom County 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.

(c) 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.

(d) Low Income Senior/Disabled Discount Program.

As a voluntary initiative, Grantee agrees to provide throughout the term of this Franchise a discount of 30% from its published rate card to Basic Service Subscribers who are low income, and aged 65 years or older or disabled provided that such individual(s) are the legal owner or lessee/tenant of their dwelling unit and that their combined disposable income from all sources meets Grantee's then-applicable income standards for participant.

Grantee shall administer the discount program. The County shall refer potential qualifying customers to Grantee.

Upon request, Grantee shall provide the County with the number of Subscribers participating in the discount program.

The County acknowledges that discounted services reflect a voluntary initiative on the part of Grantee and is not a requirement of this Franchise. Should Grantee elect to discontinue the low income discount, Grantee shall first provide the County with ninety (90) days' prior notice.

7.4 Franchise Violations, Remedies, and Revocation

(a) Remedies

The County 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 County's and/or the public's rights under County Charter to the extent permitted by Applicable Law.

(1) To the extent the County deems necessary to remedy the default, proceeding against all or any part of any security provided under the County Code or this Franchise, including, without limitation, any bonds, security funds, or other surety, Grantee shall be responsible for all direct and actual costs related to the enforcement action including, but not limited to, legal and administrative costs;

(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.

In determining which remedy or remedies for Grantee's violation are appropriate, the County 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 County 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 County, 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 County 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 County 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 County, 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 County of the steps being taken and the projected date that they will be completed. The County shall not unreasonably refuse to accept the Grantee's proposed cure date but such decision shall be the County'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 County may refer the matter to the County's hearing examiner in accordance with Section 2.11 of the County Code. The Grantee will be provided an opportunity to present evidence to contest the alleged violation. County 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. County 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 County may impose any of the remedies set out in section 7.

7.5 Liquidated Damages

(a) Because Grantee's failure to comply with the provisions of this Franchise will result in damage to the County and because it will be impractical to determine the actual amount of such damages, the County 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 County 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 County 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 County 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 County 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 County 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 County's satisfaction, whereupon no liquidated damages are assessed.

(f) Schedule of Liquidated Damages. Nothing requires the County to assess liquidated damages, acting in its sole discretion, but such non-assessment does not operate as waiver or estoppel upon the County. Liquidated damages are set as follows.

(1) For failure to provide data, documents, reports and information as required by this Franchise or to cooperate with the County during a system review, One Hundred Fifty and No/100 Dollars ($150) per day, or part thereof, per each separate violation.

(2) For failure to provide the services required by this Franchise, including, but not limited to, the implementation and utilization of the PEG Channels, performance of required tests, and compliance with customer service standards, Two Hundred Fifty and No/100 Dollars ($250) per day for each day, or part thereof, such failure occurs or continues.

(3) For failure to comply with any of the material provisions of the Franchise, for which a liquidated damage is not otherwise specified, the liquidated damages shall be Two Hundred and No/100 ($200) per day for each day, or part thereof, such failure occurs or continues.

7.6 Removal of Cable Following Termination of Franchise

Any order by the County 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 County not later than 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 County. Removal shall be completed no later than 12 months following the date of expiration of the Franchise. To the extent that Grantee provides non-cable services over its Cable System that are not regulated under this Franchise, Grantee must confirm that it has the right to retain facilities in the right of way to continue to provide non-cable services.

7.7 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 County to enforce prompt compliance, and County's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

7.8 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 County 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 Whatcom County. Said board shall make its decision in writing and file its decision with the parties within 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.

7.9 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 County heretofore or hereafter adopted or established during the term, of this Franchise. Nothing in the Franchise shall expand or limit the County'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 County requiring permits, fees to be paid, or regulation of construction.

SECTION 8. REPORTING REQUIREMENTS

8.1 Quarterly Revenue Report

For each Franchise Fee payment there shall be a report submitted by a representative of the Grantee showing the basis for the computation of the Franchise Fees and applicable PEG fees paid during that period in the Grantee's standard format. This report shall separately indicate revenues received by Grantee within the County including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.22 of this Franchise.

8.2 Open Records

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

8.3 Confidentiality

Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate of Grantee that is not providing Cable Service in the Franchise Area. The County agrees to keep proprietary or confidential books or records of Grantee confidential to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary and how it may be treated as such under State or federal law. The Grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive.

If the County receives a demand from any Person for disclosure of any information designated by Grantee as proprietary or confidential, the County shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within five (5) business days.

8.4 Maps and Records Required

Grantee shall provide to the County upon request:

(a) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the County to add this information to County's geographic information system program;

(b) A copy of all FCC filings which relate to the operation of the Cable System in the Franchise Area; and

(c) A list of Grantee's Cable Services, rates and channel line-up.

(d) Grantee shall, provide County with information which shall describe in detail Grantee's compliance with customer service standards, including complaint resolution, telephone answering, and outage reports, subject to customer privacy regulations.

8.5 Annual Reports

Upon request, thirty (30) days after the end of the first quarter, Grantee shall submit to the County a written report, which shall include the following information:

(a) A summary of gross revenue and franchise fee calculations for the previous year.

(b) An unaudited financial statement for Grantee. The County shall have the right one (1) time during the term of this Franchise to require that the Grantee provide the County with an audited financial statement for any one fiscal year of the Grantee.

(c) A summary of the previous year's activities for the Franchise area served by Grantee including, but not limited to, the number of homes passed, miles of overhead and underground cable plant.

(d) A description of all significant changes and modifications to the system or services that have been implemented in the previous year.

(e) A summary of Subscriber complaints received in the previous year.

8.6 Monitoring and Compliance Reports

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

8.7 Additional Reports and Information

Grantee shall prepare and the County may review, at the times and in the form prepared by Grantee in its normal course of business, such additional reports with respect to its operation, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise.

SECTION 9. CUSTOMER SERVICE POLICIES

9.1 Response to Customers and Cooperation with County

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

9.2 Definition of "Complaint"

For the purposes of section 9, with the exception of Subsection 9.3, a "complaint" shall mean any communication to Grantee or to the County by a Subscriber or a Person who has; requested cable service, and is expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise and has not found resolution through normal Grantee processes.

9.3 Customer Service Agreement

Grantee shall provide to Subscribers a comprehensive service agreement and a customer packet for use in establishing Subscriber service. This packet shall, at a minimum, contain the following information:

(a) Services to be provided and rates for such services.

(b) Billing procedures.

(c) Service termination procedure.

(d) Change in service notifications.

(e) Liability specifications.

(f) Converter/Subscriber equipment policy.

(g) Breach of Agreement specification.

(h) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.

(i) The name and address, of the County identified as the local franchising authority This information shall be contained in the packet, A copy of the customer service agreement shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection. Thereafter, if the packet is modified to reflect material changes in policy an updated copy of the packet shall be sent to all Subscribers within 30 days of such modification.

9.4 Customer Service

(a) Customer Service Location

Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

(b) Customer Service Standards

The County hereby adopts the customer service standards set forth in §76.309 of the FCC's rules and regulations, as included in Exhibit.

(c) Customer Service procedures regarding television signal quality

Consistent with §76.1602 of the FCC's rules and regulations, Grantee will provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:

(1) Products and Services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service;

(5) Channel positions of programming carried on the system; and

(6) Billing and complaint procedures, including the address and telephone number of the County's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the County.

(d) Customer Service Rate and Service Changes

Consistent with §76.1603 of the FCC's rules and regulations, subscribers will be notified of any changes in rates, 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.

Grantee shall give 30 days' written notice to both subscribers and the County before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion

the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.

(e) Information on Subscriber Bills

Consistent with §76.1619 of the FCC's rules and regulations,

(1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(f) Refund Policy

If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.

(g) Late Fees

Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill.

(h) Disputes

In the event a subscriber has a complaint related to Grantee's service or performance and Grantee has failed to resolve the issue. Subscribers may then direct complaints regarding Grantee's service or performance to the chief administrative officer of the County or the chief administrative officer's designee, which may be a board or commission of the County.

9.5 Customer Bills

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

9.6 Notification of Complaint Procedure

Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in section 9.3, the 24-hour Grantee phone number for Subscriber inquiries.

9.7 Grantee Identification

Grantee shall provide all customer service technicians and all other employees entering private property with appropriate picture identification so that Grantee's employees may be easily identified by the property owners and Subscribers.

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 sixty (60) 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 thirty (30) 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'.

SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS

11.1 Franchise Fees

During the term of the Franchise, Grantee shall pay to the County a franchise fee of 4% of Gross Revenues. The County retains the option of increasing the franchise fee up to 5% of Gross Revenues. If any such law, regulation or valid rule alters the 5% franchise fee enacted by the Cable Act, then the County shall have the authority to increase or decrease the franchise fee accordingly, provided such change is for purposes not inconsistent with Applicable Law and that all cable providers serving the County are treated similarly. In the event the franchise fee is modified by the County, the County agrees to provide Grantee with prompt written notice of such modification. 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 in accordance with applicable law and GAAP. 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.

(a) Franchise fees shall be paid quarterly not later than 45 days following the end of a given quarter. In accordance with Section 8.1 of this Franchise, and not later than the date of each payment, Grantee shall file with the County on a quarterly basis a franchise fee payment report which identifies Gross Revenues earned by Grantee during the prior quarter. 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 County may have for further or additional sums payable under the provisions of this section.

(b) 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.

(c) Any franchise fees owing pursuant to this Franchise which remain unpaid more than 45 days after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12% per annum or 2% above prime lending rate as quoted by major Seattle banks, whichever is greater.

11.2 County Annual Report to Grantee of PEG Fee Purchases

If the County requests remittance of any PEG Fees, they shall provide to Grantee, within ninety (90) days following the end of each calendar year, a report detailing the County's PEG related capital expenditures.

If Grantee alleges that County has inappropriately used PEG fees, Grantee agrees to first notify the County of its concern prior to taking any legal action or withholding payment against any other fees owed County.

11.3 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay in full the Franchise Fee percentage listed in this Franchise. Additionally, the Capital Contribution pursuant to Section 6.6 (a), as well as any charges incidental to the awarding or enforcing of this Franchise, including payments for bonds, security funds, letters of credit insurance, indemnification, penalties or liquidated damages shall not be offset against Franchise Fees. Furthermore, the County and Grantee agree that any utility tax, business and occupation tax or similar local tax of general applicability shall be in addition to any Franchise Fees required herein and there shall be no offset against Franchise Fees subject to applicable law. This section shall not be interpreted to prohibit offsets required or authorized by federal law or regulation, such as complimentary services or voluntary discounts. In the event that Grantee elects to offset

franchise fees by any service authorized by applicable law, Grantee shall provide ninety (90) days' advance notice.

11.4 Auditing and Financial Records

Grantee agrees to meet with representatives of the County upon request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the County deems necessary for understanding the meaning of reports and records.

The County or its authorized agent may at any time and at the County's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of franchise fees paid to the County. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. Any such audit shall take place within three (3) years from the date the County receives such payment, after which period any such payment shall be considered final.

Upon the completion of any such audit by the County, the County shall provide to the Grantee a final report setting forth the County'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 County by an amount greater than five percent (5%) underpayment, Grantee agrees to pay the cost of the audit in an amount up to fifteen thousand dollars ($15,000). No such payment shall be required of Grantee until Grantee has exhausted all of its Legal and administrative remedies.

In the event of an overpayment by Grantee, the County 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 County.

The County 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.

11.5 Performance Bond

Within 30 days after the Grantee's acceptance of this Franchise, Grantee shall post a performance bond, in the amount of two hundred fifty thousand dollars ($250,000.00), to ensure Grantee's faithful performance of the terms of this Franchise.

Neither the provisions of this section, any bond accepted by the County pursuant thereto, nor any damages recovered by the County 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.

11.6 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 County, Grantee shall replace such bond by a bond of like amount and similarly conditioned, issued by an entity satisfactory to the County.

11.7 Indemnification by Grantee

Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the County, 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 County 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 County, 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 County, its officers, or its employees.

Notwithstanding, this Section (11.7) does not include PEG Access programming, operations, or administration, Access Channel(s), Access Facilities, or Access Provider(s), all of which is the County's sole responsibility.

11.8 Grantee Insurance

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

(a) $2,000,000 for personal injury or death to any one person and $5,000,000 aggregate for personal injury or death per single accident or occurrence.

(b) $2,000,000 for property damage to any one person and $5,000,000 aggregate for property damage per single accident or occurrence.

(c) $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.

Such insurance shall specifically name as additional insured Whatcom County, 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 County.

Grantee shall file with the County 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 County.

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 County 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 County is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

12.5 Franchise Acceptance

This Franchise granted by this Ordinance shall be effective upon Grantee's acceptance and no less than 10 days from date of final passage by County 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 County's discretion if Grantee fails to accept within 60 days.

12.6 Force Majeure

In the event that either party is prevented or delayed in the performance of any of its obligations, under this Agreement by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, sabotage, boycotts, lockouts, labor disputes, shortage of qualified labor, freight embargoes, shortages or unavailability of materials or supplies, unusually severe weather conditions, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Agreement, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

12.7 Work of Contractors and Subcontractors

Work by contractors and subcontractors is 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 County 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 County Code and other Applicable Laws governing the work performed by them.

12.8 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.

12.9 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.

12.10 No Waiver of Rights

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

12.11 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.

12.12 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 County and the Grantee, which amendment shall be authorized on behalf of the County through the adoption of an appropriate resolution or order by the County, as required by applicable law.

12.13 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.

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 County:

Whatcom County
311 Grand Ave., Suite 108
Bellingham, WA 98225-4038
Attn: County Executive

To the Grantee:

Comcast of Washington IV, Inc.
15815 25th Ave. W.
Lynnwood, WA 98087
Attn: Government Affairs Dept.

Non-binding courtesy copy to:

Comcast Cable Communications, Inc.
400 Sequoia Dr,
Bellingham, WA, 98226
Attn.: Government Affairs Dept.

EXHIBIT - 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.