ORDINANCE NO. 467

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON GRANTING A NONEXCLUSIVE FRANCHISE TO VERIZON NORTHWEST, INC. TO CONSTRUCT, MAINTAIN, OPERATE AND REPAIR A CABLE SYSTEM TO PROVIDE CABLE SERVICES IN, ACROSS, OVER, ALONG, UNDER, UPON, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF WOODINVILLE; MAKING FINDINGS CONSISTENT WITH WMC SECTION 5.50.040; PROVIDING FOR SEVERABILITY, SUMMARY PUBLICATION AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Woodinville (the "City") has negotiated a Franchise Agreement with Verizon Northwest, Inc. ("Verizon"), granting Verizon a franchise, authority, right and privilege for a period of fifteen (15) years to construct, maintain, operate and repair a cable system in the City, as set forth in the Franchise Agreement attached hereto, labeled Exhibit A and hereby incorporated by reference; and

WHEREAS, Verizon has requested that the City grant it a new franchise for the provision of cable television services within the City; and

WHEREAS, pursuant to RCW 35A.11.030 and 47 U.S.C. § 541(a)(1), the City has the power, among other things, to grant franchises; and

WHEREAS, the City has analyzed and considered the technical ability, financial condition, legal qualifications, and general character of Verizon, warrants that all other conditions resulting from the grant of this Franchise have been considered by the City, and has determined that it is in the best interest of the City and its residents to grant a cable Franchise to Verizon; and

WHEREAS, Verizon and the City have agreed to be bound by the conditions hereinafter set forth;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. Pursuant to RCW 35A.47.040, the City of Woodinville hereby grants a nonexclusive franchise to Verizon Northwest, Inc. according to the terms and conditions set forth on Exhibit A attached hereto and incorporated herein by this reference as if set forth in full. Subject to the provisions therein, the term of the franchise shall be for a period of fifteen (15) years from the effective date of the franchise, as defined in Exhibit A, and shall grant Verizon the right, privilege and authority to construct, maintain, operate, and repair a cable system to provide cable services in, on, across, over, along, under, upon, through and below the public rights-of-way of the City of Woodinville, all as provided in Exhibit A.

Section 2. Findings of Fact. After Public Hearing held on August 5, 2008 before the Woodinville City Council, the Council makes the following findings:

a. The public will be benefited by the granting of the franchise to the applicant;
b. The applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area;
c. The applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the City;
d. The applicant will comply with all terms and conditions placed upon a franchisee by this chapter to the extent consistent with the franchise agreement as set out in Exhibit A.
e. The applicant is capable of complying with all relevant Federal, State, and Local regulations, codes and standards pertaining to the construction, operation and maintenance of the cable facilities and systems incorporated in its application for a franchise;
f. The public rights-of-way have the capacity to accommodate the cable television system;
g. The proposed franchise is consistent with the City's present and future use of the public rights-of-way to be used by the cable television system;
h. The benefit to the public from the cable television system outweighs the potential disruption to existing users of the public rights-of-way to be used by the cable television system, and the resultant inconvenience which may occur to the public; and
i. All other conditions resulting from the grant of the franchise have been considered by the City and that the City determines that the grant is still in the public's best interest.

Section 3. Deadline for Acceptance. The franchise granted by Section 1 of this ordinance shall be void and of no effect unless Verizon files with the City Clerk a signed franchise agreement accepting all of its terms and conditions within sixty (60) days after the Effective Date of this ordinance, which agreement is attached hereto as Exhibit A, and incorporated by this reference herein. The form of agreement (Exhibit A) has been reviewed and approved by the City Attorney.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance.

Section 5. Effective Date/Summary Publication. Pursuant to RCW 35A.47.040, this ordinance has been passed at least five days after its first introduction and by a majority of the whole membership of the City Council at a regular meeting. This ordinance, being the exercise of a power specifically delegated to the City's legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary consisting of the title.

ADOPTED BY THE CITY COUNCIL AND SIGNED INTO AUTHENTICATION OF ITS PASSAGE THIS 12th DAY OF AUGUST 2008.

Scott Hageman, Mayor

ATTEST/AUTHENTICATED:

Jennifer Kuhn
City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Greg A. Rubstello
City Attorney

PASSED BY THE CITY COUNCIL: 8-12-2008
PUBLISHED: 8-18-2008
EFFECTIVE DATE: 8-25-2008
ORDINANCE NO.: 467

Exhibit A: Ordinance No. 467

CABLE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF WOODINVILLE, WASHINGTON

AND

VERIZON NORTHWEST INC.

2008

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the City of Woodinville, a duly organized City under the applicable laws of the State of Washington (the "City") and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (the "Franchisee").

WHEREAS, the City wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. § 522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Washington State law and federal law;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network (the "FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the state of Washington;

WHEREAS, Franchisee intends to construct, install, maintain, and extend the FTTP Network pursuant to Title II of the Communications Act *(see* 47 U.S.C. § 201 *et seq.),* and has requested a cable franchise from the City to operate a Cable System over, under, and along the Public Rights-of-Way within the City's jurisdiction, in accordance with Title VI of the Communications Act *(see* 47 U.S.C. § 521 *et seq.)*;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the City, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the City has identified the future cable-related needs and interests of the City and its community, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate, in a full public proceeding affording due process to all parties;

WHEREAS, the City desires to protect and manage the Public Rights-of-Way, require high standards of customer service, receive financial compensation relating to Franchisee's use of the Public Rights-of-Way as provided by federal law, obtain educational and governmental channels, establish certain reporting and record access requirements, and provide for the future cable-related needs of its residents;

WHEREAS, the City has found Franchisee to be financially, technically, and legally qualified to operate the Cable System;

WHEREAS, the City has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the City's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise Area of the City pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1 *Access Channel:* A video Channel, which Franchisee shall make available to the City without charge for non-commercial Educational or Governmental use for the transmission of video programming as directed by the City.

1.1.1 *Educational Access Channel:* An Access Channel available for the use solely of the local schools (schools shall include any educational institution, public or private, but excluding home schools) in the Franchise Area.

1.1.2 *Government Access Channel:* An Access Channel available for the use solely of the City.

1.1.3 *EG*: Educational and Governmental.

1.2 *Additional Service Area:* Shall mean any such portion of the Service Area added pursuant to Section 3.1.3 of this Agreement.

1.3 *Affiliate:* Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with Franchisee.

1.4 *Basic Service:* Any service tier, which includes the retransmission of local television broadcast signals as well as the EG Channels required by this Franchise.

1.5 *Cable Operator:* Shall be defined herein as it is defined under section 602 of the Communications Act, 47 U.S.C. § 522(5), but does not include direct broadcast satellite providers.

1.6 *Cable Service* or *Cable Services:* Shall be defined herein as it is defined under section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.7 *Cable System* or *System:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning, "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, 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 title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems." The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject, in whole or in part, to Title II of the Communications Act or of an Information Services provider.

1.8 *Channel:* Shall be defined herein as it is defined under section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.9 *City*: The City of Woodinville or the lawful successor, transferee, or assignee thereof.

1.10 *Communications Act:* The Communications Act of 1934, as amended by, among other things, the Cable Communications Policy Act of 1984, the Cable Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as it may be further amended from time to time.

1.11 *Control:* The ability to exercise de facto or de jure control over day-to-day policies and operations or the management of Franchisee's affairs.

1.12 *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.

1.13 *Fiber to the Premise Telecommunications Network ("FTTP Network"):* The Franchisee's network that transmits Non-Cable Services pursuant to the authority granted under the laws of the state of Washington and under Title II of the Communications Act (which Non-Cable Services are not subject to Title VI of the Communications Act), and that supports the Cable System.

1.14 *Force Majeure*: Force Majeure is an event or events reasonably beyond the ability of Franchisee to anticipate and control, such as:

(a) severe or unusual weather conditions, fire, flood, or other acts of God, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots or act of a public enemy;

(b) actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible or work delays caused by waiting for other utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary; and

(c) telephone network outages only when such outages are outside the control of Franchisee.

1.15 *Franchise Area*: The incorporated area (entire existing territorial limits) of the City and such additional areas as may be included in the corporate (territorial) limits of the City during the term of this Franchise.

1.16 *Franchisee:* Verizon Northwest Inc., and its lawful and permitted successors, assigns and transferees.

1.17 *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee and/or its Affiliates from the operation of the Cable System to provide Cable Service in the Service Area. Gross Revenue shall include but may not be limited to the following items so long as all other Cable Operators in the Service Area include the same in Gross Revenues for purposes of calculating franchise fees:

(a) fees charged for Basic Service;

(b) fees charged to Subscribers for any service tier other than Basic Service;

(c) fees charged for premium Channel(s), *e.g.* HBO, Cinemax, or Showtime;

(d) fees charged to Subscribers for any optional, per-channel, or per-program services;

(e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees for video or audio programming;

(f) fees for downgrading any level of Cable Service programming;

(g) fees for service calls;

(h) fees for leasing of Channels;

(i) rental of customer equipment, including converters (e.g. set top boxes, high definition converters, and digital video recorders) and remote control devices;

(j) advertising revenue as set forth herein;

(k) revenue from the sale or lease of access Channel(s) or Channel capacity;

(l) revenue from the sale or rental of Subscriber lists;

(m) revenues or commissions received from the carriage of home shopping channels;

(n) fees for any and all music services that are deemed to be a Cable Service over a Cable System;

(o) revenue from the sale of program guides;

(p) late payment fees;

(q) forgone revenue that Franchisee chooses not to receive in exchange for trades, barters, services, or other items of value;

(r) revenue from NSF check charges;

(s) revenue received from programmers as payment for programming content cablecast on the Cable System; and

(t) Franchise Fees hereunder.

Advertising commissions paid to independent third parties shall not be deducted from advertising revenue included in Gross Revenue. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Franchisee's Subscribers within all areas covered by the particular advertising source as of the last day of such period, *e.g.*, Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Washington. Franchisee has one hundred (100) Subscribers in the Franchise Area, five hundred (500) Subscribers in Washington, and one thousand (1,000) Subscribers nationwide. Gross Revenue as to the City from Ad "A" is ten percent (10%) of Franchisee's revenue therefrom. Gross Revenue as to the City from Ad "B" is twenty percent (20%) of Franchisee's revenue therefrom.

Notwithstanding the foregoing, Gross Revenue shall not include:

1.17.1 Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;

1.17.2 Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.17.3 Refunds, rebates or discounts made to Subscribers or other third parties;

1.17.4 Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders, provided that if any such services are Cable Services at any future time pursuant to applicable law, revenues derived from such services shall be included in Gross Revenues;

1.17.5 Payments by Subscribers for merchandise purchased from any home shopping channel offered as part of the Cable Services; provided, however, that commissions or

other compensation paid to Franchisee by such home shopping channel for the promotion or exhibition of products or services shall be included in Gross Revenue;

1.17.6 Revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller pays the cable Franchise fees on the resale of Cable Services;

1.17.7 Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees), provided however, as set forth in Section 1.17(t), Franchise Fees under this Agreement are included in Gross Revenues;

1.17.8 Any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barters, services or other items of value shall be included in Gross Revenue;

1.17.9 Sales of capital assets or sales of surplus equipment;

1.17.10 Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction of new programming pursuant to a written marketing agreements;

1.17.11 Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing;

1.17.12 Any fees or charges collected from Subscribers or other third parties for EG Grant.

1.18 *Information Services:* Shall be defined herein as it is defined under Title I, Section 3 of the Communications Act, 47 U.S.C. §153(20).

1.19 *Initial Service Area:* The portion of the Franchise Area as outlined in Exhibit A.

1.20 *Internet Access:* Dial-up or broadband access service that enables Subscribers to access the Internet.

1.21 *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services.

1.22 *Normal Operating Conditions*: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages (to the extent such outages are on non-Verizon networks or caused by Force Majeure), and severe or unusual weather conditions. Those conditions which are ordinarily

within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. *See* 47 C.F.R. § 76.309(c)(4)(ii).

1.23 *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.24 *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways (to the extent the City has authority to grant the use of such waterways) used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services, nor do Public Rights-of-Way include real property owned in fee by the City unless such property is a public right-of-way.

1.25 *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any Additional Service areas.

1.26 *Service Date*: The date that the Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area. The Franchisee shall memorialize the Service Date by notifying the City in writing of the same, which notification shall become a part of this Franchise.

1.27 *Service Interruption:* The loss of picture or sound on one or more cable channels.

1.28 *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.29 *Telecommunications Facilities*: Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.30 *Telecommunications Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.31 *Title II*: Title II of the Communications Act.

1.32 *Title VI*: Title VI of the Communications Act.

1.33 *Video Programming:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1 *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Act, the City hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order

to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2 *City's Regulatory Authority:* The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. The jurisdiction of the City over such Telecommunications Facilities is also governed by federal and state law, and the City shall not assert jurisdiction over Franchisee's FTTP Network in contravention of those laws. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. § 541, the City's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained, or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services. Nothing in this Agreement shall affect the City's authority, if any, to adopt and enforce lawful regulations with respect to Franchisee's Telecommunications Facilities in the Public Rights-of-Way.

2.3 *Term:* This Franchise shall become effective on _____, 2008 (the "Effective Date"). The Term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

2.4 *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the City reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise.

2.5 *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law and state law as they may be amended, including but not limited to the Communications Act and any applicable rules, regulations, and orders of the FCC, as amended.

2.6 *No Waiver*:

2.6.1 The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable state or federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2 The failure of Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the City from performance, unless such right or performance has been specifically waived in writing.

2.7 *Construction of Agreement*:

2.7.1 The provisions of this Franchise shall be liberally construed to effect their objectives.

2.7.2 Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545.

2.8 *Police Powers*: In executing this Franchise Agreement, the Franchisee acknowledges that its rights hereunder are subject to the lawful police powers of the City. Franchisee agrees to comply with all lawful and applicable general laws and ordinances enacted by the City pursuant to such power. Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of the City's police powers. However, if the reasonable, necessary and lawful exercise of the City's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in writing and signed by both parties. If the parties cannot reach agreement on the above-referenced modification to the Franchise, the parties agree to submit the matter to mediation. The matter submitted to mediation shall be limited to what effect, if any, the City's exercise of police powers has on the terms of the Franchise. In the event mediation does not result in an agreement, then the Franchisee may terminate this Agreement without further obligation to the City or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association (but not necessarily administered by the American Arbitration Association) or as otherwise mutually agreed by the parties. The matter submitted to arbitration shall be limited to what effect, if any, the City's exercise of police powers has on the terms of the Franchise. Nothing in this provision shall require the City to pay for the relocation of Telecommunications Facilities. Such matters are outside the scope of this provision and both parties reserve their rights with respect to such matters.

2.9 *Termination of Telecommunications Services*. Notwithstanding any other provision of this Agreement, if Franchisee ceases to provide Telecommunications Services over the FTTP Network at any time during the Term and is not otherwise authorized to occupy the Public Rights-of-Way in the Franchise Area, the City may regulate the FTTP Network as a cable system to the extent permitted by Title VI.

3. <u>PROVISION OF CABLE SERVICE</u>

3.1 *Service Area*:

3.1.1 *Initial Service Area*: Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Initial Service Area within thirty-six (36) months of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the City; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service

Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirements set forth in Section 3.1.2.

3.1.2 *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than thirty (30) residential dwelling units per mile, as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Sections 3.1.1 and 3.1.2 respectively, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the City that the density requirements have been met.

3.1.3 *Additional Service Areas*: Except for the Initial Service Area Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof except as set forth in this Section 3.1.3. The parties agree that if any land is annexed by the City during the term of this Agreement, such annexed areas shall become part of the Franchise Area and Franchisee shall be required to extend Cable Service within a reasonable time to such annexed area (subject to the exceptions in Section 3.1.1 above), provided that such annexed area: (a) is contiguous to the City, (b) is within Franchisee's Title II service territory, and (c) is served by the video-enabled FTTP Network. If Franchisee intends to serve Additional Service Areas within the Franchise Area, Franchisee shall notify the City in writing of such Additional Service Area at least ten (10) days prior to providing Cable Services in such areas.

3.2 *Availability of Cable Service*: Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. Franchisee shall not deny access to Cable Services to any group of potential residential Subscribers because of the income of the residents of the local area in which the group resides. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet and actual costs incurred to connect any non-residential Subscriber.

3.3 *Complimentary Cable Service to Public Buildings*: Subject to Section 3.1, Franchisee shall provide without charge within the Service Area, one service outlet (unless otherwise specified in Exhibit B) activated for Basic Service to each public school, police and fire station, public library, government offices, and other buildings used for government administration as may be designated by the City, and also required of other cable operators in the

Service Area, as provided in Exhibit B; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred fifty (150) feet solely to provide service to any such school or public building, the City or other appropriate entity shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred fifty (150) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any school or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet or concealed inside wiring, or a service outlet requiring more than one hundred fifty (150) feet of drop cable; provided, however, that Franchisee shall charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen, or damaged due to the negligence or other wrongful acts of the City.

4. SYSTEM OPERATION

As provided in Section 2.2, the parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of the City over such Telecommunications Facilities is restricted by federal and state law, and the City does not and will not assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

5. SYSTEM FACILITIES

5.1 *Technical Requirement:* Franchisee shall operate, maintain, construct and extend the Cable System so as to provide high quality signals and reliable delivery of Cable Services for all cable programming services. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, the National Electrical Code and any other applicable federal law and the laws of the State of Washington to the extent not in conflict with federal law and regulations.

5.2 *System Characteristics:* Franchisee's Cable System shall meet or exceed the following requirements:

5.2.1 The System shall be designed with an initial digital carrier passband between fifty (50) and eight hundred sixty (860) MHz.

5.2.2 The System shall be designed, constructed and maintained to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.

5.3 *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

5.4 *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and state law in order that emergency messages may be distributed over the System in video and audio formats as required by state and federal law.

6. EG SERVICES

6.1 *Access Channels*:

6.1.1 In order to ensure availability of educational and government programming, Franchisee shall provide, without charge to the City, on the Basic Service Tier one (1) dedicated Government Access Channel, and Franchisee shall reserve on its Basic Service Tier for the City's future use one (1) additional dedicated Channel for Educational Access and one (1) additional dedicated Channel for Government Access (the "Reserve Channels") (collectively, "Access Channels").

6.1.2 The parties agree that Franchisee shall retain the right to utilize all such Access Channels, in its sole discretion, during the term of this Franchise until such time that Franchisee activates the City's Access Channels pursuant to Section 6.1 and/or if the City ceases to use the Access Channels during the Term of this Agreement. The City shall comply with applicable law regarding the use of EG Channels. Franchisee shall only be required to provide the Reserve Channels so long as the other Cable Operators in the Franchise Area are also providing similar channels.

6.1.3 Upon the signing of this Agreement, the City hereby notifies Franchisee of its intent to provide programming to be carried on the Government Access Channel; such notification shall constitute authorization to the Franchisee to transmit such programming within and outside of the City.

6.1.4 The City may activate a Reserve Channel during the Term by providing the Franchisee with written notice of the need for additional Access Channel capacity at least one hundred eighty (180) days prior to the date it intends to activate a Reserve Channel, demonstrated by a programming schedule on the existing Government Access Channel consisting of at least six (6) hours per day, which programming for purposes of this calculation shall not include repeat programming generated per day or character-generated programming. Such written notice shall authorize the Franchisee to transmit the Reserve Channel within and outside of the City.

6.1.5 The Franchisee specifically reserves the right to make or change channel assignments in its sole discretion and shall provide notice of such changes as set forth in the Customer Service Standards, Exhibit D, Sections 10.E and 10.G.4. The Access Channels shall be used for community programming related to Educational and/or Governmental activities. The City shall have complete control over the content, scheduling, and administration of the Access Channels and may delegate such functions, or a portion of such functions, to an appropriate designee upon written notice from the City to Franchisee. The Franchisee shall not exercise any editorial control over Access Channel programming.

6.1.6 The City shall provide and ensure suitable video and audio signals for the Access Channels at City Hall (17301 133rd Ave. NE, Woodinville, WA 98702) or an alternative location mutually agreeable to the City and Franchisee (the "EG Channel Origination Site"). The Franchisee's obligations under this Section 6.1, including its obligation to provide upstream equipment, lines and facilities necessary to transmit those video and audio signals, shall be

subject to the provision by the City, to the extent applicable and without charge to the Franchisee, of:

(1) access to the EG Channel Origination Site facility;

(2) access to any required EG equipment within the EG Channel Origination Site facility and suitable required space, environmental conditions, electrical power supply, access, and pathways within the EG Channel Origination Site facility;

(3) video and audio signals in a mutually agreed upon format suitable for EG Access Channel programming;

(4) any third-party consent that may be necessary to transmit EG signals (including, without limitation, any consent that may be required with respect to third-party facilities, including the facilities of the incumbent cable provider, used to transmit EG content to the EG Channel Origination Site from auxiliary locations); and

(5) any other cooperation and access to facilities as are reasonably necessary for the Franchisee to fulfill the obligations stated herein.

To the extent suitable video and audio signals are provided to Franchisee and the foregoing conditions in Section 6.1 are met, Franchisee shall, within one hundred eighty (180) days of written notice or provision of suitable video and audio signals, whichever is later, provide, install, and maintain in good working order the equipment necessary for transmitting the EG signal to Subscribers.

6.2 *EG Grant*:

6.2.1 Franchisee shall provide a grant to the City, or its designee (as evidenced by appropriate notice by the City), to be used in support of the production of local EG programming (the "EG Grant"). Such grant shall be used by the City for EG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of EG access facilities.

6.2.2 The EG Grant as of the Effective Date is $0.34 per Subscriber, per month. Subsequently, such amount can be modified as determined by the City Council no more than once each year and the EG Grant shall be no greater than $1.00, per Subscriber, per month in the Service Area, and shall be the same amount required of all other Cable Operators in the Franchise Area. Franchisee's obligation under this Section 6.2.2. is contingent upon all other Cable Operators making the same grant payment on a per Subscriber, per month basis. The LFA shall give Franchisee sixty (60) days prior written notice before changing the amount of the EG Grant under this Section. The EG Grant payment, shall be delivered to the LFA concurrent with the Franchise Fee payment. Calculation of the EG Grant will commence with the first calendar month during which Franchisee obtains its first Subscriber in the Service Area.

6.2.3 The City shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 6.2.

6.3 The City shall require all local producers and users of any of the EG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the City, from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owed to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a EG facility or Channel. The City shall establish rules and regulations for use of EG facilities, consistent with, and as required by, 47 U.S.C. § 531.

6.4 To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of an EG Grant or any other costs arising from the provision of EG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill.

7. FRANCHISE FEES

7.1 *Payment to City:* Franchisee shall pay to the City a Franchise fee of five percent (5%) of annual Gross Revenue ("Franchise Fee"). In accordance with Title VI of the Communications Act, the twelve-month (12) period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were inadvertently omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

7.2 *Supporting Information:* Each Franchise Fee payment shall be accompanied by a brief report that is verified by a financial manager of Franchisee showing the basis for the computation, substantially similar to that set forth in Exhibit D. No later than forty-five (45) days after the end of each calendar year, Franchisee shall furnish to the City an annual summary of Franchise Fee calculations.

7.3 *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be four (4) years from the date on which payment by Franchisee is due.

7.4 *Interest Charge on Late Payments:* Late payments for any (i) Franchise Fees due pursuant to Section 7, (ii) EG Grant due pursuant to Section 6, (iii) Franchise Grant due pursuant to Section 14, and (iv) liquidated damages due pursuant to Section 13 shall be subject to the interest at the then-current rate set forth in RCW 19.52.020, which as of the date of execution of this Agreement is twelve percent (12%) per annum from the due date to the date that such payment is made.

7.5 *No Release*: The City's acceptance of payment shall not be construed as an agreement that the amount paid was correct, nor shall acceptance be construed as a release of any claim which the City may have for additional sums due under provisions of this Section 7.

7.6 *No Limitation on Taxing Authority*: Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee, or assessment of general applicability. Nothing in this Franchise is intended to preclude Franchisee from exercising any right it may have to challenge the lawfulness of any tax, fee, or assessment imposed by the City or any state or federal agency or authority, or intended to waive any rights the Franchisee may have under 47 U.S.C. § 542.

7.7 *EG Grant and Franchise Grant Not Franchise Fees:* Franchisee agrees that the EG Grant and Franchise Grant set forth in Sections 6 and 14 respectively, shall in no way modify or otherwise affect Franchisee's obligation to pay Franchise Fees to the City. Franchisee agrees that although the sum of Franchise Fees and the EG Grant and Franchise Grant may total more than five percent (5%) of Franchisee's Gross Revenues in any twelve-month (12) period, the additional commitments are not to be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise.

7.8 *Audits*:

7.8.1 The parties shall make every effort to informally consult and resolve any questions or issues regarding Franchise Fee or EG Grant payments and nothing herein shall be construed to preclude such informal consultations or review of Franchisee's books. The City may audit or conduct a Franchise Fee review of Franchisee's books and records no more than once every three (3) years during the Term, provided that the City shall require all other Cable Operators in the Franchise Area to be subject to competitively equitable audit requirements in any renewal or initial granting of such franchises after the Effective Date.

7.8.2 All records reasonably necessary for any such audit shall be made available by Franchisee to the City within thirty (30) days of the City's request.

7.8.3 Each party shall bear its own costs of an audit; provided, however, that if the results of any audit indicate that Franchisee underpaid the Franchise Fees by five percent (5%) or more, then Franchisee shall pay the reasonable, documented, out-of-pocket costs of the audit up to Ten Thousand Dollars ($10,000).

7.8.4 If the results of an audit indicate an overpayment of Franchise Fees, the parties agree that any undisputed overpayment shall be offset against future payments if applicable, within forty-five (45) days. If the results of an audit indicate an underpayment of Franchise Fees, the parties agree that any undisputed underpayment shall be paid within forty-five (45) days along with interest as set forth in Section 7.4.

7.8.5 Any audit shall be conducted by an independent third party. Any entity employed by the City that performs the audit or Franchise Fee review shall not be permitted to be compensated on a success based formula, *e.g.* payment based on an underpayment of fees, if any.

7.9 *Bundled Services*: If Cable Services subject to the Franchise Fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with applicable federal or state laws, rules, and regulations, or Washington Utilities and Trade Commission regulations, standards or orders. Franchisee shall not allocate revenue between Cable Services and Non-Cable Services with the purpose of evading or substantially reducing the Franchisee's Franchise Fee obligations to the City.

7.10 *Alternative Fees*: In the event that Franchise Fees are prohibited by any law or regulation, Franchisee agrees to pay any substitute fee or amount allowed by law up to a maximum amount of five percent (5%) of Gross Revenues, so long as the substitute fee is imposed on all other Cable Operators in the Franchise Area and Franchisee is given thirty (30) days notice of the substitute fee by the City.

8. CUSTOMER SERVICE

Customer Service Requirements are set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

9. REPORTS AND RECORDS

9.1 *Open Books and Records*: Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during normal business hours (those hours during which most similar businesses in the community are open to serve customers) and on a nondisruptive basis, at a mutually agreed upon location in the Franchisee's Title II territory in Washington, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years, provided that if, as a result of reviewing Franchisee's records, the City identifies specific records and requests that such records be retained beyond the six-year (6) period, Franchisee shall retain those records for an additional twelve (12) months. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The City shall treat any information disclosed by Franchisee as confidential and only disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof, unless otherwise required by law whereupon the City will notify Franchisee pursuant to Section 9.2. Franchisee shall not be required to provide Subscriber information in violation of section 631 of the Communications Act, 47 U.S.C. § 551.

9.2 *Public Disclosure*: If, in the course of enforcing this Franchise or for any other reason, the City believes it must disclose any Franchisee confidential information pursuant to Washington law, the City shall provide reasonable advance notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

9.3 *Records Required*: Franchisee shall at all times maintain:

9.3.1 Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.3.2 Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.3.3 Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.3.4 Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.3.5 A map showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

10. INSURANCE AND INDEMNIFICATION

10.1 *Insurance:*

10.1.1 Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1 Commercial General Liability Insurance in the amount of two million dollars ($2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System and the conduct of Franchisee's Cable Service business in the City.

10.1.1.2 Automobile Liability Insurance in the amount of two million dollars ($2,000,000) combined single limit for bodily injury and property damage.

10.1.1.3 Workers' Compensation Insurance meeting all legal requirements of the state of Washington.

10.1.1.4 Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: $100,000; and (B) Bodily Injury by Disease: $100,000 employee limit; and (C) Bodily Injury by Disease: $2,000,000 policy limit.

10.1.1.5 Umbrella or excess liability insurance in the amount of three million dollars ($3,000,000).

10.1.2 The City shall be included as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance. Franchisee shall provide to the City a copy of the blanket additional insured endorsements for General and Auto liability, or similar documentation demonstrating compliance. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements.

10.1.3 Each of the required insurance policies shall be with insurers qualified to do business in the State of Washington with an A.M. Best Financial Strength rating of A- or better.

10.1.4 Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement. In the event that the insurance company cancels the policy, Franchisee will work diligently to obtain replacement insurance so there is no gap in coverage.

10.1.5 Franchisee shall deliver to the City Certificates of Insurance showing evidence of the required coverage within thirty (30) days following the Effective Date of this Agreement.

10.1.6 The limits required above may be satisfied with a combination of primary and excess coverage.

10.2 *Indemnification:*

10.2.1 Franchisee agrees to indemnify, save and hold harmless, and defend the City, its elected officials, officers, agents, boards and employees, from and against any liability, damages or claims, settlements approved by Franchisee pursuant to Section 10.2.2 or judgments, arising out of, or resulting from, the Franchisee's activities pursuant to this Franchise, provided that the City shall give Franchisee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this Section, (or up to thirty (30) days as long as such notice causes no prejudice to the Franchisee). Notwithstanding the foregoing, Franchisee shall not indemnify the City, for any damages, liability or claims resulting from the willful misconduct, negligence, or breach of obligation of the City, its officers, agents, employees, attorneys, consultants, or independent contractors, for which the City is legally responsible, or for any activity or function conducted by any Person other than Franchisee in connection with EG Access or EAS.

10.2.2 With respect to Franchisee's indemnity obligations set forth in Section 10.2.1, Franchisee shall provide the defense of any claims or actions brought against the City by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the City, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the City from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the City, Franchisee shall have the right to defend, settle or compromise any claim or action arising

hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the City, and the third party is willing to accept the settlement, but the City does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the City shall in no event exceed the amount of such settlement.

11. TRANSFER OF FRANCHISE

11.1 Transfer of the Franchise means:

11.1.1 Any transaction in which:

11.1.1.1 an ownership or other interest in Franchisee, the Franchise or the Cable System is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or

11.1.1.2 the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

11.1.2 However, notwithstanding Sections 11.1.1.1 and 11.1.1.2 above, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

11.2 Subject to section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior written consent of the City, provided that such consent shall not be unreasonably withheld, delayed or conditioned so long as the transferee assumes the obligations of the Franchisee hereunder. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise for transactions otherwise excluded under Section 11.1.2 above.

12. RENEWAL OF FRANCHISE

12.1 The City and Franchisee agree that any proceedings undertaken by the City that relate to the renewal of this Franchise shall be governed by and comply with the provisions of section 626 of the Communications Act, 47 U.S.C. § 546.

12.2 In addition to the procedures set forth in said section 626 of the Communications Act, the City shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then-current Franchise term. The City further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under 47 U.S.C. § 546 and pursue renewal of the Franchise prior to expiration of its term.

12.3 Notwithstanding anything to the contrary set forth herein, Franchisee and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof.

12.4 Franchisee and the City consider the terms set forth in this Article 12 to be consistent with the express provisions of 47 U.S.C. § 546.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1 *Security*: Within thirty (30) days following the Effective Date of this Agreement, Franchisee shall provide to the City security for the faithful performance by Franchisee of all material provisions of this Agreement, provided that the City shall require all other Cable Operators in the Franchise Area to provide competitively equitable security in any renewal or initial granting of such franchises after the Effective Date. Franchisee shall maintain a letter of credit at Twenty Thousand Dollars ($20,000) throughout the term of this Agreement (the "Security"). Nothing in this security provision is intended to impair or alter any Title II security fund rights.

13.1.1 In the event the Security provided pursuant to the Agreement is not renewed, is cancelled, is terminated or is otherwise impaired, Franchisee shall provide new security pursuant to this Article within sixty (60) days of notice.

13.1.2 Neither cancellation, nor termination nor refusal by surety to extend the Security, nor inability of Franchisee to file a replacement security for its obligations, shall constitute a loss to the City recoverable under the Security.

13.2 *Liquidated Damages*:

13.2.1 In the event the City determines that Franchisee has breached this Agreement, after following the procedures in Sections 13.3 and 13.4, the City may assess the following as liquidated damages, provided that the City shall require all other Cable Operators in the Franchise Area to be subject to competitively equitable liquidated damages in any renewal or initial granting of such franchises after the Effective Date:

13.2.1.1 Two hundred fifty dollars ($250) per day for failure to provide EG Access Channels as set forth herein;

13.2.1.2 One hundred fifty dollars ($150) per day for material breach of the customer service standards set forth in Exhibit D;

13.2.1.3 One hundred dollars ($100) per day for failure to provide reports as required by the Franchise; or

13.2.1.4 Up to two hundred fifty dollars ($250) per day for any other material breaches or defaults of this Agreement.

13.2.2 Franchisee shall pay any liquidated damages assessed by the City within thirty (30) days after they are assessed. Liquidated damages shall accrue starting on the first date of the occurrence of the noncompliance. If liquidated damages are not paid within the thirty (30) day period, the City may proceed against the Security. Total liquidated damages shall not exceed Twenty Thousand Dollars ($20,000) in any twelve-month (12) period.

13.2.3 Assessment of liquidated damages shall not constitute a waiver by the City of any other right or remedy it may have under this Franchise or applicable law except as set forth in this Agreement, including without limitation its right to recover from Franchisee such additional damages, losses, costs and expenses, as may have been suffered or incurred by the City by reason of or arising out of such breach of this Franchise. Notwithstanding the foregoing, if the City elects to assess liquidated damages pursuant to this Section, such election shall constitute the City's exclusive remedy for the violation for which the liquidated damages were assessed for a period of sixty (60) days. Thereafter, the remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the City at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed.

13.2.4 Subject to Sections 13.3 and 13.4, and subject to the assessment of any liquidated damages pursuant to Section 13.2, the City may elect to pursue other legal and equitable remedies at any time during the term of this Franchise.

13.3 *Notice of Violation*: In the event the City believes that Franchisee has not complied with the terms of the Franchise, failed to perform any obligation under this Agreement or has failed to perform in a timely manner, the City shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem within twenty (20) days, the City shall notify Franchisee in writing, stating with reasonable specificity the nature of the alleged violation (the "Noncompliance Notice").

13.4 *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to the City, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance and notify the City of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, the City shall provide written confirmation that such cure has been effected.

13.5 *Remedies*: Subject to applicable federal and state law, in the event the City, after the procedures set forth in Sections 13.3 and 13.4, determines that Franchisee is in default of any material provision of this Franchise, the City may take the following actions:

13.5.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;

13.5.2 Seek liquidated damages as set forth herein;

13.5.3 Commence an action at law for monetary damages or seek other equitable relief;

13.5.4 In the case of a substantial material default of the Franchise, seek to revoke the Franchise in accordance with Section 13.6.

13.6 *Revocation*:

13.6.1 As set forth in this Section 13.6, the City may seek to revoke this Franchise in the event of a substantial material default of this Franchise. Should the City seek to revoke this Franchise after following the procedures set forth in Sections 13.3 and 13.4, the City shall give written notice to Franchisee of such intent to revoke this Franchise. This notice of intent to revoke is in addition to the Notice of Noncompliance pursuant to Section 13.3. The notice shall set forth with reasonable specificity the reasons for revocation. The Franchisee shall have thirty (30) days to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. The City shall notify the Franchisee in writing of the time and place of the public hearing at least thirty (30) days prior to the public hearing.

13.6.2 At the revocation hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to compel the testimony of persons as permitted by law, and to question and/or cross examine witnesses. The revocation hearing shall be a public hearing at which members of the public may testify under oath. A complete verbatim record shall be made of the revocation hearing by a court reporter. The costs of such court reporter shall be shared equally by the parties.

13.6.3 Following the public hearing, Franchisee may submit its proposed written findings and conclusions within twenty (20) days of the close of the public hearing. Thereafter, the City shall determine: (i) whether an event of default has occurred; (ii) whether such event of default should be excused; and (iii) whether such event of default has been cured or will be cured by the Franchisee; and (iv) whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the City determines that the Franchise shall be revoked, the City shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the City to an appropriate court within thirty (30) days of notice of the City's decision.

13.6.4 The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

13.7 *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the third anniversary of the Service Date of this Franchise, if at the end of such three (3) year period Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System. Franchisee may consider subscriber penetration levels outside

the Franchise Area but within the Puget Sound metropolitan area in this determination. Notice to terminate under this Section 13.7 shall be given to the City in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

13.8 The City specifically does not by any provision of this Franchise, waive any immunity or limitation of liability under state or federal law, including but not limited to, section 635 A of the Communications Act.

14. MISCELLANEOUS PROVISIONS

14.1 *Franchise Grant*: Franchisee shall pay the City Two Thousand Five Hundred Dollars ($2,500.00) (the "Franchise Grant"). The Franchise Grant shall be payable thirty (30) days from the Effective Date, which may be used for any lawful purpose. The City agrees to require competitively similar obligations from other Cable Operators upon the future grant or renewal of a franchise agreement for the provision of Cable Service. To the extent permitted by federal law, Franchisee shall be allowed to recover this amount from Subscribers and may line-item or otherwise pass-through this amount to Subscribers. The reference to the line item shall accurately describe its purpose.

14.2 *Equal Employment Opportunity*: Franchisee shall comply with all applicable federal and state laws affording nondiscrimination in employment to all individuals regardless of their race, color, religion, age, sex, national origin, sexual orientation or physical disability.

14.3 *Actions of Parties*: In any action by the City or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

14.4 *Binding Acceptance*: This Agreement shall bind and benefit the parties hereto and their respective successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.5 *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Franchisee.

14.6 *Force Majeure*: Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or liquidated damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

14.7 *Good Faith Error:* Furthermore, the parties hereby agree that it is not the City's intention to subject Franchisee to liquidated damages, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers.

14.8 *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be deemed effective three (3) days after having been deposited by first class, postage prepaid, registered or certified mail, return receipt requested or one (1) day after having been deposited with any nationally recognized overnight courier for next day delivery, and addressed to the addressees below. Each party may change its designee by providing written notice to the other party.

14.8.1 Notices to Franchisee shall be mailed to:

Verizon Northwest Inc.
Attn: Tim McCallion, President
112 Lakeview Canyon Road, CA501GA
Thousand Oaks, CA 91362

with a copy to:

Mr. Jack H. White
Senior Vice President & General Counsel - Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

Notices to the City shall be mailed to:

City of Woodinville
17301 – 133rd Ave NE
Woodinville, WA 98072
Attn: City Manager

14.9 *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the City, and supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances relating to cable service that conflict with the provisions of this Agreement are superseded by this Agreement.

14.10 *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties. No amendment will take effect if it will impair the security set forth in Section 13, unless otherwise agreed by the parties.

14.11 *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.12 *Severability*: If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.13 *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.14 *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the City or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services.

14.15 *No Joint Venture*: Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

14.16 *Independent Review*: The City and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.17 *Venue:* The venue for any dispute related to this Franchise shall be in the United States District Court for the Western District of Washington in Seattle, provided it has subject matter jurisdiction; if no jurisdiction exists, then venue shall be in the Superior Court for King County.

14.18 *Attorneys' Fees:* If any action or suit arises between Franchisee and the City for breach of this Franchise, the prevailing party, either the City or Franchisee, as the case may be, shall be entitled to recover all of its reasonable attorneys' fees, costs and expenses in connection therewith along with such other relief as the court deems proper.

14.19 *Acceptance:* No later than sixty (60) days after the effective date of the Ordinance granting a Franchise, Franchisee will file with the City Clerk a signed copy of the Agreement which will constitute written acceptance of the Franchise. By signing this Agreement, Franchisee declares that (i) Franchisee has carefully read the terms and conditions of Woodinville Municipal Code Chapter 5.50 and this Franchise; (ii) Franchisee unconditionally accepts and agrees to abide by the Franchise and, to the extent consistent with the Franchise, the terms and conditions of Woodinville Municipal Code Chapter 5.50; (iii) Franchisee has relied

upon its own investigation of all relevant facts, that it was not induced to accept the Franchise, and that it accepts all reasonable risks related to the interpretation of the Franchise; and (iv) Franchisee will timely provide to the City the security specified in Section 13.1 and the insurance certificates specified in Section 10.1.

14.20 *Singular and Plural:* Except where the context indicates otherwise, words used herein, regardless of the number specifically used, shall be deemed and construed to include any other number, singular or plural as is reasonable in the context.

SIGNATURE PAGE FOLLOWS

AGREED TO THIS _____ DAY OF _____, 2008.

CITY OF WOODINVILLE

By: _____
[Name, Title]

Verizon Northwest Inc.

By: _____
Tim McCallion, President

EXHIBITS

Exhibit A: Initial Service Area

Exhibit B: Municipal Locations and Schools to be Provided Free Cable Service

Exhibit C: Remittance Form

Exhibit D: Customer Service Standards

EXHIBIT A

INITIAL SERVICE AREA

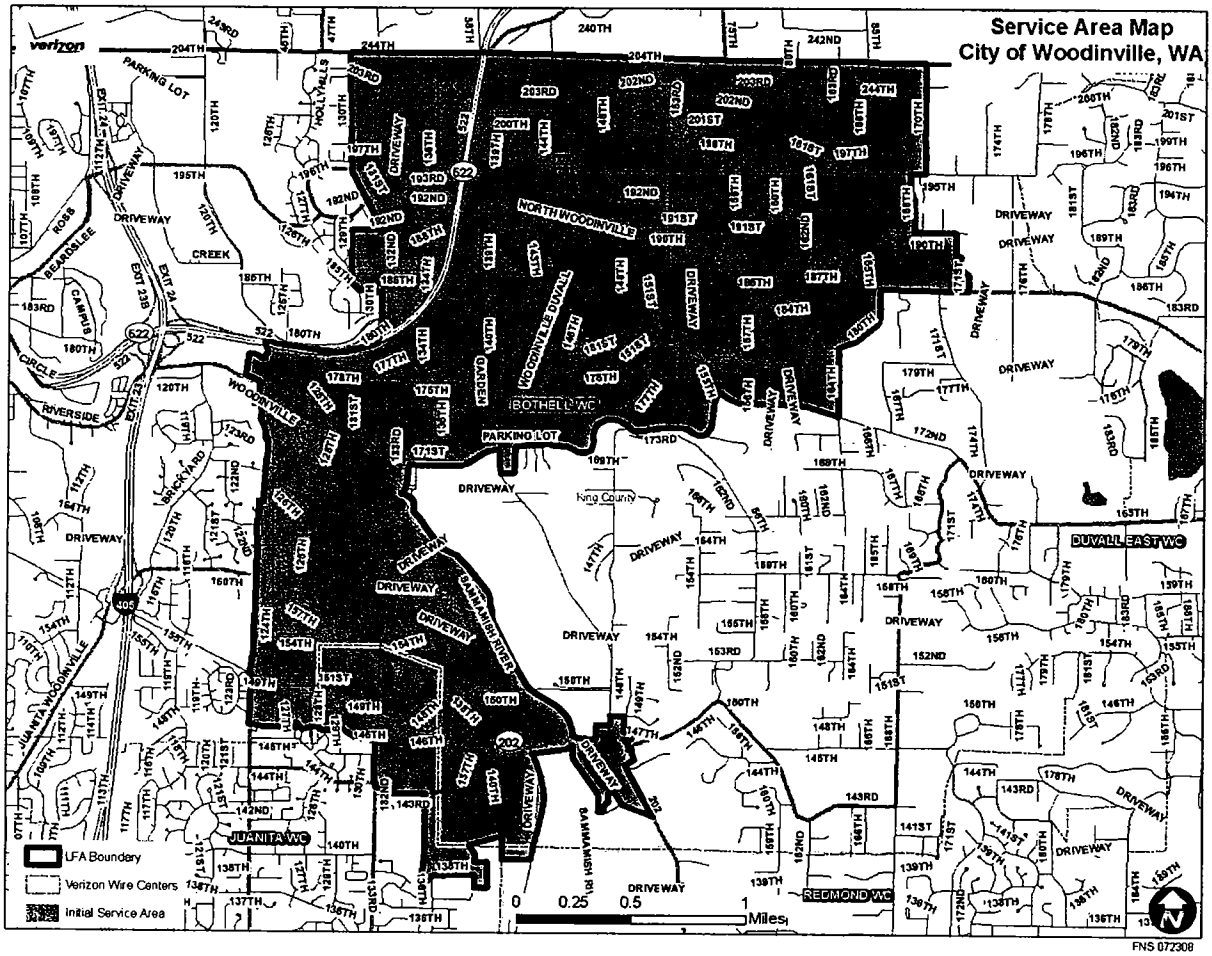

EXHIBIT B

MUNICIPAL LOCATIONS AND SCHOOLS TO BE PROVIDED

FREE CABLE SERVICE

Existing Buildings:

City Manager's Office
17301 133rd Avenue NE, Woodinville, WA

City Handicap Access Area – City Hall
17301 133rd Avenue NE, Woodinville, WA

Police Department
17301 133rd Avenue NE, Woodinville, WA

Old Woodinville School
13203 NE 175th Street, Woodinville, WA

Carol Edwards Center
17401 133rd Avenue NE, Woodinville, WA

Wellington Elementary
16501 NE 195th Street, Woodinville, WA

Leota Junior High School
19301 168th Avenue NE, Woodinville, WA

Woodinville High School
19819 136th Avenue NE, Woodinville, WA

Woodinville Fire and Life Safety District
17718 Woodinville-Snohomish Road NE, Woodinville, WA

In the event that an existing building listed above is demolished and rebuilt in the same or different location in the Service Area, Franchisee will provide, subject to the terms and conditions set forth in Section 3.3, one service outlet activated for Basic Service so long as all other Cable Operators in the Franchise Area provide service at such location.

Future Buildings:

Franchisee will provide, subject to the terms and conditions set forth in Section 3.3 of this Franchise, one service outlet active for Basic Service at up to five (5) future public buildings in the Service Area so long as all other Cable Operators in the Franchise Area provide service to at least the same number of future locations.

EXHIBIT C

REMITTANCE FORM

Franchise Fee Schedule/Report (Quarter and Year)

City of XXXX

Verizon - fGTE

Washington

Franchise Fee Rate: 5.00%

	Month 1	Month 2	Month 3	Quarter Total
Monthly Recurring Cable Service Charges (e.g. Basic, Enhanced Basic, Premium and Equipment Rental)	$0.00	$0.00	$0.00	$0.00
Usage Based Charges (e.g. PayPer View, Installation)	$0.00	$0.00	$0.00	$0.00
Advertising	$0.00	$0.00	$0.00	$0.00
Home Shopping	$0.00	$0.00	$0.00	$0.00
Late Payment	$0.00	$0.00	$0.00	$0.00
Other Misc. (Leased Access & Other Misc.)	$0.00	$0.00	$0.00	$0.00
Franchise Fee Billed	$0.00	$0.00	$0.00	$0.00
PEG Fee Billed	$0.00	$0.00	$0.00	$0.00
Less:				
Bad Debt				
Total Receipts Subject to Franchise Fee Calculation	$0.00	$0.00	$0.00	$0.00
Franchise Fee Due	$0.00	$0.00	$0.00	$0.00

Verizon Northwest Inc. is hereby requesting that this information be treated as confidential and proprietary commercial trade secret information and financial statements and not disclosed in accordance with section XXXX and the Cable Television Franchise Agreement granted to Verizon Northwest Inc. This information is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided herein, would cause substantial harm to competitive position of Verizon in the highly competitive video marketplace if disclosed, is intended to be proprietary confidential business information and is treated by Verizon as such.

EXHIBIT D

CUSTOMER SERVICE STANDARDS

These standards shall, starting six (6) months after the Service Date, apply to Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area. For the first six (6) months after the Service Date, Franchisee shall use best efforts to comply with the Customer Service Standards provided herein; it being agreed, however, that the City will not impose liquidated damages during this first six (6) month period if Franchisee using best efforts fails to meet the Customer Service Standards.

SECTION 1: DEFINITIONS

A. Normal Operating Conditions: Those service conditions which are within the control of Franchisee, as defined under 47 C.F.R. § 76.309(c)(4)(ii). Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages that are not within the control of the Franchisee, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

B. Respond: The start of Franchisee's investigation of a Service Interruption by receiving a Subscriber call, and opening a trouble ticket, and begin working, if required.

C. Service Call: The action taken by Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Service Interruption: The loss of picture or sound on one or more cable channels.

E. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

F. Standard Installation: Installations where the Subscriber is within one hundred fifty (150) feet of trunk or feeder lines.

SECTION 2: TELEPHONE AVAILABILITY

A. Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, all other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.

B. Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local

telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by Franchisee.

C. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after thirty (30) seconds of call waiting. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.

E. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Upon request from the City, but in no event more than once a quarter, forty-five (45) days following the end of each quarter, the Franchisee shall report to the City the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Section 2.D; and

(2) Percentage of time customers received a busy signal when calling the Franchisee's service center as set forth in Section 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request.

G. At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify the City of such a change not less than thirty (30) days in advance.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the

provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after an order is placed if the Optical Network Terminal ("ONT") is already installed on the customer's premises. The Standard Installation shall be performed within fourteen (14) business days where there is no ONT at the time of service order. Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding those requested by the customer outside of these time periods.

C. The Franchisee shall provide the City with a report upon request from the City, but in no event more than once a quarter, noting the percentage of Standard Installations completed within the time periods provided in Section 3.B. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request.

D. At Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify the City of such a change not less than thirty (30) days in advance.

E. Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Franchisee's discretion, Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

(1) Franchisee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.

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

F. Franchisee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Franchisee representative going to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a local business office within the Franchise Area. If requested by a mobility-limited customer, the Franchisee shall arrange for pickup and/or replacement of converters or other Franchisee equipment at Subscriber's address or by a satisfactory equivalent.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. Franchisee shall promptly notify the City of any Significant Outage of the Cable Service.

B. Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the City and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Franchisee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.

(2) Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the City of a Cable Service problem.

E. Under Normal Operating Conditions, Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. Franchisee shall meet the standard in Section E of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. Franchisee shall provide the City with a report upon request from the City, but in no event more than once a quarter, forty-five (45) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request. At the Franchisee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify the City of such a change at least thirty (30) days in advance of any implementation.

H. Under Normal Operating Conditions, Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Franchisee to verify the problem if requested by Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

I. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

J. With respect to service issues concerning Cable Services provided to the City facilities, Franchisee shall Respond to all inquiries from the City within four (4) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions and shall diligently pursue to completion. If such repairs cannot be completed within twenty-four (24) hours, Franchisee shall notify the City in writing as to the reason(s) for the delay and provide an estimated time of repair.

SECTION 5: CUSTOMER COMPLAINTS REFERRED BY THE CITY

Under Normal Operating Conditions, Franchisee shall begin investigating Subscriber complaints referred by the City within seventy-two (72) hours. Franchisee shall notify the City of those matters that necessitate an excess of five (5) business days to resolve, but Franchisee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. The City may require Franchisee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Franchisee shall inform the City in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section, "resolve" means that Franchisee shall perform those actions, which, in the normal course of business, are necessary to (a) investigate the Customer's complaint; (b) advise the Customer of the results of that investigation; and (c) implement and complete steps to bring resolution to the matter in question.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills will comply with applicable federal and state laws, and shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other

governmental-imposed fees. Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Section 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved, provided that:

(1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. Franchisee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Franchisee.

G. Franchisee shall forward a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to the City.

H. Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Franchisee, the payment alternative may be limited.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to Franchisee, or 3) who rent Subscriber equipment from Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Franchisee may charge for Subscriber equipment is the cost of the equipment which Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Franchisee shall pay interest on deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by Franchisee or its authorized agent. Appropriate time considerations shall be included in Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. Franchisee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Franchisee's equipment (for example, a dog chew).

B. Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

C. All of Franchisee's rates and charges shall comply with applicable federal and state law. Franchisee shall maintain a complete current schedule of rates and charges for Cable Services on file with the City throughout the term of this Franchise.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

A. Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Franchisee's equipment, abusive and/or threatening behavior toward Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

D. Charges for cable service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may by applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Franchisee. For purposes of this Section, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Franchisee.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. Each employee of the Franchisee who routinely comes into contact with members of the public at their places of residence must wear a picture identification card clearly indicating his or her employment with the Franchisee. The photograph on the identification card shall prominently show the employee's name and/or identification number. Such employee shall prominently display such identification card and shall show it to all such members of the public. Each employee of any contractor or subcontractor of the Franchisee who routinely comes into contact with members of the public at their places of residence must wear a picture identification card clearly indicating his or her name, the name of such contractor or subcontractor and the name of the Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing Franchisee shall be conducted in a courteous manner.

C. Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Franchisee may be referred to the City. A copy of the annual notice required under this Section 10.C will be given to the City at least fifteen (15) days prior to distribution to Subscribers.

D. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

E. Franchisee shall provide reasonable notice to Subscribers and the City of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Franchisee. Franchisee shall provide a copy of the notice to the City including how and where the notice was given to Subscribers.

F. Upon request by any Subscriber, Franchisee shall make available a parental control or lockout device to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Franchisee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

G. Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Section 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Franchisee:

(1) Products and Cable Service offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Franchisee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address, and telephone number of the City, but with a notice advising the Subscriber to initially contact Franchisee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

(7) The availability of a parental control device;

(8) Franchisee practices and procedures for protecting against invasion of privacy; and

(9) The address and telephone number of Franchisee's office to which complaints may be reported.

A copy of notices required in this Section 10.G. will be given to the City at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not within the control of Franchisee.

H. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

I. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

J. Every notice of termination of Cable Service shall include the following information:

(1) The name and address of the Subscriber whose account is delinquent;

(2) The amount of the delinquency for all services billed;

(3) The date by which payment is required in order to avoid termination of Cable Service; and

(4) The telephone number for Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

K. Franchisee will comply with privacy rights of Subscribers in accordance with applicable federal and state law, including 47 U.S.C. §551.