



City of Bellingham, Washington, and
Qwest Broadband Services, Inc. d/b/a/ CenturyLink

Cable Television Franchise

ORDINANCE NO. xx

AN ORDINANCE AWARDDING A FRANCHISE TO QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BELLINGHAM; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM

WHEREAS, Qwest Broadband Services, Inc. d/b/a/ CenturyLink (“Grantee”) desires to operate a Cable System in the rights-of-way of the City of Bellingham (“City” or “Grantor”) under the authority of Chapter 6.17 of the Bellingham Municipal Code; and

WHEREAS, negotiations between Grantee and the City have been completed; and

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

WHEREAS, pursuant to Section 11.08 of the City Charter, notice of CenturyLink’s application for a Franchise was filed with the Finance Director and published once a week for four successive weeks in the City official newspaper; and

WHEREAS, pursuant to Bellingham Municipal Code 6.17.070, a hearing was held on the 24th day of July, 2017;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN that a franchise is hereby granted to Qwest Broadband Services, Inc. d/b/a/ CenturyLink to construct, operate, and maintain a Cable System in the City of Bellingham upon the following terms and conditions:

City of Bellingham
CenturyLink Cable Television Franchise Agreement
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SECTION 1. DEFINITIONS

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

1.1 “Access,” “PEG Access,” or “PEG Use”

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

(a) “Public Access” or “Public Use”

means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

(b) “Education Access” or “Education Use”

means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

(c) “Government Access” or “Government Use”

means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

1.2 “Access Channel”

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

1.3 “Access Facilities”

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

1.4 “Access Provider”

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

- 1.5 “Applicable Law”**
means any federal, State or local statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.
- 1.6 “Basic or Basic Service”**
means a service tier that includes, at a minimum, all signals of domestic television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Cable System) any public, educational, and governmental programming required by this Franchise to be carried on the Basic tier, and any additional video programming signals or service added to the Basic tier by the Grantee.
- 1.7 “BTV”**
Means, the City’s PEG channel in existence on the Effective Date of this Franchise, and identified as a government, education, and public access channel.
- 1.8 “Cable Service”**
means:
(a) The one-way transmission to Subscribers of (1) video programming, or (2) other programming services; and
(b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.
- 1.9 “Cable Act”**
means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.
- 1.10 “Cable System”**
means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with Section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system. For the purposes of this Franchise, Cable System means Grantee’s system serving the City.

- 1.11 “Channel”**
means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).
- 1.12 “City”**
means the City of Bellingham of the State of Washington and all the territory within its present and future boundaries.
- 1.13 “City Code”**
means the Municipal Code of the City of Bellingham, Washington, as may be amended from time to time.
- 1.14 “Day”**
unless otherwise specified shall mean a calendar day.
- 1.15 “Demarcation Point”**
means the physical point at which the Cable System enters a subscriber’s home or building.
- 1.16 “Digital Services”**
means services offered over the Cable system including the transmission of audio and video by discrete (digital) signals including standard definition and high definition signals consistent with the standards developed by the Advanced Television Systems Committee for digital television transmission over terrestrial, cable, and satellite networks.
- 1.17 “Effective Date”**
means this Franchise granted by this Ordinance shall be effective 15 days from date of final passage by City Council; provided, however, that Grantee shall have 60 days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the City’s discretion if Grantee fails to accept within 60 days.
- 1.18 “Expanded Basic Service”**
Refers to the next tier of service above the Basic Service tier excluding premium or pay-per-view services.
- 1.19 “Franchise”**
means this Ordinance and conditions as set forth herein.
- 1.20 “Franchise Fee”**
means the fee the City may assess in accordance with Section 622 (g) of the Cable Act (47 U.S.C. 542(g)).
- 1.21 “Grantee”**
means Qwest Broadband Services, Inc. d/b/a/ CenturyLink, a Delaware Corporation, and permitted successors and assigns.

1.22 “Gross Revenues”

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

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

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

1.23 “Headend”

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

1.24 “Institutional Facilities”

means libraries, police stations (not including incarceration facilities) and fire stations but shall not include buildings or sites owned by City such as storage facilities or other facilities not used for administrative purposes, or those buildings owned by the City but leased to third parties at which government administrative employees are not regularly stationed.

1.25 “Leased Access”

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

- 1.26 “Mosaic” or “Mosaic Channel”**
means a channel which displays miniaturized media screens and related information for a particular group of channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, which displays the group of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel.
- 1.27 “Municipal buildings”**
means those buildings owned or leased and occupied by the City for government administrative purposes.
- 1.28 “MVPD”**
means "multichannel video programming distributor." As used in this Franchise MVPD means a cable operator or a multichannel multipoint distribution service, that makes available for purchase, by Subscribers, multiple Channels of video programming.
- 1.29 “Normal Business Office Hours”**
means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.
- 1.30 “Normal Operating Conditions”**
means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- 1.31 “Premium Service”**
means a Cable Service (such as movie channels or pay-per-view programs) offered to Subscribers on a per-channel, per-program, or per-event basis.
- 1.32 “PEG”**
means public, educational and governmental.
- 1.33 “Person”**
means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.
- 1.34 “QC”**
means Qwest Corporation d/b/a CenturyLink (“QC”), an Affiliate of Grantee.

- 1.35 "Qualified Living Unit"**
means a distinct address in the QC network inventory database that satisfies the minimum technical qualifications defined by Grantee for provision of Cable Service. Examples of a Qualified Living Unit may include city administrative buildings, single family homes, multi-dwelling units, and business locations that satisfy the minimum technical qualifications defined by Grantee for the provision of Cable Service.
- 1.36 "State"**
means The State of Washington.
- 1.37 "Street"**
means the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all incorporated areas of the City.
- 1.38 "Subscriber"**
means any person who legally receives Grantee's Cable Services over the Cable System
- 1.39 "Transfer"**
means any transaction in which:
(a) All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Streets);
(b) There is any change, acquisition, or direct or indirect transfer of control of the Grantee;
(c) The rights and/or obligations held by the Grantee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or
(d) The transfer of stock in a corporation so as to create a new controlling interest constitutes a "transfer." The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- 1.40 "Video Services"**
means programming provided by, or generally considered comparable to programming provided by a cable operator as the term "cable operator" is defined in the Cable Act.

SECTION 2. FRANCHISE

2.1 Grant of Franchise

The City hereby authorizes Grantee to occupy or use the City's Streets subject to (A) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and (B) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from providing services other than Cable Services to the extent not prohibited by Applicable Law. The City hereby reserves all of its rights to regulate such other services to the extent

consistent with Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

Any Affiliate of Grantee directly involved in the offering or delivery of Cable Services in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, shall comply with the obligations of this Franchise. However, the Parties acknowledge that QC, an Affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Service, including Cable Services utilizing QC's Fiber-to-the-Premises Network or Fiber-to-the-node infrastructure. So long as QC does not provide Cable Services to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Rights-of-Way shall otherwise be subject to applicable laws and permit requirements. To the extent Grantee uses any third-parties (whether or not affiliated with Grantee) to fulfill its obligations under this Franchise, Grantee shall ensure such parties comply with the terms and conditions of this Franchise. To the extent Grantee constructs and installs Facilities in the Rights-of-Way, such Facilities will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for compliance with all provisions in this Franchise related to: 1) its offering of Cable Services in the Franchise Area; and 2) the operation of the Cable System regardless of which entity owns or constructs the Facilities used to provide the Cable Service.

2.2 Police Powers

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

2.3 Franchise Term

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

Grantee may terminate the Franchise Agreement five (5) years after its effective date if Grantee is not providing Cable Service to a minimum of twenty percent (20%) of the total

number of Cable Service subscribers within the Franchise Area. Grantee shall provide no less than 180 days written notice to Grantor of its intent to terminate the Franchise Agreement. The option to terminate shall be waived if not exercised five (5) years after the effective date of the agreement.

2.4 Franchise Area

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

Grantee anticipates having 6,200 Qualified Livings Units in the City within 12 months after acceptance of the Franchise.

2.5 Franchise Nonexclusive

The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee. If any other wireline MVPD enters into any agreement with the City to provide Video Services to Subscribers in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide Video Services to Subscribers in the City under a substantively similar agreement as applicable to the new MVPD, if permissible under Applicable Law. Within one hundred and twenty (120) Days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the substantively similar terms and conditions as are applicable to the new wireline MVPD.

2.6 Competition from Wireline MVPD

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

2.7 Franchise Renewal or New Franchise

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

2.8 Periodic Public Review of Franchise

The City may, at approximately three-year intervals during the term of the Franchise, and at such other times as the City deems appropriate, conduct a public review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Franchise continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests, and other such factors. Both the City and Grantee agree to make a full and good faith effort to participate in the review in a manner that accomplishes this end. It is not intended that the Franchise be modified as a result of such review. The City shall establish a procedure for ensuring orderly review, full discussion of any proposed policy changes between the City and Grantee, and full public hearing regarding all matters discussed during the review.

Matters appropriate for discussion at the public reviews in accordance with this section include, without limitation:

- (a) Grantee's overall compliance with the Franchise;
- (b) Policies and practices necessary to ensure continued support for public, educational and government access at substantially the same level provided for in the Franchise;
- (c) System upgrade and rebuild requirements; and
- (d) The resolution of any evident patterns of existing customer service problems.

If so ordered by a resolution of the City Council, following public review under this Section 2.8 and after the Eighth (8th) year of the Effective Date of the Franchise, Grantee shall agree to meet to discuss with the City technical capacity and performance, as well as provide general parity of overall Cable Service with the its most advanced Cable Service provided by Grantee in Washington and Oregon.

The periodic public reviews described in this section may be but need not be made coincident with public reviews involved in the consideration of Grantee requests for franchise renewal, franchise extension, or approval of transfer of system ownership.

2.9 Transfer or Change of Control

Neither the Grantee nor any other Person may Transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by CenturyLink, Inc. If Grantee submits an application for approval of any Transfer in accordance with federal regulations (47 C.F.R. Section 76.502) the City shall process said application in accordance with those regulations. Applications for approval of any Transfer shall also be filed, and the City shall process such applications, in accordance with procedures set out in the City Code so long

as they are not in conflict with Applicable Law. A Transfer without the prior written approval of the City is a material violation of this Franchise and shall make the Franchise subject to termination by the City.

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

In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, the City shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential impact of the Transfer on Subscriber services; whether the Grantee is in compliance with its Franchise and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the City's interest under this Franchise, or other Applicable Law.

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

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

2.10 Renewal

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

2.11 Conditions of Sale

The City may acquire the Cable System, used exclusively for the provision of Cable Service, as provided in 47 U.S.C. 547.

2.12 Right to Require Removal of Property

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

2.13 Continuity of Service Mandatory

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

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

3.1 Use of Streets

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

3.2 Construction or Alteration

Subject to Section 2 herein, in connection with the construction, operation or repair of the Cable System, Grantee shall, in all cases, comply with the City Code.

3.3 Non-Interference

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

3.4 Consistency with Designated Use

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

3.5 Undergrounding

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

- (a) All other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
- (b) Grantee is unable to get pole clearance;
- (c) Underground easements are obtained from developers of new residential areas; or
- (d) Utilities are overhead but residents prefer underground service drops (underground service drops provided at cost).

If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires within such district if requested to do so and place facilities underground pursuant to RCW 35.99.060.

If such undergrounding of Grantee facilities is part of such a project, the costs thereof shall be included in such local improvement district.

Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 Maintenance and Restoration

(a) Restoration to Prior Condition

Consistent with Section 6.17.230 of the City Code, in case of any disturbance of any Street, pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, landscaping or surface, in as good condition as before said work was commenced and in accordance with standards for such work set by the City and the City Code.

(b) Disputes

In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City of Bellingham Department of Public Works subject to appeal by Grantee to Hearings Examiner consistent with Section 7.5 herein.

3.7 Tree Trimming

Grantee shall have the authority, pursuant to Sections 6.17.230 and 13.40.060 of the City Code, to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

3.8 Relocation

(a) Relocation of Facilities

In the event that at any time during the period of the franchise, the city, county or state shall lawfully elect to alter or change the grade of any street, alley, or other public ways, the Grantee, upon reasonable notice by the proper governmental entity, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures within the public right-of-way pursuant to RCW 35.99.060.

(b) Failure by Grantee to Remove or Relocate

If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee to the extent required by RCW 35.99.060.

(c) Procedure for Removal of Cable

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

3.9 Movement of Buildings

Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than 15 days' notice to the cable company to arrange for such temporary wire changes.

SECTION 4. CABLE SYSTEM CAPACITY AND COMPLIMENTARY SERVICE

4.1 Cable System Capacity

During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming to its customers in the Franchise Area, including Basic Cable.

4.2 Connection of City and Other Public Facilities

Grantee shall, upon request through the designated City representative and without charge, provide a standard installation and one outlet of Basic and Expanded Basic Cable Services (and if necessary one (1) set top box) to City administrative buildings as designated by the City (whether they are owned or leased), fire station(s), police station(s), libraries and K-12 public school(s), provided that such buildings or public schools are designated as Qualified Living Units and that no other Cable Operator is providing Cable Services at such location.

If the City building is designated as a Qualified Living Unit and another Cable Operator is providing Cable Services at such location, and the City building requests that Grantee be its Cable Operator, Grantee shall install and furnish, at its sole cost, Complimentary Cable Service to said building once the other Cable Operator's service is disconnected.

The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public. The City will take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, loss or damage to the Cable System. If additional outlets of Cable Service are needed in such buildings, only the Grantee is authorized to complete the Cable Service expansion to support the outlet installation(s) and the building occupant will pay the standard installation fees, and pay the costs of any additional set top boxes. The costs associated with these services shall not be offset against Franchise Fees, unless another franchised cable provider in the City is permitted to such an offset. To the extent that any existing franchise awarded to a Cable Operator contains less burdensome terms related to complimentary service, Grantee will only be obligated to provide complimentary service consistent with the terms in that franchise.

(a) City or school responsibilities

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

(b) Alternate Wireline Service Provider

Subject to 4.2 above in the event that there is another wireline service provider (or providers) providing Cable Service within the City, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis, in City's sole discretion, in an effort to maintain equitable burdens on each provider.

4.3 Cable System Specifications

(a) Cable System Maintenance

In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, and service requirements set forth in this Franchise agreement.

(b) Emergency Alert Capability

Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert System.

(c) Standby Power

Grantee shall provide standby power generating capacity at the Cable System (headend) and central offices of at least twenty-four (24) hours.

4.4 Technical Standards

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

4.5 Performance Testing

Grantee shall perform all applicable Cable System tests at the intervals required by the FCC. Written records of all Cable System test results performed by or for Grantee shall be maintained and available for City inspection upon request.

The tests may be witnessed by representatives of the City, and Grantee shall inform the City of the time and place of each test no less than three weeks prior to the scheduled compliance test. Written test reports of compliance testing shall be submitted to the City. If more than one of the locations tested fail to meet the performance standards, Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed.

SECTION 5. PROGRAMMING AND SERVICES

5.1 Categories of Programming Service

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

- News and Information
- Sports
- General Entertainment
- Arts/Performance/Humanities
- Science/Technology
- Children/Family/Seniors
- Foreign Language/Ethnic Programming
- Public, Educational and Governmental Access Programming

5.2 Changes in Programming Services

Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without notifying the City. Further, Grantee shall provide

at least thirty (30) days' prior written notice to Subscribers and to the City of Grantee's intent to effectively delete any broad category of programming or any channel within its control, including all proposed changes in channel allocation, including any new equipment requirements that may occur as a result of these changes.

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

5.3 Obscenity

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

5.4 Parental Control Device

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

5.5 Closed Captioning

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

SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

6.1 Access Channels

Grantee shall make available for City's use up to three (3) Channels on the Cable System for PEG use as designated by the City in its sole discretion. For purposes of this agreement a standard definition channel and a high definition channel with the same programming shall be considered separate channels. Grantee shall provide two (2) Channels to the City for PEG use within 180 days of the Effective Date of this agreement, or other date agreed upon by the parties.

Grantee shall make available for Grantor's use a third PEG Channel after it provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service subscribers within the Franchise Area. The third PEG channel shall be added to the Cable System by Grantee within 180 days of the receipt of written notice from the City, or other date agreed upon by the parties. The additional PEG channels may be programmed by the

City in City's sole discretion for PEG access purposes. In no event shall Grantee be required to have more PEG channels than any other franchised cable provider in the City.

6.2 Control and Administration

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

6.3 Cable Guide for PEG

Grantee agrees that if it utilizes a cable guide under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Law so that Subscribers will have ready access to PEG Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation.

6.4 Noncommercial Use of PEG

PEG Channels are for noncommercial programming to be promoted and administered by the City as allowed under Applicable Law. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (A) the identification of financial supporters similar to what is provided on public broadcasting stations; or (B) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (C) programming offered by accredited, non-profit, educational institutions which may offer telecourses over a PEG Channel.

6.5 Indemnification

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

6.6 PEG Channel Location

Channel assignments for PEG Access Channels shall be determined in accordance with the following criteria:

- (a) Access Channels shall be available across all of Grantee's service tiers on the Cable System except as otherwise agreed to by the City.
- (b) The City acknowledges that Grantee may determine Channel placement at its sole discretion.
- (c) Grantee shall maintain a separate Channel assignment for each PEG Channel. The initial PEG access channels for BTV shall be located on Channel 40 in Standard

Definition, and on Channel 1040 in High Definition. BTV will also be placed on channels in the PEG numbering scheme used by Grantee.

- (d) Grantee shall utilize the following identifiers for BTV on its system (subject to availability from Grantee's guide data provider, and subject to any change agreed to by the parties):
 - (i) Call Letters: BTVBHAM
 - (ii) Channel Name: BTV Bellingham
- (e) Grantee reserves the right to make a mosaic channel that includes Bellingham PEG channels. In this case, BTV will remain on the PEG numbering scheme used by Grantee rather than channels 40 and 1040. Grantee will consult with the City on the name of the mosaic channel.
- (f) Grantee will give City at least 90 days notice prior to changing any PEG channel or mosaic location or number; or conversion of a PEG channel to a mosaic.

6.7 PEG Fees

(a) PEG Fee Amounts

Grantee shall collect fees to support PEG obligations on a per subscriber per month basis.

Upon the Effective Date of this Franchise, Grantee shall collect on behalf of City a per Subscriber fee of fifty cents (\$.50) per month ("PEG Fee").

Subject to the preceding requirements of this Section 6.7(a), the City may, at any time over the term of this Franchise, provide Grantee ninety (90) days advance written notice to increase or decrease the PEG Fee as determined in City's sole discretion, provided that the Grantee shall never be required to collect and remit a different monthly per Subscriber amount than being collected from the incumbent cable provider from its subscribers as a PEG Fee. In no event may any PEG Fee exceed fifty cents (\$.50)/Subscriber/month.

If PEG fees are itemized on Subscriber bills, PEG fees shown shall appear in a single line on the bill.

(b) City's use of PEG Fees

In no event shall the City use any portion of the PEG Fee in a manner inconsistent with 47 U.S.C. § 542(g)(2)(C) or any other applicable provisions of the Cable Act and FCC regulations.

The City and Grantee agree that the PEG Fee is in addition to the Franchise Fee, and falls within one or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Law.

(c) **Grantee payment of PEG Fees**

Grantee shall pay the PEG Fee to the City monthly at the same time as the payment of franchise fees under Section 11.1 of this Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise fees required as a result of its obligation to remit the PEG Fee.

Should Grantee continue to provide Cable Service after the scheduled expiration of this Franchise, until and unless this Franchise is superseded by a renewed franchise in accordance with Applicable Law, Grantee shall continue to make monthly PEG Fee payments for, and in support of PEG Channels as specified hereinabove.

Any PEG Fee's owing pursuant to this Franchise which remain unpaid more than thirty (30) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve (12) percent per annum or the prime lending rate published by the Wall Street Journal plus two percent on the day the payment was due, whichever is greater.

6.8 Fiber Return Lines and Confidence Feed

Grantee shall construct and maintain free of charge to the City throughout the life of this Franchise a fiber return line at the Bellingham Municipal Court building in order to enable the distribution of PEG access programming to Grantee's residential Subscribers. Grantee shall ensure that the Cable System is capable of transporting PEG programming (i.e. program origination capability) from the Bellingham Municipal Court building.

Grantee will also provide a complimentary confidence feed to the Bellingham Municipal Court Building so that the City may monitor the PEG access programming viewable by Subscribers. The confidence feed may be provided using a sling-box or other technological means if the Bellingham Municipal Court Building does not meet the definition of a qualified living unit. The parties shall mutually agree on the location for a sling-box, if necessary.

6.9 Construction of New Fiber Return Lines.

In the event that Grantor relocates its Access Facility during the term of this Agreement, Grantor shall provide no less than 180 days written notice to Grantee. The parties shall determine the most cost-effective means of constructing a new fiber return line which may include, for example, utilizing Grantor's existing fiber between the proposed new Access Facility and the Grantee's Cable System.

Grantor shall be solely responsible for the costs of constructing a new fiber return line and may contract with Grantee for the construction of the fiber. Grantor may request a written estimate of the proposed construction costs from Grantee which estimate shall be provided within 45 days of the request. If the estimate is accepted by Grantor, the parties shall execute a separate agreement for the construction of the new fiber return line.

6.10 PEG Signals and Equipment

All PEG Channels shall be provided as part of Basic Service in accordance with applicable law. Grantor shall deliver the signal from BTV to Grantee in both standard digital format and HD format, which shall constitute the provision of two PEG channels.

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

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

6.11 Technical Quality of PEG Channel Signals

(a) PEG channel signals

PEG channel signals will not be intentionally degraded in any way that would reduce signal quality of the signals delivered by the City or the Access Providers to the Grantee. Grantee shall be responsible for all equipment, including head end equipment, on Grantee's side of fiber termination panel. Grantee shall not impose any additional charges on City or any Access Providers after the signal is handed off to Grantee.

Grantee shall maintain its Cable System in accordance with applicable FCC Technical Standards so that PEG Channels and return lines are at the same level of technical quality and reliability as other commercial signals carried by Grantee, so long as the signal comes to Grantee at that level of quality.

Grantee agrees not to encrypt the PEG Channels any differently than other commercial Channels available on the Cable System. There shall be no significant deterioration in signal from the point of origination to the customer premise equipment on the Cable System. All processing equipment used by Grantee for processing PEG signals will be of similar quality to the processing equipment used for other commercial Channels.

The City shall ensure PEG Channels and signals leaving the City's playback facilities, or the playback facilities of the Access Providers, are in compliance with applicable FCC technical standards.

Grantee will transport PEG programming from the City's playback facilities, or the playback facilities of the Access Providers, to the Grantee's headend free of charge.

(b) PEG Signal – Technical support from Grantee

Within 24 hours of a call from City to the Grantee identifying a technical problem and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering

representation from Grantee and the City in order to determine the course of action to remedy the problem.

6.12 Change in Technology

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

6.13 Relocation of Grantee’s Headend

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

SECTION 7. REGULATORY PROVISIONS

7.1 Intent

In accordance with the provisions of Chapter 6.17 BMC, the City retains the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

7.2 Delegation of Authority to Regulate

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

7.3 Areas of Administrative Authority

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

- (a) Administering and enforcing the provisions of this Franchise agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- (b) Coordinating the operation of PEG Channel programming.
- (c) Planning expansion and growth of public access programming.
- (d) Formulating and recommending long-range cable communications policy for the Franchise area.
- (e) Disbursing and utilizing Franchise revenues paid to the City.

Grantee shall cooperate fully in facilitating the City’s discharge of its administrative authority.

7.4 Regulation of Rates and Charges

- (a) **Right to Regulate.** The City reserves the right to regulate rates and charges for any Cable Service within the limits of Applicable Law.
- (b) **Notice of Change in Rates and Charges.** Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City of Bellingham at least thirty (30) days' notice of any intended change to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers without notice to all Subscribers.
- (c) **Rate Discrimination Prohibited.** Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any Cable Service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers.
- (d) **Low Income Discount**
Grantee shall provide reasonable needs-based discounts on Cable Services of not less than the amount provided by other Cable Operators serving the City as of the Effective Date of this Franchise, at a minimum to Subscribers that qualify for discounts under the Federal Lifeline/Link-up program. This subsection shall not prohibit Grantee from providing a larger discount or offering the discount to other economically or physically challenged Subscribers.

As of the date of this Franchise, to participate in the Lifeline Link-up program, subscribers must either have an income that is at or below 135% of the Federal Poverty Guidelines or participate in one of the following assistance programs:

- Medicaid;
- Supplemental Nutrition Assistance Program (Food Stamps or SNAP);
- Supplemental Security Income (SSI);
- Federal Public Housing Assistance (Section 8);
- Veterans and Survivors Pension Benefit;
- Bureau of Indian Affairs General Assistance;
- Tribally-Administered Temporary Assistance for Needy Families (TTANF);
- Food Distribution Program on Indian Reservations (FDPIR);
- Head Start (if income eligibility criteria are met); or
- State assistance programs (if applicable).

To the extent federal law changes with respect to eligibility requirements, those changes shall be incorporated herein.

7.5 Franchise Violations, Remedies, and Revocation

(a) Remedies

The City shall have the right to assert the remedies set out below in the event Grantee violates any provision of this Franchise. These remedies are intended to embody the City's and/or the public's rights under City Charter Article 11.04 to the extent permitted by Applicable Law.

- (i) To the extent the City deems necessary to remedy the default, proceeding against all or any part of any security provided under the City Code or this Franchise, including, without limitation, any bonds, security funds, or other surety, Grantee shall be responsible for all direct and actual costs related to the enforcement action including, but not limited to, legal and administrative costs;
- (ii) Impose liquidated damages as set forth in Section 7.6, but only after the due process provisions outlined herein have been completed;
- (iii) Commencing an action at law for monetary damages or seeking equitable relief, including specific performance; or
- (iv) In the case of a Grantee's default as to a material provision of the Franchise, undertake the proceeding to revoke the Franchise.
- (v) In determining which remedy or remedies for Grantee's violation are appropriate, the City shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

(b) Revocation

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

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

(c) **Enforcement Procedures**

- (i) **Notice of Violation or Default.** In the event the City believes that the Grantee has not complied with the material terms of the Franchise or has demonstrated a pattern of Franchise violations, it shall first make contact with Grantee to informally discuss the issue. This informal discussion may be via telephone, email or other electronic means and is intended as a courtesy to Grantee prior to issuing a notice of violation. Thereafter the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default (“Violation Notice”).
- (ii) **Grantee’s Right to Cure or Respond.** The Grantee shall have thirty (30) days from the receipt of the Violation Notice to: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. The City shall not unreasonably refuse to accept the Grantee’s proposed cure date but such decision shall be the City’s alone to make.

- (iii) **Contested Hearings.** In the event the Grantee fails to respond to the Violation Notice or in the event that the alleged default is not remedied as required under this Section 7.5 (c), the City may refer the matter to the City's hearing examiner in accordance with Section 2.56 of the City Code. The Grantee will be provided an opportunity to present evidence to contest the alleged violation. City shall notify Grantee of the hearing in writing. The determination as to whether Grantee is in default of this Franchise shall be determined by the hearing examiner, but any such written decision shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be filed within thirty (30) Days of the issuance of the written decision of the hearing examiner. City shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.
- (iv) In the event the hearing examiner determines that Grantee is in non-compliance with any provision of the Franchise, the City may impose any of the remedies set out in section 7.

7.6 Liquidated Damages

- (a) Because Grantee's failure to comply with the provisions of this Franchise will result in damage to the City and because it will be impractical to determine the actual amount of such damages, the City and Grantee hereby agree upon and specify certain amounts set forth hereafter in this section which represent both parties' best estimate of the damages.
- (b) The City shall specify any damages subject to this section and shall include such information in the Violation Notice sent to Grantee required under Section 7.5(c)(1). Such Violation Notice may provide for damages sustained prior to the Violation Notice where so provided, and subsequent thereto pending compliance by Grantee.
- (c) To the extent that the City elects to assess liquidated damages as provided in this section and such liquidated damages have been paid, the parties agree that the assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or Applicable Law.
- (d) Unless otherwise provided, liquidated damages shall accrue once the thirty (30) day cure period has expired following Grantee's receipt of the Violation Notice, unless the City has agreed to extend the thirty (30) day cure period. If Grantee fails to cure within the thirty (30) days, or other agreed upon date, then the liquidated damages accrue from the date of the Violation Notice for a maximum of one hundred-twenty (120) days, whereupon the City may pursue alternate remedies as provided herein. Nothing in this section prevents the parties from settling any dispute relating to liquidated damages by mutual stipulation.

- (e) Grantee may cure the breach or violation within the time specified in Section 7.5(c)(2) to the City's satisfaction, whereupon no liquidated damages are assessed.
- (f) Schedule of Liquidated Damages. Nothing requires the City to assess liquidated damages, acting in its sole discretion, but such non-assessment does not operate as waiver or estoppel upon the City. Liquidated damages are set as follows.
 - (i) For failure to provide data, documents, reports and information as required by this Franchise or to cooperate with the City during a system review, One Hundred Fifty and No/100 Dollars (\$150) per day, or part thereof, per each separate violation.
 - (ii) For failure to provide the services required by this Franchise, including, but not limited to, the implementation and utilization of the PEG Channels, performance of required tests, and compliance with customer service standards, Two Hundred Fifty and No/100 Dollars (\$250) per day for each day, or part thereof, such failure occurs or continues. Failure of Customer Service Standards shall be counted as one per day, irrespective of the number of customers impacted.
 - (iii) For failure to comply with any of the material provisions of the Franchise, for which a liquidated damage is not otherwise specified, the liquidated damages shall be Two Hundred and No/100 (\$200) per day for each day, or part thereof, such failure occurs or continues.
 - (iv) The City shall not assess liquidated damages for breaches identified in 7.6(f)(ii) related to customer service standards for the first twelve (12) months after the Effective Date of this Agreement. After the first twelve (12) months after the Effective Date of this Agreement, the City may assess liquidated damages for breaches identified in 7.6(f)(ii) related to customer service standards at a rate of fifty percent (50%) of the maximum applicable penalty until Grantee provides Cable Service to a minimum of fifteen percent (15%) of the total number of Cable Service subscribers within the Franchise Area, then at a rate of seventy-five percent (75%) of the maximum applicable penalty when Grantee provides Cable Service to between sixteen and 30 percent (16-30%) of the total number of Cable Service subscribers within the Franchise Area. The maximum applicable penalty may be applied for breaches identified in 7.6(f)(ii) related to customer service standards after Grantee initially reaches thirty-one percent (31%) of Cable Service subscribers within the Franchise Area.

7.7 Removal of Cable Following Termination of Franchise

Any order by the City to remove cable or conduit utilized exclusively for the provision of cable service shall be mailed to Grantee not later than thirty (30) calendar days following the final determination of revocation of Grantee's right to occupy public right of way.

Grantee shall file written notice with the City not later than 30 calendar days following the date of termination of the Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed no later than 12 months following the date of expiration of the Franchise.

7.8 Failure to Enforce

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

7.9 Alternative Remedies

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

7.10 Compliance with the Laws; Eminent Domain

Subject to Section 2.2., Grantee shall comply with all applicable federal and State laws and regulations, including regulations of any administrative agency thereof, as well as all generally applicable ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the term, of this Franchise. Nothing in the Franchise shall expand or limit the City's right of eminent domain under State law. Nothing in the Franchise shall be deemed to waive the requirements of any lawful code, ordinance or resolution of the City requiring permits, fees to be paid, or regulation of construction.

SECTION 8. REPORTING REQUIREMENTS

8.1 Monthly Revenue Report

Grantee shall submit to the City along with its franchise fee payment a report showing the basis for computation of such fees showing the basis for the computation of the franchise fees and PEG fees paid during that period in a form and substance substantially equivalent to Exhibit A attached hereto. This report shall separately indicate revenues received by Grantee within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.22 of this Franchise.

8.2 Quarterly Trouble Call Report

Beginning six (6) months after the Effective Date, Grantee shall provide the total number of trouble calls to the City or person or agency designated by the City on a quarterly basis. The City may request more detailed information about trouble calls that is maintained by Grantee in the ordinary course of business which may include, for example, the street name portion of the address, city, zip, trouble call reason, dated entered, date completed, and resolution.

8.3 Quarterly Report

Beginning twelve (12) months after the Effective Date, Grantee shall provide City with information which shall describe in detail Grantee's compliance with customer service standards.

8.4 Annual Report

On or before May 31st of each year during the term of this Franchise, Grantee shall present a written report to the City which shall include:

- (a) A summary of gross revenue and franchise fee calculations for the previous year.
- (b) An unaudited financial statement that includes Grantee's operations. The City shall have the right one (1) time during the Term of this Franchise to require that the Grantee provide the City with an audited financial statement for any one fiscal year that includes Grantee's operations.
- (c) A summary of the previous year's activities for the Franchise area served by Grantee including, but not limited to, the total number of Subscribers for each category of service, the number of Qualified Living Units within the City and viewership statistics related to the City's PEG channel or channels (if available). Grantee may mark this information as confidential.
- (d) A description of all significant changes and modifications to the system or services that have been implemented in the previous year.

8.5 Ascertainment Process

Grantee shall:

- (a) If requested by the City, provide one (1) systematic ascertainment of the community's views regarding the nature and adequacy of Grantee's services, and of the cable related needs and interests of the community, and the preferences of customers in the City of Bellingham. The ascertainment shall use a methodology approved by the City, and may not be requested by the City until after the initial five (5) years of the franchise term.
- (b) At least sixty (60) days prior to beginning ascertainment survey, Grantee and City shall meet to discuss proposed survey questions and Grantee shall provide City with a draft copy of the proposed survey questions. The City shall have the right to add up to 10 questions to the survey or to refine questions based on Grantee's draft survey to address issues related to Cable Services or PEG channel viewing in the City. The parties agree to collaborate so that survey can be conducted in timely manner.

8.6 Monitoring and Compliance Reports

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

8.7 Additional Reports and Information

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

Upon request, City shall have right to inspect detailed system maps at Grantee's local office.

8.8 Semi-annual meetings

Beginning six months from the Effective Date, Grantee may meet with the City not less frequently than semiannually if requested, and more if requested by the City, to discuss service availability under this agreement, including availability to multi-tenant buildings owned/operated by Bellingham Whatcom County Housing Authority or other known low income housing providers.

8.9 Grantee Report of Communications with State Regulatory Bodies or Committees

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

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

SECTION 9. CUSTOMER SERVICE POLICIES

9.1 Response to Customers and Cooperation with City

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

9.2 Definition of "Complaint"

For the purposes of section 9, with the exception of Subsection 9.3, a "complaint" shall mean an initial or repeated Customer expression of dissatisfaction, whether written or oral, that is referred beyond a Customer Service Representative or their supervisor at the Call Center, or to the Grantee's system office or regional office or corporate headquarters, or to the LFA for resolution. This does not include routine inquiries and service requests.

9.3 Customer Service Agreement

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

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Liability specifications.
- (f) Converter/Subscriber equipment policy.
- (g) Breach of Agreement specification.
- (h) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (i) The name and address, of the City identified as the local franchising authority. This information shall be contained in the packet. A copy or a link to the customer service agreement shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection. The information above shall be updated in a timely manner but not longer than 30 days from such modification.

9.4 Customer Service

(a) Customer Payment Location

During the term of the Franchise the Grantee shall comply with one of the following requirements:

- (i) Grantee shall maintain one (1) or more convenient local customer service and bill payment locations within the City, for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.
- (ii) Grantee shall maintain convenient local Subscriber service and bill payment locations for the purpose of receiving Subscriber payments or equipment returns. Unless otherwise requested by the Subscriber, Grantee shall deliver replacement equipment directly to the Subscriber at no cost to the Subscriber. The Grantee shall maintain a business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billings disputes and similar matters. The office must be reachable by a local, toll-free telephone call, and Grantee shall provide the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. At a minimum Grantee shall also provide the following:
 - 1) Subscribers can remit payments at third party commercial location(s) within the greater Bellingham area.
 - 2) Subscribers shall be able to return and receive equipment, free of charge, via national overnight courier service (such as Fed Ex or UPS) if a service technician is not required to visit the Subscriber's Qualified Living Unit.
 - 3) In the event Grantee provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service Subscribers in the City served by cable operators franchised by the City, the Grantee shall then be required to also comply with the requirements of Section 9.4(a)(i) above.

(b) Customer Service Standards

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

(c) Customer Service procedures regarding television signal quality

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

- (i) Products and Services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and service maintenance policies;
- (iv) Instructions on how to use the cable service;
- (v) Channel positions of programming carried on the system; and
- (vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.
- (vii) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City.

(d) Customer Service Rate and Service Changes

Consistent with §76.1603 of the FCC's rules and regulations, subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee.

Grantee shall give 30 days' notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the deletion of channels, each channel deleted must be separately identified.

(e) Information on Subscriber Bills

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

- (i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (ii) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(f) Refund Policy

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

(g) Late Fees

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

(h) Disputes

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

9.5 Customer Bills

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

9.6 Notification of Complaint Procedure

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

9.7 Grantee Identification

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

SECTION 10. LINE EXTENSION POLICY

10.1 Service availability

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

(A) Service Connections. Grantee shall provide Cable Services upon a valid request from any person in the City who resides in a Qualified Living Unit within seven (7) business days. A request shall be deemed placed on the date of signing a service agreement, receipt of funds by Grantee, or receipt by Grantee of a verified verbal or written request. Rates and charges may not exceed the Grantee's published rates.

(B) Grantee shall not deny cable service to any group of subscribers or potential residential subscribers based upon race or the income level of the local area in which such group resides. Additionally, Grantee shall not make decisions about construction or maintenance of its cable system or facilities based upon race or the income level of residents of the local area in which such group resides.

10.2 Annexed Areas and Requirements

- (a) **City Notice of Annexation**
In the event the City annexes any area which is being provided cable service by Grantee, the City shall provide to Grantee, within (10) ten working days of passage by City Council, a copy of the City ordinance, legal description, if not found in the ordinance, addresses and a map defining the annexed area.
- (b) **Grantee service to newly annexed areas**
Upon the annexation of any additional land area by the City, the following conditions apply:
 - (i) If the annexed area is not currently served by a cable operator, Grantee will be subject to the other provisions of this franchise.
 - (ii) If the annexed area is served by a cable operator other than Grantee, the Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so.

SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS

11.1 Franchise Fees

During the term of the Franchise, Grantee shall pay to the City a franchise fee of 5% of Gross Revenues. If any such law, regulation or valid rule alters the 5% franchise fee enacted by the Cable Act, then the City shall have the authority to increase or decrease the franchise fee accordingly, provided such change is for purposes not inconsistent with Applicable Law. In the event franchise fee is modified by the City, City agrees to provide Grantee with prompt written notice of such modification. In the event Grantee bundles or combines Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the franchise fee, it shall allocate Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately. At no time during the life of this Agreement shall Grantee be required to pay a franchise fee that is a greater percentage of gross revenue than another franchised cable provider.

- (a) Franchise fees shall be paid monthly not later than 45 days following the end of a given month. In accordance with Section 8.1 of this Franchise, and not later than the date of each payment, Grantee shall file with the City on a monthly basis a franchise fee payment report which identifies Gross Revenues earned by Grantee during the prior month. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.
- (b) Neither current nor previously paid franchise fees shall be subtracted from the Gross Revenue amount upon which franchise fees are calculated and due for any period, unless otherwise required by Applicable Law. Nor shall copyright fees or other license fees paid by Grantee be subtracted from Gross Revenues for purposes of calculating franchise fees.
- (c) Any franchise fees owing pursuant to this Franchise which remain unpaid more than 45 days after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12% per annum or 2% above prime lending rate as quoted by major Seattle banks, whichever is greater.

11.2 Franchise Fees for Government and Education Access Operation

During the term of the Franchise, the City shall place no less than 1.25% of the Franchise fees received in a fund to support BTV operations.

11.3 City Annual Report to Grantee of PEG Fee Purchases

City shall provide to Grantee, within ninety (90) days following the end of each calendar year, a report detailing the City's PEG related capital expenditures.

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

11.4 Auditing and Financial Records

Grantee shall manage all of its operations in accordance with a policy of keeping relevant books and records open and accessible to the City. The City shall have the right as necessary for effectively enforcing the Franchise, to inspect at any time during Normal Business Office Hours upon reasonable notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by Grantee and any parent company pursuant to the applicable rules and regulations of the FCC and other regulatory agencies, and other like materials of Grantee and any parent company which relate to the enforcement of the Franchise. Access to the aforementioned records shall not be denied by Grantee to representatives of the City on the basis that said records contain "proprietary" information. However, to the extent allowed by Washington law, the City shall protect the trade secrets and other confidential information of Grantee and any parent company. All books and records relating to Grantee's activities under the Franchise shall be, or upon request be made, available in the City of Bellingham. If any

books, records, maps, plans or other requested documents are too voluminous, not available locally, or for security reasons cannot be copied and moved, then the Grantee may request that the inspection take place at a location mutually agreed to by Grantor and the Grantee, provided that the Grantee must pay all reasonable travel expenses incurred by Grantor in inspecting those documents or having the documents inspected by its designee, above those that would have been incurred had the documents been produced in the Seattle DMA

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

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

Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. Enforcement of any overpayment or underpayment shall be undertaken in accordance with Section 7.5 of this Franchise. In the event Grantee has underpaid the City by an amount greater than five percent (5%) underpayment, Grantee agrees to pay the cost of the audit in an amount up to fifteen thousand dollars (\$15,000). No such payment shall be required of Grantee until Grantee has exhausted all of its Legal and administrative remedies.

In the event of an overpayment by Grantee, the City shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days that Grantee withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the City.

The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement of the Franchise.

11.5 Performance Bond

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

Neither the provisions of this section, any bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by Grantee or to limit liability of Grantee under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

11.6 Validity of Bond

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

11.7 Indemnification by Grantee

Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of, or alleged to arise out of, any claim for damages for Grantee's invasion of the right of privacy, defamation of any person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington or any local agency applicable to Grantee in its business. Nothing herein shall be deemed to prevent the City, its officers, or its employees, from participating in the defense of any litigation by their own counsel, at such parties expense, but may not enter into a settlement without Grantee's consent. Such participation shall not, under any circumstances, relieve Grantee from its duty of defense against liability, or of paying any judgment entered against the City, its officers, or its employees.

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

11.8 Grantee Insurance

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

- (a) \$2,000,000 for personal injury or death to any one person and \$5,000,000 aggregate for personal injury or death per single accident or occurrence.
- (b) \$2,000,000 for property damage to any one person and \$5,000,000 aggregate for property damage per single accident or occurrence.
- (c) \$2,000,000 for all other types of liability, including claims for damages for invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or, for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington, or any local agency with jurisdiction.

Such insurance shall specifically name as additional insured the City of Bellingham, its officers, employees and agents. Grantee shall not cancel the policy during the life of this Franchise without giving 30 days' written notice to the City.

Grantee shall file with the City a certificate of insurance showing up-to-date coverage and additional insured coverage, as set forth above. Coverage shall not be changed or canceled without notification to the City.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 Posting and Publication

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

12.2 Guarantee of Performance

Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a 10-year Franchise.

12.3 Entire Agreement

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

12.4 Consent

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

12.5 Franchise Acceptance

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

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

12.6 Force Majeure

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

12.7 Work of Contractors and Subcontractors

Subject to Section 2.1 above, Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

12.8 Severability

If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

12.9 Counterparts

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

12.10 No Waiver of Rights

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

12.11 No Third Party Beneficiaries

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

12.12 Modification

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

12.13 Confidential Information

Grantee acknowledges that City is a municipal corporation incorporated under the laws of the State of Washington and subject to the Public Records Act (Chapter 42.56 RCW). The City shall make available copies of this Agreement, related documents, and related financial records.

In the event "Confidential Information" is requested, City may either withhold the records or provide reasonable notice of the request to Grantee and allow Grantee up to ten (10) business days to obtain and serve the City with a court injunction to prevent the City from releasing documents that Grantee has marked as "confidential." If Grantee fails to obtain a Court order and serve the City within the ten (10) business days, the City may release the documents. The City will not assert an exemption from disclosure on Grantee's behalf. The Grantee shall have the sole responsibility to seek a court order prohibiting the release of the "Confidential Information" under RCW 42.56.540.

Under no circumstances shall the City's compliance with its obligations under the Public Records Act be considered a breach of this Agreement.

12.14 Governing Law

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

12.15 Notices

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

To the City:

City of Bellingham
210 Lottie Street
Bellingham, WA 98225
ATTN: Finance Director

Non-binding courtesy copy to:

City of Bellingham
210 Lottie Street
Bellingham, WA 98225

ATTN: I.T. Director

To the Grantee:

Qwest Broadband Services, Inc., d/b/a CenturyLink
931 14th St.
Suite 1230
Denver, Colorado 80202

Non-binding courtesy copy to:

Qwest Broadband
Services, Inc., d/b/a CenturyLink
1600 7th Ave., 15th Floor
Seattle, WA 98191
ATTN: Public Policy

PASSED by the Council this ____ day of _____, 2017.

Council President

EXECUTED, this the _____ day of _____, 2017, for the **CITY OF BELLINGHAM**:

Departmental Approval:

Mayor

Department Head

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney

EXECUTED, this the _____ day of _____, 2017, for the Grantee:

Signature

Name

Title

EXHIBIT A – FRANCHISE FEE PAYMENT WORKSHEET

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

Fee Factor: 5%

Note: PEG fees paid will be described in a separate monthly report.

EXHIBIT B - FCC CUSTOMER SERVICE STANDARDS

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

- (1) Cable System office hours and telephone availability:**
 - (i)** The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - (A)** Trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - (B)** After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
 - (ii)** Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
 - (iii)** The operator shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - (iv)** Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 - (v)** Customer service center and bill payment locations will be open at least during Normal Business Office Hours and will be conveniently located.
- (2) Installations, Outages and Service Calls.** Under Normal Operating Conditions, each of the following standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:
 - (i)** Standard Installations will be performed within seven (7) business days after an order has been placed. **(ii)** Excluding conditions beyond the control of the operator, the cable operator will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other Service problems the next business day after notification of the Service problem.

- (iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The operator may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
 - (iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - (v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (3) Communications between Cable operators and Subscribers:
- (i) Refunds. Refund checks will be issued promptly, but no later than either:

 - (A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - (B) The return of the equipment supplied by the cable operator if service is terminated.
 - (ii) Credits. Credits for Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.