

**ORDINANCE NO. 3116**

AN ORDINANCE of the City of Port Angeles granting to Northland Cable Television, Inc., doing business as Northland Cable Television, a non-exclusive franchise for the purpose of constructing, maintaining, operating, repairing, replacing, upgrading, rebuilding and using a cable television system in public streets, alleys, and rights-of-way in the City of Port Angeles to provide cable service, and repealing Ordinance 2470.

**WHEREAS**, pursuant to RCW 35A.48.040, the City is authorized to grant one or more non-exclusive franchises to construct, maintain, repair, replace, upgrade, rebuild and operate a cable television system within the City; and

**WHEREAS**, Northland Cable Television, Inc., doing business as Northland Cable Television ("Grantee"), has requested a franchise from the City to provide Cable Services (defined below); and

**WHEREAS**, upon completion of an informal negotiation with the Grantee, the City has determined that this Franchise reasonably meets the current and future cable related needs and interests of the community, taking into consideration the cost of meeting such needs and interests; and

**WHEREAS**, in the Acceptance attached hereto as Exhibit A, the Grantee has agreed to be bound by the conditions hereinafter set forth during its provision of Cable Services within the Franchise Area;

**WHEREAS**, in consideration of the terms of this Ordinance and the Acceptance attached hereto as Exhibit A, the City herein agrees to grant to the Grantee a Franchise as set forth in said Acceptance and in this Ordinance;

**NOW THEREFORE**, the City Council of the City of Port Angeles, does hereby ordain as follows:

**Section 1 - Purpose and Intent.**

The following provisions are statements of the City's purpose and intent in granting this Franchise and shall not supplant or modify any specific provisions of the Franchise. The City's purpose and intent in granting this Franchise to the Grantee is to accomplish the following:

**1.1** Provide for the installation and operation of a Cable System with features reasonably meeting the current and future cable related needs and interests of the community, taking into consideration the cost of meeting such needs and interests.

**1.2** Encourage the widest feasible scope and diversity of programming and other services to all City residents that is consistent with community needs and interests, taking into consideration the cost of meeting such needs and interests.

**1.3** Encourage a broad range of Cable Services to be offered to City residents on a non-discriminatory basis.

**1.4** Encourage prompt implementation of technical advances in cable television technology.

**1.5** Provide for ample and fairly allocated access to cable facilities for program producers for government and educational programming.

**1.6** Require that Grantee use its commercially reasonable efforts to provide high quality Cable Service.

**1.7** Ensure that the installation and maintenance of cable facilities meet or exceed all applicable City regulations and do not materially interfere with the City's legitimate use of its own facilities and property.

**1.8** Encourage competition among Cable Operators and between Cable Operators and other providers of communications services on a fair and equitable basis.

**1.9** Protect the City's interests and the health, safety, and welfare of its citizenry.

**1.10** Ensure the universal availability of Cable Services within the Franchise Area on a non-discriminatory basis.

**1.11** Provide for timely mandatory Government Access to all Cable Systems in times of civil emergency.

## **Section 2 - Definitions.**

When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

Words not defined herein shall be given the meaning set forth in the Cable Act (defined below), and if not defined therein, the words shall be given their common and ordinary meaning.

**2.1** “**Access**” means the right of certain governmental and educational institutions in the community, including the City and its designees, on a non-discriminatory basis, to use the Cable System for specific educational or governmental, non-commercial purposes, including the right to acquire Programming, to create Programming free from outside control

including that of Grantee, to the extent required by the Cable Act, and to distribute and receive Programming over the Cable System.

**2.2 “Access Channel”** means a dedicated channel for educational institution or governmental non-commercial use, be it audio or video, as provided for in Section 611 of the Cable Act and in Section 7 of this Ordinance.

**2.3 “Activated”** means equipped with the electronic, optical or other devices and hardware required for transmitting and receiving communications signals over the network transmission media between locations across the network.

**2.4 “Additional Access Channels”** means access channels as set forth in Subsection 7.2.

**2.5 “Affiliate”** means any entity that owns or controls Grantee, or is owned or controlled by Grantee, or otherwise has ownership or management control in common with Grantee, including, without limitation, Grantee's parent corporation and any subsidiaries or affiliates of such parent corporation.

**2.6 “Backbone”** means approximately fourteen miles of fiber optic infrastructure as shown in Exhibit C.

**2.7 “Basic Cable Service” or “Basic Service Tier”** is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

**2.8 “Broadband”** means transmission of information over a medium requiring transmission channels supporting upload throughput rates of at least 144 kbps and download throughput rates of at least 256 kbps.

**2.9 “Cable Act”** means the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, 47 U.S.C.521 et seq., by the Cable Television Consumer Protection and Competition Act of 1992, and by the Telecommunications Act of 1996, and as may be further amended from time to time.

**2.10 “Cable Operator”** means any Person or group of Persons, which (A) provides Cable Services over a Cable System and owns a significant interest in such Cable System, or (B) otherwise controls or, through any arrangement, is responsible for the management and operation of such a Cable System.

**2.11 “Cable Modem Service”** means bi-directional access to the Internet over the Cable System and the related Cable System equipment used for that purpose, which may be either high speed Cable System download and integrated telephone return or two-way Cable System transmission.

**2.12 “Cable Service”** means (A) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming

service, and (C) as otherwise defined by the FCC from time to time, and (D) includes, to the extent applicable, “cable television service” as defined in RCW 35.99.010.

**2.13 “Cable System”** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Rights-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a Cable System 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 on-demand services; (D) an open video system that is certified by the FCC; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

**2.14 “Channel”** means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television signal whether in an analog or digital format. This definition does not restrict the use of any Channel to the transmission of analog television signals.

**2.15 “City”** means the City of Port Angeles, Washington, an optional municipal code city operating under the provisions of Title 35A RCW.

**2.16 “City Council”** means the City Council of the City.

**2.17 “City Property”** means and includes all real property, utility poles, conduits, bridges and similar facilities owned by the City and all property held in a proprietary capacity by the City.

**2.18 “City Requirements”** means all laws, ordinances, resolutions, regulations, rules, policies and directives of general application of the City, in effect at present or that may be adopted in the future by the City Council.

**2.19 “Converter”** or receiver means an electronic device which converts cable channel frequencies which are not normally receivable by some television sets to an appropriate channel, and which permits a Subscriber to view signals included in the service being delivered, according to a designated tuning or channel selector dial.

**2.20 “Control” or “Controlling Interest”** means actual working control in whatever manner exercised.

**2.21 “City Manager”** means the City Manager or any successor, or his or her designee.

**2.22 “Days”** means calendar days unless otherwise specified.

**2.23 “Demarcation Point”** means the physical point at which the Cable System enters the Subscriber’s home or building, or a point within the building that is no further than fifty (50) feet from the physical point of entry into the building or facility on the I-Net, or as otherwise defined by the FCC, from time to time.

**2.24 “Downstream Channel”** means a Channel capable of carrying a transmission from a Headend to other points on a Cable System, including Interconnection points.

**2.25 “Educational Access”** means non-commercial, educational use by public schools and school districts and not-for-profit educational institutions chartered or licensed by the State of Washington or an agency or division thereof.

**2.26 “Educational Access Channel”** means a dedicated Channel for Educational Access.

**2.27 “FCC” or “Federal Communications Commission”** means the federal administrative agency or lawful successor, authorized to regulate and oversee telecommunications, cable operators and open video carriers on a national level.

**2.28 “Fiber Optic”** refers to a transmission medium of optical fiber that supports delivery of Cable Services.

**2.29 “Franchise”** means this Ordinance, including the Acceptance attached hereto as Exhibit A, which constitutes a binding agreement between the City and Grantee.

**2.30 “Franchise Area” or “Service Area”** means the present municipal boundaries of the City and shall include any additions thereto by annexation or other legal means.

**2.31 “Franchising Authority”** means the City of Port Angeles, Washington, or the lawful successor, transferee, or assignee thereof.

**2.32 “Government Access”** means non-commercial use by municipal, county and state governments and agencies and divisions thereof.

**2.33 “Governmental Access Channel”** means a dedicated Channel for Governmental Access.

**2.34 “Grantee”** means Northland Cable Television, Inc., doing business as Northland Cable Television, or any successor or assignee as provided for herein.

**2.35 “Gross Revenue”** means, for purposes of Franchise fee calculations, revenue received by Grantee from Subscribers for recurring Cable Service charges in connection with the operation of Grantee's Cable System within the Franchise Area, including revenue collected for payment of Franchise Fees. Gross revenues shall not include Cable Modem Service-related collections.

In the event of bundling of Cable Services with other non-Cable Services offered by the Grantee over its Cable System, the Gross Revenues attributable to Cable Services shall be calculated as follows:

$$\left( \frac{cs}{cs + ncs} \right) x (bc)$$

Where *cs* is the current unit charges or fees paid by Subscribers receiving Cable Services only, *ncs* is the current unit charges or fees paid by Subscribers receiving non-Cable Services only, and *bc* is the current unit charges or fees paid by Subscribers receiving bundled Cable Services with other non-Cable Services.

Gross Revenue does not include any revenue not actually received, even if billed (e.g., bad debt), and does not include taxes which are imposed by law directly on the Subscriber but collected by the Grantee and passed on to other governmental entities, such as the local and state sales tax.

**2.36 “Headend”** means a facility for signal reception and/or dissemination on the Cable System, including all related equipment such as cable, antennas, wires, satellite dishes, monitors, switchers, modulators, computers, software, and processors for television broadcast signals.

**2.37 “Institutional Network” or “I-Net”** means a communications network and backbone as provided for in Section 8.

**2.38 “Interconnect,” “Interconnected” or “Interconnection”** means to provide, having been provided with, or the provision of, respectively, an electronic or optical linkage between the Grantee's Cable System and Cable Services or any part, designated Channel, or signal pathway thereof, and any other designated Cable System and Cable Services or any part, designated Channel or signal pathway thereof, with the result that Cable Services of high technical quality may be transmitted between such Cable Systems.

**2.39 “Liquidated Damages”** means the requirements imposed on Grantee to pay specified, pre-calculated sums set forth in Section 12 hereof, rather than actual costs, to the City as a result of performance deficiencies identified herein.

**2.40 “Normal Operating Conditions”** means service conditions that are within the commercially reasonable control of the Grantee. Service conditions which are ordinarily within the commercially reasonable control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increase, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System, except for unscheduled and/or emergency equipment replacement and testing required by the FCC or this Franchise. Those conditions which are not within the commercially reasonable control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, programmer originated interruption, and severe weather.

**2.41 “Penetration Level”** means the result obtained by dividing the number of Cable System Subscribers receiving Cable Services from Grantee within the Franchise Area by the total number of potential Subscribers within the Franchise Area. Such number of

potential subscribers shall be approximately equal to the number of residential electric customers within the Franchise Area. In the event that Grantee believes there is a difference between the total number of potential Subscribers and the number of residential electric customers of greater than ten percent (10%), the Grantee shall provide reasonable documentation as to its calculation of potential Subscribers.

**2.42 “Person”** means a corporation, company, association, joint stock company or association, firm, partnership, limited liability company, or individual and includes a lessor, trustee, receiver, or other such an entity, but does not include the City.

**2.43 “Programming”** means the video and audio material or programs prepared for or capable of transmission on a Cable System, or, as the context requires, the process of causing such material to be created, received, transmitted or distributed on a Cable System. This definition is not intended to, nor shall it, change or expand the scope of Cable Service.

**2.44 “Public Way”, “Street”, or “Right-of-Way”** means land acquired or dedicated for roads, alleys, sidewalks, rights-of-way, public ways, public places and public streets and easements, including those dedicated for compatible uses and for which, under City ordinances and other applicable laws, the City has authority to grant Cable System Franchises and master permits, licenses or leases for use thereof for telecommunications facilities, or has regulatory authority thereover, and may be more specifically defined in the master permit, license or lease granting any right to or use thereof. “Right-of-way” for the purpose of this Chapter does not include buildings, parks, poles, conduits or similar facilities or property leased to the City, including, by way of example and not limitation, structures in the right-of-way such as utility poles and bridges. However, “Right-of-way” shall include any such facilities or property within the direct or management control of the City where Grantee’s facilities are located on the Effective Date of this Ordinance.

**2.45 “Residential Dwelling Unit”** means each home, house, building, or other structure that normally accommodates the living quarters of one (1) family, and each apartment, condominium, or co-operative unit that normally accommodates the living quarters of one (1) family in any multiple-unit building or complex of multiple-unit buildings; provided, however, that if the Grantee has not been granted the authority by an owner or association of owners to extend its facilities to individual apartments, condominiums, and co-operative units within the interior of such multiple-unit buildings or complex of multiple-unit buildings, then any such multiple-unit building or complex of multiple-unit buildings shall be considered a single Residential Dwelling Unit.

**2.46 “Service Interruption” or “Outage”** is defined as being a Cable System malfunction resulting in the loss of picture and sound on one or more Channels affecting more than one Subscriber.

**2.47 “Standard Drop or Drop”** means the cable connection between the Subscriber’s premises and the Cable System up to a maximum length of one hundred fifty (150) feet measured from six inches (6”) outside the nearest exterior wall of the Subscriber’s premises to the nearest Cable System distribution tap.

**2.48 “Subscriber”** means any Person who is lawfully receiving, for any purpose or reason, any Cable Service whether or not a fee is paid, including each such Person in a multiple unit building, except for purposes of reporting or cost allocation, where equivalent Subscriber basis may be used.

**2.49 “Tier”** means a level of Cable Services offered by Grantee to Subscribers as a package, for a specified fee.

**2.50 “Upgrade”** means an improvement in any aspect of the Cable System.

**2.51 “Upstream”** means a transmission to a Headend from any other point on the Cable System, including Interconnection points.

**2.52 “Upstream Channel”** means a Channel capable of carrying a transmission to a Headend from any other point on a Cable System including Interconnection points.

### **Section 3 – Grant and Acceptance of Franchise.**

#### **3.1 Grant Of Cable Franchise**

3.1.1 There is hereby granted, subject to Grantee’s acceptance of the terms of this Franchise as provided herein and the City’s receipt of monetary compensation for a term as described below, unless otherwise terminated as provided for herein, the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use, repair, replace, upgrade, rebuild and operate, in, along, across, on, over, through, above and under the Public Rights-of-Way of the City, a Cable System to provide Cable Service. In the event the Grantee either seeks to provide or to allow others to use its Cable System to provide non-Cable Services, Grantee agrees to obtain all lawfully required City, state and federal permits, consents, franchises, and other required authorizations, except as allowed in Subsection 5.3.4.

3.1.2 Nothing in this Franchise shall authorize Grantee to attach any part of its Cable System to any City property or infrastructure or to use any City-owned conduits or facilities until Grantee has all required agreements, permits, and licenses from the City, supported by independent consideration, for such rights of attachment or use.

**3.2 Acceptance of Franchise.** Grantee has filed with the office of the City Clerk its Acceptance of the Franchise, and all terms and conditions thereof, signed and acknowledged by its proper officers. The written Acceptance is attached hereto as Exhibit A and is accompanied by the Bond and Certificate of Insurance in accordance with Section 10. Grantee has paid the City its actual, direct expenses incurred in this Franchise renewal process, but not to exceed the aggregate amount of three thousand (\$3,000) dollars.

### **Section 4 - General Terms.**

**4.1 Franchise Not Exclusive.** This Franchise is not exclusive.

## 4.2 Term

4.2.1 The term of this Franchise shall commence on the Effective Date of this Ordinance and shall extend for a period of fifteen (15) years.

- (1) The term shall be contingent upon an upgrade of the Cable System, which shall be completed within twenty four (24) months of the Effective Date of the Franchise. The upgrade shall meet all the following requirements:
  - (a) Activated capacity of 550 MHz providing expanded Cable Services to 80% of Subscribers by the end of year 2002 and reaching all Subscribers within twenty-four (24) months of the effective date of this Franchise in accordance with Section 5.
  - (b) Broadband cable infrastructure as set forth in Section 5.
  - (c) Cable Modem Services as set forth in Subsection 5.3.
- (2) The upgrade shall also meet the following requirement:

Provision of an Institutional Network including backbone, reserve fibers, standard drop, and fiber to requesting businesses, within eighteen (18) months after the effective date of the City's approval of I-Net plans and specifications.
- (3) In the event Grantee fails to meet the requirements listed in Subsection 4.2.1 (1) (a-c) or Subsection 4.2.1 (2) above, the term shall be reduced from fifteen (15) years to five (5) years, in accordance with Subsection 12.3.
- (4) In the event the City requires Grantee to complete an upgrade as set forth in Subsection 5.6, the term shall be automatically extended for five (5), years or such longer term as may be requested by Grantee and approved by the City consistent with Subsection 5.7.1, if Grantee is:
  - (a) In full compliance with the Technical Upgrade Procedures as set forth in Subsection 5.7.
  - (b) In substantial compliance with all requirements set forth herein, all as affirmatively determined by the City Manager and evidenced in the City Manager's written report to the City Council, which determination shall be delivered within 60 days following Grantee's notice to the City Manager that the Upgrade construction is complete. If the City Manager fails to deliver the

written report within said 60 days, then the Upgrade construction shall be deemed to be in compliance with the requests set forth herein.

### **4.3 Service Availability**

4.3.1 Franchise Area. Throughout the term of this Franchise, the Grantee covenants and agrees to construct, operate, maintain and upgrade the Cable System so as to make all Cable Services distributed over the Cable System available to any Person within the Franchise Area in accordance with the terms, schedule, sequence and procedures established in this Franchise, except for any such service which is provided on a test basis and provided, however, that a new Cable Service may be introduced on a phased basis in different areas of the City over a period no longer than one year.

4.3.2 Annexation. Whenever any rights-of-way outside of the Franchise Area are annexed into the City, all of the rights and privileges herein granted shall apply to said rights-of-way upon the effective date of the annexation. Within thirty (30) days of such incorporation or annexation, the Grantee shall revise its billing records accordingly in order to comply with this franchise.

4.3.3 The Grantee shall ensure that access to any Cable Service is not denied to any group of potential Subscribers because of the income of the residents of the area in which such group resides or geographic location (subject to Subsection 4.4). It shall be the right of all Subscribers to receive continuously all available Cable Services insofar as their financial and other obligations to the Grantee are honored. The Grantee shall continuously monitor the implementation of the commitments set forth in this Subsection.

### **4.4 Line Extension Policies**

4.4.1 Grantee shall extend its Cable System and make Cable Service available to every existing residential area within the Franchise Area, if requested, whenever density of at least thirty (30) Residential Dwelling Units for overhead construction and forty-five (45) Residential Dwelling Units for underground construction per cable mile (or any proportionate amount thereof measured over a shorter or longer distance) is realized, as measured from the existing facilities of Grantee's cable system in the Franchise Area; provided such Residential Dwelling Units are situated along Rights-of-Way to which Grantee has reasonable access.

4.4.2 For purposes of this Subsection, density per cable mile shall be computed by dividing the number of Residential Dwelling Units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the Residential Dwelling Units in such area in accordance with Grantee's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access. The total cable length shall exclude the drop cable necessary to serve individual subscriber premises.

4.4.3 Grantee shall extend its cable system necessary for the provision of cable service and make cable service available to any business in the Franchise Area when the business subscriber agrees to pre-pay for the labor costs to be incurred and materials to be used in making the extension, beyond the cost of a standard drop.

#### **4.5 Rate Regulation**

4.5.1 Rates and Charges. The City hereby waives its right to regulate rates for the provision of Basic Cable Service tier and equipment as expressly permitted by applicable law for a period not to exceed five (5) years from the Effective Date of this Ordinance.

4.5.2 No earlier than five (5) years from the Effective Date of this Ordinance, the City Manager may notify the Grantee of the date that the City will regulate basic service tier rates as provided by federal law. After the date that the City will regulate basic service tier rates, those fees and charges subject to regulation by the City shall not be increased without prior approval of the City, except as allowed by law.

4.5.3 Reasonable Discounts Offered. Grantee shall offer reasonable discounts as follows:

- (1) Grantee shall offer a discount to eligible Subscribers in accordance with the criteria set forth in Chapter 13.20 PAMC for the current and preceding calendar year.
- (2) Subscribers meeting eligibility criteria and subscribing to a higher tier of service shall not be eligible for a discount.
- (3) Such discounts will consist of at least a fifteen percent (15%) reduction in the normal charge for basic residential services as well as a fifty percent (50%) reduction in normal residential installation charges.
- (4) The City or its designee shall be responsible for certifying and notifying the Grantee that such applicants conform to the specified eligibility criteria.
- (5) The City may promulgate revised eligibility criteria, so long as they are economically and technically feasible and the Grantee is allowed a reasonable opportunity to comment on such revisions prior to adoption.

#### **4.6 Changed Conditions**

4.6.1 It is the intent of both parties that each party shall enjoy all rights and be subject to all obligations of this Franchise for the entire term of this Franchise and, to the extent any provisions have continuing effect, after its expiration. However, both parties recognize that the technology of cable television and related services is in a state of flux and that regulatory conditions and franchise rights and powers may change significantly during the term of this Franchise.

4.6.2 Should such changes occur, as determined by the City, the provisions and procedures of Subsection 5.6 shall govern.

4.6.3 The parties agree that the perpetuation of the substantial equivalent of the current statutory and regulatory structure governing cable television is not a condition of this Franchise, or a fundamental assumption that either party is making in entering into it; provided, however, nothing herein shall prevent either the City or Grantee from asserting that any part or parts of this Franchise, except for the waivers set forth in Subsections 4.5.1 and 6.10, are preempted by state or federal law as a result of such changes.

## **Section 5 – General Cable System Requirements.**

**5.1 Principal Features.** Broadband Platform. The Grantee's upgraded Cable System shall be a broadband cable infrastructure.

**5.2 Cable System Standards.** The Grantee's Cable System shall comply with all applicable federal and state laws, ordinances, and safety requirements, including but not limited to the regulation of the Federal Communications Commission and Federal Aviation Administration and the National Electric Code and National Electric Safety Code.

**5.3 Cable Modem Service.** Grantee agrees to make reasonable efforts to negotiate an agreement with at least one Internet service provider, whether affiliated or unaffiliated with Grantee, to use Grantee's broadband cable infrastructure to provide Cable Modem Service within the Franchise Area in accordance with Subsection 4.2.1. The Grantee agrees to negotiate with at least one, if applicable, Internet service provider within the Grantee's service area first; provided that if such an arrangement has not been reached within three months of the Effective Date of this Franchise, the Grantee may negotiate with other Internet service providers. Said arrangements shall be subject to Grantee and Internet service providers reaching an agreement based on commercially reasonable terms and conditions. Grantee shall use commercially reasonable efforts to ensure that the broadband Internet access services provided over Grantee's Cable System will conform substantially to the following standards:

5.3.1 The Cable Modem Service platform will be kept current with standards for interoperability with Internet protocol applications.

5.3.2 Subscribers to the Cable Modem Service, whether affiliated or unaffiliated with Grantee, will be able to reach the Internet .

5.3.3 The City hereby recognizes that the Grantee and an Internet service provider, whether affiliated or unaffiliated with Grantee, may provide Cable Modem Service, without obtaining other City approvals.

## **5.4 Cable Plant Topography**

5.4.1 Network Operating Center. The Network Operating Center will contain CATV Headend equipment used to originate and receive communication and entertainment services, and transmit analog and digital signals over the network.

5.4.2 Fiber Optic Nodes. Fiber optic nodes will typically serve clusters of less than 750 homes passed and will have standby battery electrical powering equipment. The fiber backbone shall have a minimum of 750 MHz downstream capacity and capabilities to activate return paths to the Network Operating Center. Furthermore, the fiber optic backbone will have the ability to geographically segment the Cable System in the future so each node's service area contains less than 250 homes passed.

5.4.3 Subscriber Drops. Cable Service signals will be converted from optical to electrical RF at each fiber optic node and carried on coaxial cable and standard coaxial drops to the Subscriber site. Upon the completion of the upgrade provided for in Subsection 4.2, Cable Service signals from each fiber optic node to the Subscriber site shall have a minimum 550 MHz downstream bandwidth capacity and the ability to activate the upstream bandwidth of 5 to 40 MHz.

**5.5 Network Operating Center.** Grantee's Network Operating Center will be housed in a building with sufficient air conditioning and power conditioning equipment both for short-term and long-term equipment installation. Standby powering will be installed that is of sufficient size to be able to provide a continuous supply of electricity up to a forty-eight (48) hour period in the event of loss of commercial power.

**5.6 Upgrade to Keep Technology Current.** At the City's request during the Term of the Franchise, upon the showing required pursuant to Subsection 5.7, the Cable System and any affected component thereof shall be upgraded to match current technology, to the extent economically and technically feasible, as reasonably determined by the Grantee as provided by Grantee or other Cable Service providers of comparable size to Grantee in cities of comparable size and concurred with by the City. Upon acceptance by the City of such upgrade, which acceptance will not be unreasonably withheld or delayed, the Term of this Franchise shall be extended by a period of at least an additional five (5) years. The appropriate costs of the upgrade shall be deemed external costs passed directly to Subscribers for rate regulation purposes, at Grantee's option.

## **5.7 Technical Upgrade Procedure**

5.7.1 No earlier than five (5) years from the Effective Date and no more than once during the Term of this Franchise, the City may require a technical Upgrade of the Cable System upon the following showing:

- (1) The Upgrade is commercially practicable considering the remaining term of the Franchise and considering Grantee's ability to recoup the costs of such Upgrade plus a reasonable

- rate of return on such Upgrade investment, provided that the City shall extend the term of this Franchise by a period of at least five (5) years, to allow such return on investment; and
- (2) The requirement for such Upgrade is uniformly applied to all of the City's Cable Service franchisees; and,
  - (3) There is a demonstrable need and public interest to be served by the Upgrade during such extended Term.

5.7.2 The City will conduct an inquiry to determine whether the required showing can be made. Grantee shall reasonably cooperate with the City in the investigation and provide information, including, if reasonably available, estimated general cost figures, technical specifications, and equipment specifications that may assist such an undertaking.

5.7.3 Grantee acknowledges and agrees that the City's inquiry may include information not provided by Grantee and that the City may commission third parties, as necessary, to ascertain facts in support of the required showing. City and Grantee shall share the expense of the inquiry with the Grantee's total cost limited to \$1,000.00. As part of the inquiry, the City will survey the public on the currency of Grantee's Cable System, using a scientific random survey method to be statistically valid, which survey is applicable to the entire population of the City and meets technically unbiased tests (for example, does not contain leading questions). The survey method and materials shall be mutually agreed upon.

5.7.4 In the event the City's inquiry indicates that a technical Upgrade may be necessary under the required showing, the City and Grantee may meet to discuss whether and to what extent an Upgrade of the Cable System is required. Within twelve (12) months of the City Manager's written request, the Grantee shall in good faith prepare and submit its business evaluation for review by the City. If the Grantee's business plan is commercially practicable based on commonly accepted industry cost and return on investment criteria, the Upgrade shall be required.

5.7.5 Upgrade Plans and Permits. Within one-hundred and eighty (180) days of the City Manager's written notice upon City determination that an Upgrade is required, Grantee shall submit its Upgrade plans and construction schedule for City approval. Work shall begin within one-hundred and twenty (120) days of the City's approval of the Grantee's submittal and the granting of all necessary permits and other applicable authorizations. All construction shall be in accordance with the City's permitting process, which shall not be unreasonably withheld, delayed or conditioned.

5.7.6 Extension of Construction Deadlines. Grantee shall obtain City authorization for any extension to the prescribed time limit for construction of an Upgrade. Such extension shall be authorized only when the City reasonably finds that such extension is reasonably necessary and appropriate due to causes beyond the commercially reasonable control of the Grantee. The City shall not unreasonably withhold, delay or condition its authorization.

**5.8 System Reliability and Performance.** Grantee's Cable System will meet or exceed FCC technical standards, as amended. Grantee's Cable System will be backed up with

a minimum of two hours standby power at all Cable System nodes. Crews will be dispatched in the event of a material loss of commercial power. In the event that the Cable System cables or fiber optic lines are severed, Grantee will respond within an average of two hours and will correct all such outages, within its commercially reasonable control, within 24 hours.

## **5.9 System Capacity and Features**

5.9.1 Throughout the Term of this Franchise, subject to the completion of the upgrade provided for in Subsection 4.2 and subject further to any Technical Upgrade requirements, the Grantee's Cable System will have the following minimum capacity and features:

### **Downstream**

- (1) Fiber optic backbone frequency spectrum: 54-750 MHz.
- (2) Fiber optic nodes to Subscribers frequency spectrum: 54-550 MHz.
- (3) Integrated downstream broadband infrastructure, delivering a variety of broadband Cable Services, including but not limited to analog and digital cable television and Cable Modem Service as set forth in Subsection 5.3.
- (4) Analog Channel Capacity: At least 78 channels.

### **Upstream**

- (1) Frequency spectrum: 5-40 MHz which may be used to provide an integrated upstream broadband infrastructure.

**5.10 Subscriber Equipment Interface and Control.** Grantee will comply with the FCC's standard on equipment compatibility.

## **5.11 Emergency Alert System**

5.11.1 Grantee shall install an emergency alert system that is capable of providing audio and video messages on all programmed channels, in compliance with FCC rules by October 1, 2002. The emergency alert system shall provide for activation from the City's emergency operations center or an alternate location specified by the City, and upon request by the City, Grantee shall cooperate with the City to test the emergency override system, for periods not to exceed one minute in duration and not more than once every six months. If the Grantee elects to participate in the voluntary Washington State EAS plan and local operational area plan, it shall follow all required procedures. Notwithstanding the foregoing, FCC rules governing emergency alert systems shall take precedence if in conflict with this Section.

5.11.2 The EAS shall meet all technical standards as required by the FCC rules governing the new emergency alert system ("EAS").

5.11.3 The Grantee shall provide and maintain all equipment, systems, software, services, security provisions, and procedures required for a fully operational emergency cable override warning system in accordance with FCC rules.

**5.12 FCC Testing.** The Grantee shall maintain for inspection by the City, a copy of the final report on each proof of performance test required by Part 76, Subpart K, of the rules and regulations of the FCC. If the FCC shall cease to require such tests, or if the FCC's regulations do not apply pursuant to 47 CFR § 77.601(c), the Grantee shall continue to conduct such tests at least once every calendar year (at intervals not to exceed 14 months) and shall maintain the resulting test data on file at its local office for at least five (5) years. The City may require Grantee to provide within a reasonable period of time as the City may designate, a full report on any deficiencies disclosed by the proof of performance test.

**5.13 As Built Drawings.** Within one hundred twenty (120) days of completion of each segment of Grantee's facilities, upon the written request of the City Manager, Grantee shall supply the City with a complete set of any current drawings for that segment. Grantee may exclude proprietary information.

## **Section 6 – Programming and Services.**

**6.1 Grantee Compliance.** Grantee shall meet or exceed the programming requirements set forth in this Franchise.

**6.2 Programming.** Beginning no later than the date on which the entire Cable System is to be activated, or, if activated in phases at Grantee's discretion, then when each phase is activated, Grantee shall provide:

6.2.1 In addition to Programming provided on Educational Access and Governmental Access Channels and local off-air broadcast channels, if any, Grantee shall use commercially reasonable efforts to provide the following broad categories of Programming:

- (1) Education
- (2) News & information (local, regional and national)
- (3) Sports (local, regional and national)
- (4) Cultural and performing arts
- (5) Government affairs
- (6) Weather
- (7) Audio programming (including a selection of local FM radio stations)
- (8) Business news
- (9) General entertainment (including but not limited to movies)
- (10) Children's programming
- (11) Family programming
- (12) Science/documentary
- (13) Canadian programming

6.2.2 The requirements for each category of Programming may be satisfied by providing a separate Channel devoted substantially to the category or by Programming from more than one Channel which in the aggregate totals the equivalent of a Channel devoted substantially to the category.

### **6.3 Community Programming Needs**

6.3.1 Grantee agrees to use its commercially reasonable efforts to air a minimum of twenty (20) hours per month of locally produced Programming, if and to the extent available, as part of the Programming required by Subsections 6.2.1. and 6.22. Local programming and locally produced programming shall be considered Programming that is produced within the Franchise Area and is not Governmental or Educational Access programming.

6.3.2 The parties expressly agree that the Programming described in Subsection 6.2.1 represents broad categories of video programming within the meaning of 47 U.S.C. 544(b) (2) (B).

**6.4 Subscriber Programming Survey.** Within ninety (90) days after the written notice by the City Manager, not more frequently than once during the term of this Franchise, the Grantee shall survey existing Subscribers on the broad categories of Programming for determination of the Subscriber's Programming preference using a scientific random survey method to be statistically valid, which is applicable to the entire current Subscriber base and meets technically unbiased tests. Within ninety (90) days of the completion of the survey, the results of the survey shall be provided to the City by the Grantee with proposed change(s), if any, in the broad categories.

### **6.5 Community Needs Ascertainment Process**

6.5.1 Not more frequently than once during the Term of this Franchise, the City may also arrange and pay for a systematic ascertainment of the community's views regarding the nature and adequacy of Grantee's performance of this Franchise and the needs and interests of the community and Subscribers regarding this Franchise.

6.5.2 The ascertainment shall be conducted by an independent entity using generally accepted market research techniques. A written summary of the findings made by such an ascertainment shall be provided to Grantee. Such summary shall include a description of the methodology used.

**6.6 Deletions or Reduction of Programming Categories.** Grantee shall not, to the extent within its commercially reasonable control, delete or so limit as to effectively delete any broad category of Programming for any group of Subscribers without providing at least 30 days' prior written notice to the City Manager; provided, however, such deletions as set forth in this Subsection do not apply to changes pursuant to the FCC's broadcast carriage and other rules.

**6.7 Parental Control Device.** Upon request by any Subscriber, Grantee shall make available at Grantee's actual cost a parental control or manual non-electronic lockout device compatible with the Subscriber's equipment that will enable the Subscriber to block access to Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of the original subscription, and if requested by the Subscriber, shall provide the device at the time of the original installation.

**6.8 Closed Caption Signals.** Grantee shall retransmit all closed-captioned broadcast signals, to the extent economically and technically feasible, which are made available by programmers in conjunction with Programming in its line-up and which are provided in order to facilitate viewing by handicapped persons. Grantee shall maintain the necessary Headend equipment to make local off-air broadcast signals secondary audio programming (SAP) features available to Subscribers. Grantee's obligations under this subsection do not extend to providing customer premises equipment.

### **6.9 Cable Service to Community Facilities**

6.9.1 Within ninety (90) days of a written request by the City Manager, Grantee shall provide, to facilities included in Exhibit B and future facilities as identified by the City Manager in writing, that are within one hundred fifty (150) feet of the nearest Cable System distribution tap and are situated along Rights-of-Way to which Grantee has reasonable access, one free aerial drop installation to deliver the Basic Service Tier. For any facilities requiring underground drops, the City will pre-pay Grantee the actual cost for any such underground drop installation. Each free Basic Service Tier outlet shall include the use of one Converter, if necessary, and maintenance thereof by Grantee; provided, however, that each facility receiving free cable television service shall post a written acknowledgement provided by Grantee, stating "This service is provided courtesy of Northland Cable Television in cooperation with the City of Port Angeles." Hardware and the installation thereof for any internal video or broadband distribution system shall be provided by the facility served.

6.9.2 Within ninety (90) days of a written request by the City Manager, Grantee will provide, to the extent economically and technically feasible, at no charge, an appropriate interface to any internal video distribution system in the facilities described on Exhibit B, so long as the facility insures that such internal system complies with the FCC's signal leakage and signal quality standards and does not interfere with or adversely affect the Grantee's Cable System, including the upstream capacity.

**6.10 Subscriber Service Standards.** The City hereby waives its right to promulgate subscriber service standards for a period not to exceed five (5) years from the Effective Date of this Agreement. In accordance with federal law, the City may promulgate subscriber service standards so long as they are economically and technically feasible and the Grantee is allowed a reasonable opportunity to comment on such standards prior to adoption.

## **Section 7 – Access Channels and Support.**

**7.1 Minimum Channel Capacity.** In addition to the current one Access Channel in the Franchise Area, currently activated as Channel 21, within ninety (90) days after the City

Manager's written request, the Grantee shall activate a second and a third Access Channel in the Franchise Area, for a total of three activated Access Channels during the Franchise term. Of the three activated Access Channels, the City Manager shall dedicate at least one channel for Governmental Access and one for Educational Access.

**7.2 Access Channel Activation Utilization Criteria.** Progressively, the second and then the third Access Channels may be activated, upon written request by the City Manager, when the average daily use of the existing Access Channels meet the following criteria:

7.2.1 Access Channels are used for access programming purposes with governmental and educational institutions of any type a minimum annual average of four (4) hours per day that is distinct and non-repetitive, five (5) days per week, during any consecutive ten (10) week period.

7.2.3 Except for character-generated announcements, the Programming of the second or third Access Channels required shall be distinct and non-repetitive of the previous Access Channel. Based upon these criteria, the Grantee shall, within ninety (90) days following a written request by the City Manager, provide the second and/or third designated Access Channel in the Franchise Area for this purpose. The City Manager shall have the right to designate whether the second or third Channel will be utilized in whole or in part for Educational Access or Governmental Access.

7.2.4 Minimum Usage. If the second or third Access Channel fails to meet the continuing criteria of programmed usage for one hundred eighty (180) continuous days of operation, such Channel shall revert to the Grantee for whatever use it deems appropriate, until the City can demonstrate that the minimum utilization criteria set forth herein will be achieved. However, the City may not request reactivation of such a Channel any sooner than twelve (12) months after such reversion to Grantee.

7.2.5 Channel Placement. Access channels shall be included in the basic Channel lineup. The current channel position of the one Access Channel in the Franchise Area shall continue to be Channel 21. The Grantee shall obtain City approval of a change to the current Access Channel position, including a plan to promote such change to Subscribers. Such approval shall not be unreasonably withheld. The second and third Access Channels shall be assigned a position within the basic Channel lineup as close to Channel 21 as possible consistent with Grantee's contracts in place at such time and with applicable Federal law.

**7.3 Access Policies.** The City's public information committee shall recommend policies and procedures to the City Council for the use of the second and third Access Channels. At Grantee's option, Grantee may be a member of the City's Public Information Committee.

#### **7.4 Allocation of Access Channels.**

7.4.1 The City Manager shall, in accordance with the provisions of this Section determine the number of Access Channels to be used, subject to the provisions of

Subsection 7.2 hereof, and allocate to various entities access to the Access Channels in the Franchise Area to meet their requirements. Grantee shall determine Access Channel placement. The request by the institution or organization must provide the City Manager with sufficient plans for operating expenses, technical configuration, channel use, and public purpose other than public access as contemplated by the Cable Act. In the event that making available a Channel for Access Channel purposes requires displacement of other Programming, the City shall give Grantee at least ninety (90) days written notice.

7.4.2 The City Manager may designate Access Channel use in the Franchise Area for use by Educational Access or Governmental Access at the City's sole discretion, including order and priority of programming. The City Manager may designate one Access Channel dedicated exclusively for either Educational Access or Governmental Access uses or may combine users on a shared basis on activated Access Channels in the Franchise Area.

## **7.5 Use of Access Channels.**

7.5.1 The Access Channels in the Franchise Area shall be placed under the authority of the City Manager for use related to governmental and educational purposes.

7.5.2 Access Channel programming may include financial sponsorships and underwriting with acknowledgment of those sponsors or underwriters.

7.5.3 No restrictions shall be placed on the use of these Access Channels for Governmental or Educational Access, except as provided in this Franchise or by law. Except as provided by law, Grantee shall not exercise editorial control over programming of any Access Channel. At no time shall the Grantee interrupt at its headend or hub site the signal provided on any Access Channel without the express consent of the City, except for routine maintenance and in circumstances beyond Grantee's commercially reasonable control.

**7.6 Technical Quality.** Grantee shall maintain all Upstream and Downstream Access Channels and Interconnections of Access Channels at the level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations or at the same level of quality as comparable Subscriber Channels, whichever is higher.

**7.7 Designated Access Channel Managers.** The City shall name Designated Access Channel Managers for Educational Access and Governmental Access Programming. The Designated Access Channel Managers shall have sole responsibility for operating and managing their respective Access Channels.

**7.8 Video Feeds.** Grantee currently provides video feeds from City Hall and Peninsula Community College. Within ninety (90) days of a written request by the City Manager, Grantee shall install for the City's use and at no cost to the City, upstream video feeds from one additional location designated by the City, provided such location is within Franchise Area, located within 150 aerial feet of Grantee's upgraded Cable System, and is situated along Rights-of-Way to which Grantee has reasonable access to either Grantee's headend or other connection point capable of transmitting a video signal. For any such location requiring underground installation, the City will pre-pay Grantee the actual cost for

any such underground installation. Grantee shall also provide and install, for the City's use and at no cost to the City, any equipment reasonably necessary for the City to transmit signals via the Video Feeds, provided Grantee's total cost for such additional location shall not exceed \$1,000.

**7.9 Rights to Access Channel Programming.** Grantee shall have no rights to Access Channel Programming by virtue of cablecasting or distributing such Programming over its Cable System, except for Grantee's right to transmit such Programming to all the Subscribers receiving a signal from the Cable System headend serving the Franchise Area.

**7.10 Access Channel Resources.** Grantee shall provide, at no charge to the City, the following:

7.10.1 Staffing. The Grantee shall provide the technical advice necessary to transmit access Programming on the Access Channels as directed by the City, as applicable, on an as-needed basis. Such staff shall be available during normal business hours at no charge to the access user and at other times for a reasonable and fair charge. For the purposes of this Subsection, normal business hours shall be considered to be the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays.

7.10.2 With respect to access, at the written request of the City Manager, the Grantee shall provide up to four (4) hours per week of use in the aggregate of the Grantee's staffing and technical services ("staff and equipment time") for production of live and video taped Educational Access and Governmental Access programs. The City will reimburse Grantee's actual costs in excess of four (4) hours per week averaged annually.

7.10.3 The Grantee shall maintain the Interconnection and electronics on the Cable System such that "live" or videotaped programming may be cablecast via Access Channels from the Port Angeles City Council Chambers, Peninsula Community College, and at one additional site selected by the City which is situated along Rights-of-Way to which Grantee has reasonable access, taking due consideration that the cost for such electronics for such additional site on the Cable System shall be comparable to the expenses for the electronics on the Cable System allowing cable-casting from the Port Angeles City Council Chambers. Grantee shall not be responsible for the maintenance of electronics on site, or any other customer premises equipment, for such cablecast.

### **7.11 Grantee Contributions and Other Support for Access Channels**

7.11.1 Within ninety (90) days of the City Manager's written request, no earlier than two (2) years from the Effective Date of this Franchise, the Grantee shall, at its option, provide the City either (i) funds for Access Channel production facilities and equipment in the amount of \$60,000.00, (ii) \$12,000 per year for five (5) consecutive years, paid pro rata to the City quarterly by the Grantee, or (iii) Access Channel equipment specified in writing by the City up to the aggregate value of \$60,000.00.

7.11.2 Within ninety (90) days of the Effective Date of this Franchise, the Grantee shall provide Access Channel playback equipment to the City including three (3)

Panasonic AG-7150 S-VHS/VHS HI-FI Players, one (1) Leightronix Mini-T Event Controller And Software, and five (5) Leightronix Pro-Bus Control Interfaces. The Access Channel playback equipment shall be in proper operating condition and in accordance with manufacturer's specifications.

7.11.3 The Grantee shall not be responsible for any of the costs to install production facilities and equipment. All such facilities and equipment shall be for the benefit of the City and its residents and shall be subject to the sole control and ownership of the City. Within ninety (90) days of Grantee request, the City shall provide a detailed accounting of the capital expenditures with such funds. At the termination of this Franchise, any unspent funds will be returned to the Grantee.

7.11.4 The City shall continue to provide playback services for access users within the Franchise Area for the Access Channel originating at City Hall and shall provide and maintain all of its equipment, referenced in Subsection 7.11.1, currently located at 321 East Fifth Street, Port Angeles, Washington, for Access Channel purposes.

7.11.5 Within ninety (90) days of the City Manager's written request, no earlier than two (2) years from the Effective Date of this Franchise, the Grantee shall provide an annual operational contribution to support the adequate operation of the Government Access Channel in the amount of \$0.05 per subscriber per month.

**7.12 Agreement as to Access Channel Contribution.** The Grantee acknowledges that all contributions, services, equipment, facilities, support, resources, and other activities to be paid for or supplied by the Grantee pursuant to or in connection with its performance under this Subsection are for the benefit of all Subscribers. For purposes of this Franchise, the Grantee agrees that such contributions, services, equipment, facilities, support, resources, and other things of value are not deemed to be (1) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by the Grantee pursuant to Section 10 hereof, or (2) part of the compensation to be paid to the City by the Grantee pursuant to Section 10.

**7.13 Access Channel Interconnection.** For the purpose of making all Access Channels available to all Subscribers, Access Channels on Grantee's Cable System shall be capable of being interconnected with other Cable Systems throughout the City for cablecast of the Access Channels. Actual interconnection shall be implemented upon request of the City Manager provided that (1) interconnection is technically and economically feasible; (2) Grantee and the other operator agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between Grantee and such other operator that is reasonable in light of the relative benefits and burdens, including consideration of support (capital and operational) provided for Access Channel purposes, including equipment in use for Access Channels purposes at the time of interconnection.

## **Section 8 – Institutional Network.**

### **8.1 Provision of Institutional Network**

8.1.1 As a condition of this Franchise, Grantee shall furnish to the City on a cost plus a twenty percent (20%) project management fee, a dark fiber Institutional Network (I-Net) backbone including in addition 12 single mode reserve fibers capable of bi-directional delivery of broadband communications services as identified in Exhibit "C", as described herein, within eighteen (18) months after City approval of the Grantee's I-Net plans and specifications as provided for in Subsection 8.6.1. The I-Net fibers and reserve fibers shall be located in the same sheath, wherever practicable. The cost of the fiber backbone construction will be shared as set forth in Subsection 8.11.

8.1.2 Fiber Optic Infrastructure. The I-Net transmission infrastructure shall physically consist of:

- (1) A minimum of 12 single mode fibers in the backbone in accordance with Exhibit C. On or before October 1, 2002, the City Manager may notify the Grantee in writing that the backbone shall include a minimum of 24 single-mode fibers.
- (2) Seven (7) fiber node locations along the I-Net backbone as identified in Exhibits "B" and "C".
- (3) The Grantee shall allow the extension of fiber drops from the I-Net nodes identified in Exhibits "B" and "C", to sites identified in Exhibit B, that are situated along Rights-of-Way to which Grantee has reasonable access and upon the request of the City shall construct such additional drops, subject to the City's payment to Grantee of any and all costs, expenses, and fees associated with the requested drops including a twenty (20) percent project management fee from the City.
- (4) Each I-Net site connection shall be terminated within fifty (50) feet of entering the applicable building at a point of demarcation in a Grantee standard termination panel, mounted on a City furnished backboard, unless the City, at the City's cost, provides another means of termination, in which case the City, at the City's cost, shall provide all necessary termination equipment. All terminations will use SC/APC fiber connectors.

8.1.3 The Fiber Optic reserve transmission infrastructure shall physically consist of:

- (1) A minimum of 12 single mode reserve fibers in the I-Net backbone in accordance with Exhibits "B" and "C".
- (2) The Grantee shall allow the extension of fiber drops, consisting of a minimum of four (4) single mode fibers to each business, from the I-Net fiber optic nodes to requesting businesses, and shall construct such additional drops, subject to the requesting business' pre-payment to Grantee of any and all costs, expenses, and fees associated with the requested drops including a twenty (20) percent project management fee from the requesting business.

- (3) Each business connection shall be terminated within fifty (50) feet of entering the building at a point of demarcation in a termination panel, mounted on a backboard furnished by the business, unless the business, at the business's pre-paid cost and expenses, provides another means of termination, in which case the business, at the business's pre-paid cost and expenses, shall provide all necessary termination equipment. All terminations will use SC/APC fiber connectors.

**8.2 I-Net Ownership.** Grantee shall have full ownership of the I-Net and 12 single mode reserve fiber infrastructure and associated facilities up to and including the Grantee provided termination panels or up to the termination splices in City provided termination panels, within the fiber backbone at each node. Unless otherwise agreed by the user making payment and Grantee, all I-Net and reserve fiber drops not within Grantee's sheath or lashed to Grantee's sheath from the I-Net node to user sites shall be owned and maintained by the user making payment for said drop.

### **8.3 City's Exclusive Rights.**

8.3.1 The City shall have an exclusive right of use of the I-Net infrastructure at no charge to the City and these free and exclusive rights shall be irrevocable by Grantee, or successor companies, if any, during the term of this Franchise. Maintenance charges shall be as provided in Subsection 8.7.

8.3.2 In the event of any transfer, assignment or sale of any ownership interest whatsoever of the I-Net owned by the Grantee to any successor or other person, the Grantee shall notify the City and the prospective successor or person of the irrevocable rights of the City. In the event such notice is not given, the City may exercise all rights under law, including enjoining the prospective transfer of ownership.

8.3.3 To the extent the I-Net infrastructure provided under this Franchise is still in use and needed by the City, continued use of the I-Net infrastructure under the same conditions set forth in this Franchise shall be a condition of any renewal.

### **8.4 Use of Institutional Network**

8.4.1 The City may use the I-Net described in Subsection 8.1.2 for any communications, in any form, for any non-commercial (a) governmental purpose (proprietary or governmental); (b) educational purpose; (c) public purpose other than public access as contemplated by the 1996 Telecommunications Act; or (d) for use of the Access Channels on the subscriber Network. The I-Net may be linked to any other communications network used by the City, or to any non-commercial I-Net user authorized by the City (or an entity under the City's control) and approved by Grantee in writing, which approval shall not be unreasonably withheld. Notwithstanding any other provision of the Franchise, Grantee agrees that mutually authorized non-commercial I-Net users may provide Internet services or access to Internet services to the public, schools and governmental entities over the I-Net described in Subsection 8.12.

8.4.2 In the Event of Bi-Directional Usage. Upon future activation of an integrated upstream broadband infrastructure, Grantee shall allow the City bi-directional access to the subscriber network, for such uses mutually agreed upon, which may include meter reading, utility load monitoring and utility control. In the event there is a charge for such bi-directional usage, the City will be charged the Grantee's most favorable rate, subject to acceptance by the City.

## **8.5 Use of Reserve Fibers**

8.5.1 Reserve fibers may be used for I-Net purposes and as allowed under this subsection.

- (1) Grantee or Grantee approved third parties may use 12 single mode reserve fibers for commercial purposes other than Cable Services. Grantee or each Grantee approved third party shall be permitted to use no more than four (4) reserve fibers for commercial purposes, unless mutually agreed upon by the City and Grantee. Grantee shall be permitted to charge a fee and impose contractual restrictions based on competitive market conditions to approved third parties for use of 12 single mode reserve fibers.
- (2) Subject to all of the provisions of this Subsection 8.5.1, the Grantee shall permit third parties to use 12 single mode reserve fibers for private wide area networks (WAN). Grantee approved third parties using reserve fibers for private wide area networks shall be further limited as follows:
  - (a) No more than eight (8) of the 12 single mode reserve fibers may be used for such private WAN network use.
  - (b) The Grantee shall permit use of reserve fibers by private WAN users only until such time as bandwidth is available from a commercial service provider using the reserve fibers, and Grantee will condition any contract for use of reserve fibers by private WAN users accordingly.
- (3) After the 12 single mode reserve fibers have been fully utilized, the City may allow unused I-Net fibers to be used by Grantee or Grantee approved third parties for commercial purposes other than Cable Services, subject to the same provisions listed in Subsections 8.5.1(1) and (2) and other such provisions mutually acceptable to the City and Grantee. Any compensation charge for such use shall be mutually agreed to by the Grantee and City and shared equally.
- (4) In the event that the Grantee or Grantee approved third parties have not utilized the 12 single mode reserve fibers throughout its fiber optic backbone for commercial or private WAN

purposes other than Cable Services after two (2) years following City acceptance of the I-Net backbone, or a reduced time period as otherwise mutually agreed upon, upon City Council determination available reserve fibers may be used by the City or City and Grantee approved third parties for commercial purposes other than Cable Services. Any compensation charge for such use shall be mutually agreed to by the Grantee and City and shared equally.

## **8.6 Institutional Network Plans, Specifications, Cost Proposal and Construction**

8.6.1 Backbone Route Plan and Cost Proposal. The Grantee's fiber optic backbone route plan including node locations is identified in Exhibits "B" and "C". The cost to the City for the installation and construction of the I-Net fiber optic backbone, including single mode fiber optic strands, shall be as provided in Subsection 8.11. The Grantee shall be responsible for the installation and construction of the 12 single mode reserve fibers within the I-Net fiber optic backbone, including 12 single mode fiber optic strands. The Grantee shall submit plans and specifications within sixty (60) days of the Effective Date of this Franchise for City approval. The I-Net backbone and reserve fibers, including all splicing and testing, shall be fully complete, tested, and capable of operation within 18 months after the effective date of the City's approval of the Grantee's I-Net plans and specifications. The City shall promptly conduct a final inspection to verify completion. Upon verification of completion by the City and delivery by Grantee to the City of as-builts and a complete set of City approved fiber test results, the City will issue formal acceptance of the I-Net backbone and reserve fibers, which acceptance shall not be unreasonably withheld or delayed.

### 8.6.2 Site Drop Route Plans and Cost Proposal Procedure and Schedule.

- (1) The City may provide the Grantee detailed site plans for the I-Net sites for which it requests the Grantee to prepare a cost proposal.
- (2) Grantee may meet and confer with the City to clarify any of the I-Net user site location plans.
- (3) Grantee shall provide the City Manager the network outside plant plans and cost proposal, from the I-Net node locations to each I-Net site identified in the City's request, and a sufficiently documented I-Net site drop cost proposal, within ninety (90) days of the City's written request.
- (4) The City may request the Grantee to provide a cost proposal to build the City's I-Net fiber site drop infrastructure, in accordance with the following:
  - (a) In preparing the plans, specifications and cost proposal, Grantee and the City agree to coordinate closely to ensure that the project requirements are met expeditiously.

- (b) Grantee's plans and specifications shall be in sufficient detail to permit identification, correlation, verification and understanding of the components of Grantee's cost proposal.
- (c) The City Manager will review the plans, specifications and cost proposal and shall provide written revisions or approval of the proposal within sixty (60) days of receipt of Grantee's submittal.
- (d) In no event shall the City have any liability for any expenses the Grantee incurs in preparation of such plans, specifications or cost proposal until approval of such plans, specifications or cost proposal is given by the City Manager, which approval shall not be unreasonably withheld or delayed.
- (e) Grantee shall take steps to commence the I-Net fiber drop construction within a mutually agreed upon time frame from approval of the cost proposal by the City Manager.
- (f) Grantee shall provide the City, upon the City's prior written notice, with monthly updates indicating work completed, planned construction for next month, and projected time-line for project completion.
- (g) Taking into consideration any unforeseen circumstances and to the extent technically feasible, the I-Net fiber drops, including all splicing and testing, shall be fully complete, and capable of operation within a mutually agreed upon time frame after the construction start date. The City shall promptly conduct a final inspection to verify completion.
- (h) Upon verification of completion by the City and delivery by Grantee to the City of as-builts and a complete set of City approved fiber test results, the City will issue formal acceptance of the I-Net site drops.

8.6.3 Grantee shall warrant the I-Net backbone and fiber drop construction for a period of one year following City acceptance and be responsible to promptly correct, at its own expense, all defects and errors in materials and/or construction that may arise during the warranty period.

8.6.4 To the extent technically and economically feasible, Grantee shall include in its design the capability to provide for video feeds and/or data that need to be routed to the Grantee Subscriber network Educational Access Channel and Government Access Channel.

8.6.5 Interconnection and Extensions. The City reserves, at the City's sole cost and expense, the right to make extensions or drops to sites identified in Exhibit "B" and other sites that are within and outside of the City limits by itself or by the Grantee. All

Interconnections shall be made by the Grantee or by other arrangements as mutually agreed upon, provided that all such Interconnections to the Grantee's network are performed only by the Grantee at agreed upon competitive commercial rates.

**8.7 Demand Maintenance of the I-Net.** Grantee shall provide demand maintenance twenty-four hours a day, seven days a week and shall maintain the I-Net infrastructure to the point of demarcation to operate at or above FCC standards at all times.

8.7.1 Normal Operating Conditions. Under normal operating conditions, Grantee shall respond to all outage reports within two hours and make necessary repairs to the extent technically feasible to restore service within four hours of notification Monday through Sunday, 6 a.m. to 10 p.m.. Under normal operating conditions, Grantee shall respond to degradation reports within twenty-four hours.

8.7.2 Emergency Conditions. In emergency conditions, such as a natural emergency resulting from a windstorm, Grantee will perform emergency repair work on the I-Net fiber and field equipment in the course of conducting its own emergency repair work on its fiber systems. All fibers at a given damage location shall be repaired concurrently without preference to function.

**8.8 Routine Maintenance of I-Net.** Routine maintenance on the fiber used exclusively by the City for I-Net use will be conducted on the same schedule as routine maintenance on Grantee's fiber systems, or as mutually agreed upon. Any maintenance that may disrupt the use of the I-Net shall be performed by Grantee with minimum seven (7) days prior notice to the City.

**8.9 Payment for Maintenance of I-Net.** A mutually agreed upon fee shall be charged by the Grantee for maintenance and repair of the I-Net. Such fee will be payable quarterly, and at Grantee's option all or a portion thereof may be applied as a credit to the franchise fee payable by Grantee.

**8.10 Administration, Maintenance and Management of I-Net Sites and Equipment.** The City and any other I-Net user shall be responsible for the ongoing administration, maintenance and management of its I-Net sites and equipment. All such maintenance conducted by the City or any other I-Net user shall be performed in a workmanlike manner to industry standards, and any City-provided equipment shall comply in all respects with applicable governmental codes, laws, ordinances or regulations and the National Electric Safety Code. The City and any I-Net user shall indemnify and hold harmless Grantee from and against any and all claims for damages resulting from any acts or omissions in connection with this Subsection 8.10.

**8.11 I-Net Cost.**

8.11.1 The cost to the City for the installation and construction of the I-Net backbone shall be the incremental cost as defined in Subsection 8.12.1, plus a twenty percent (20%) project management fee and shall not exceed \$250,000.00, in accordance with Subsection 8.6.1. If the City

Manager notifies the Grantee in writing on or before October 1, 2002 that the backbone shall include a minimum of 24 single mode fibers the cost to the City for the installation and construction of the I-Net backbone shall be the incremental cost as defined in Subsection 8.12.1, plus a twenty percent (20%) project management fee and shall not exceed \$350,000.00, which includes a thirteen percent (13%) contingency for expenses that are approved by the City Manager, which approval shall not be unreasonably withheld, in accordance with Subsection 8.6.1. The Grantee shall be responsible for the cost of 12 single mode reserve fibers in accordance with this Subsection. The cost to the City for the installation and construction of the I-Net site drops shall not exceed the Grantee's cost proposal approved in accordance with Subsection 8.6.2. There shall be no charge by the Grantee to the City or to any other authorized user for the use of the I-Net, except maintenance charges as provided in Subsection 8.9.

8.11.2 The City's cost-share for the I-Net backbone and site drops shall be verified by the City and payments shall be made by the City within thirty (30) days of Grantee's request for payment as follows:

- (1) Monthly payments less five percent (5%) retainage required by RCW 60.28.010 upon City acceptance and approval of Grantee's request for payment containing all appropriate and complete invoices.
- (2) Final payment representing release of five percent (5%) retainage thirty (30) days following formal City acceptance, which shall occur within 60 days of the City's receipt of Grantee's request for payment containing all appropriate and complete invoices.

## **8.12 Definition of Incremental, Direct and Indirect Costs**

8.12.1 Incremental Costs. Incremental costs are that portion of the direct costs solely attributable to the cost of materials, labor and final engineering design of the I-Net for which the City is responsible for payment under this Franchise. Incremental costs include only the direct costs that would not have been incurred but for the providing of such I-Net and do not include indirect costs.

8.12.2 Direct Costs. In respect to the obligation of the City to pay for the cost of I-Net facilities to be provided by Grantee under this Franchise, the term "direct costs" includes those costs specified in this Section 8 and no indirect costs. "Direct costs" shall include costs such as:

- (1) cost of design, materials and equipment necessary or desirable for construction;

- (2) payments made by Grantee to subcontractors in accordance with the requirements of the subcontracts;
- (3) wages and salaries and associated taxes and benefits of Grantee's employees performing work on the relevant portion of City-required facilities;
- (4) sales, excise, and other taxes paid by Grantee on materials, equipment, supplies and services chargeable to the relevant portion of the City-required facilities;
- (5) any labor force travel expenses directly chargeable to the work on the relevant portion of the City-required facilities;
- (6) cost of necessary licenses and permit fees, including rights-of-way construction permit fees and inspection fees, if any, related to the relevant portion of the City-required facilities; the City may review the applicability of such City permit fees, such as construction permit fees, construction impact fees, and construction inspection fees for the I-Net;
- (7) actual rental costs for the use of any necessary temporary facilities, or special machinery, equipment and hand tools used in the work on the relevant portion of the City-required facilities;
- (8) that portion attributable to this Franchise of premiums for insurance and bonds related to the design and construction of the City-required facilities;
- (9) any work destroyed or damaged prior to the City's acceptance, not compensated by insurance or otherwise, sustained by Grantee in connection with the work, provided the damage resulted from causes other than the fault or negligence of Grantee;
- (10) costs of removal of debris on the relevant portion of the City-required facilities;
- (11) costs incurred on the relevant portion of the City-required facilities, in taking action to prevent threatened damage, injury, loss in case of an emergency affecting the safety of persons and property;
- (12) any additional pole attachment costs to Grantee; and
- (13) other costs incurred on the relevant portion of the City-required facilities in the performance of the work if, and to the extent, approved in advance in writing by the City.

8.12.3 Indirect Costs. Indirect costs shall include:

- (1) salaries and other compensation of Grantee's employees stationed at Grantee's offices other than its office located within the Franchise Area, except as may be expressly included in Subsection 8.11.2 (3);
- (2) overhead and general expenses, except as may be expressly included in Subsection 8.12.2 (3);

- (3) Grantee's cost of capital (debt and equity); and
- (4) costs due to the fault or negligence of Grantee, including, but not limited to, costs for the correction of damage, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, in making good damage to property not forming a part of the work.

**8.13 I-Net Costs not Franchise Fees.** The parties agree that there shall be no charge to the City for the I-Net provided by Grantee, other than the charges specified in this Section 8. The parties agree that any capital costs to the Grantee associated with the I-Net provided by Grantee are not Franchise fees and fall within one or more of the exceptions to 47 U.S.C. 542(g).

**8.14 Pricing Guarantee.** Notwithstanding any other provision of this Franchise, for any work that the City is obligated to use the Grantee to perform under this Franchise, the Grantee will make commercially reasonable efforts to ensure that the amount it charges will be consistent with the price the City could obtain through a competitive pricing process.

## **Section 9 – Construction Procedures.**

**9.1 Cable System Construction Standards.** All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality, and so as to cause a minimum of interference with the Public Rights-of-Way. If, at any time, it is reasonably determined by the City that any part of the Cable System, including, without limitation, any means used to distribute signals over or within the Cable System, is harmful to the health or safety of any person, then the Grantee shall, at its own cost and expense, promptly correct all such conditions.

**9.2 Construction Work Regulation by City.** All construction work done by Grantee in connection with the construction, expansion, reconstruction, maintenance or repair of its facilities in the Public Rights-of-Way shall be subject to and governed by all lawful City Requirements, provided that the terms of this Ordinance shall control over any City requirements enacted or adopted after the Effective Date that are less favorable or more burdensome than the terms of this Ordinance, except, if and to the extent any such City requirements are universally applied to all utilities and applicable third parties.

**9.3 Work by Others.** The City reserves the right to lay and permit to be laid, telecommunications, sewer, gas, water, electric and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work, and any attachment, restructuring or changes in aerial facilities that may be reasonably deemed necessary by the City Manager in, across, along, over or under any public street, alley or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not directly caused by the willful misconduct or negligence of the City; provided, however, nothing herein shall

relieve any other person or entity, including any contractor, subcontractor, or agent from liability for damage to Grantee's Cable System.

**9.4 Construction by Abutting Owners.** In the event that, during the term of this Franchise, the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or Right-of-Way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley or Right-of-Way, which contains any portion of Grantee's Cable System, any conveyance of land contained in such closed or abandoned public street, alley, or right-of-way shall be subject to the rights herein granted.

**9.5 Relocation or Removal of Facilities.**

9.5.1 Grantee will obtain the City's approval before any relocation of Grantee's facilities in the Public Rights-of-Way. Such approval shall not be unreasonably withheld or delayed.

9.5.2 Within thirty (30) days following written notice from the City, the Grantee shall, at its own reasonable expense, temporarily or permanently remove, relocate, change or alter the position of any of its Cable System or other of its facilities that are within the Public Rights-of-Ways whenever the City shall have reasonably determined that such removal, relocation, change or alteration is necessary for:

- (1) the construction, repair, maintenance or installation of any City or other public improvement in or upon the Public Rights-of-Way;
- (2) the operations of the City or other governmental entity in or upon the Public Rights-of-Way.

9.5.3 Grantee and the City shall cooperate to the extent possible to assure continuity of service. If Grantee, after at least forty five (45) days' written notice by the City, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee, except to the extent caused by the willful misconduct or negligence of the City.

9.5.4 This Section is not intended to affect or alter any current contractual agreements that the Grantee may have concerning relocation of facilities or recovery of costs from private third parties for relocations requested by such private third parties.

**9.6 Tree Trimming.** Upon ten (10) days' written notice provided to the City, except in an emergency of imminent danger to persons or property, the Grantee may trim trees or other vegetation owned by the City or encroaching upon the Public Right-of-Way to prevent their branches or leaves from touching or otherwise interfering with its wires. All trimming or pruning by Grantee shall be at the sole cost of the Grantee. The Grantee may contract for said trimming or pruning services with any person approved by the City, which approval shall not be unreasonably withheld or delayed.

## **Section 10 – Compensation and Financial Provisions.**

**10.1 General Compensation.** Grantee agrees to pay to the City during each year of this Franchise, a franchise fee consisting of five percent (5%) of Grantee's Gross Revenue.

### **10.2 Calculation and Payment on a Quarterly Basis of Annual Franchise Fee**

10.2.1 Grantee shall pay to the City for each quarter this Franchise remains in effect an amount equal to five percent (5%) of Gross Revenue, referred to as the "quarterly payment." Grantee shall make this payment by check or by wire transfer to the account designated by the City Manager by 5:00 P.M. on the forty-fifth (45) day following the close of the calendar quarter for which the quarterly payment is calculated, provided that necessary information in order to pay by wire transfer is or has been provided to Grantee at least ten (10) days prior to the payment date. Any necessary prorations shall be made.

10.2.2 To the extent consistent with federal law, the compensation set forth in this Section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes, utility billing charges, pole attachment fees, inspection fees and assessments for recovery of costs incurred by the City. The City hereby waives its right to impose a utility tax on Cable Services throughout the Term of this Franchise.

Until Grantee installs metering or other mutually acceptable means of determining electrical consumption, utility billing charges for Grantee power supplies shall be based on the metered electrical consumption of Grantee's power supply, which is currently located at 3<sup>rd</sup> and Penn Streets, multiplied times the number of Grantee's power supplies served by the City's electric utility. The City shall only include one (1) basic customer charge for Grantee power supplies, and all utility charges shall be billed at the current City's electric rate, as amended. The City shall promptly adjust the Grantee's utility billing based on any changes it makes to the number of power supplies served by the City's electric utility. The City may adjust the utility billing, if any of the Grantee's power supply power ratings exceed that of the power supply located at 3<sup>rd</sup> and Penn Streets.

10.2.3 In the event any quarterly payment is made after 5:00 P.M. on the date due, Grantee shall pay a late payment charge of the greater of (A) \$100 or (B) simple interest at twelve percent (12%) annual percentage rate of the total amount past due.

10.2.4 Payment of money under this Section shall not in any way limit or impair any of the privileges or regulatory, condemnation, or police powers of the City, whether under this Franchise or otherwise. No acceptance of any payment shall be construed, as an accord that the amount paid is the correct amount, nor shall such acceptance be construed as a release of any claim which the City may have for additional sums payable under the provisions of this Section.

10.2.5 Grantee shall file annually with the City Manager, no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a statement of Gross Revenue within the Franchise Area for that year pursuant to this Franchise. This statement

shall present a detailed classification of Gross Revenue for the year in a reasonable form agreed to by the City and Grantee.

10.2.6 City's Franchise Renewal Costs. Upon acceptance of this Franchise, the Grantee shall make payment in accordance with Subsection 3.2. of Grantee's existing franchise with the City, which franchise was superceded by this Ordinance. Such payment shall not be deductible from or considered to be in lieu of Franchise fees under this Ordinance.

10.2.7 Any transaction or arrangement which has the intent of circumventing payment of required Franchise fees and/or evasion of payment of Franchise fees by non-collection, non-reporting of Gross Revenue, bartering, or any other means which evade the actual collection of revenues by Grantee for services delivered over the Cable System is prohibited.

### **10.3 Bond**

10.3.1 Grantee shall obtain a performance bond in favor of the City with a surety company reasonably approved by the City Attorney, in the principal amount of twenty-five thousand dollars (\$25,000) to secure Grantee's performance of its obligations and faithful adherence to all requirements of this Franchise, including payment of any liquidated damages required in Section 12. Grantee shall provide this performance bond at the time of filing the acceptance of this Franchise, as required by Subsection 3.2 herein. The City in accordance with Subsection 12.3 may draw upon this bond.

10.3.2 The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until after thirty (30) days written notice to the City Attorney of such intention to cancel or not to renew".

10.3.3 The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by law and no action, proceeding or exercise of a right with respect to such bond shall affect the City's rights to demand full and faithful performance under this Franchise or limit Grantee's liability for damages.

**10.4 Insurance.** Subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City Manager, Grantee shall obtain and maintain in full force and effect for the duration of this Franchise, at Grantee's sole expense, insurance coverage in the following type and minimum amounts:

- (1) Comprehensive general liability insurance with limits not less than:
  - (a) Two million dollars (\$2,000,000.00) for bodily injury or death to each person;
  - (b) One million dollars (\$1,000,000.00) for property damage resulting from any one (a) accident; and
  - (c) One million dollars (\$1,000,000.00) for all other types of liability.

- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and one million dollars (\$1,000,000.00) for each accident.
- (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00).
- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than one million dollars (\$1,000,000.00).
- (5) Libel and slander Copyright violations with limits not less than one million dollars (\$ 1,000,000.00) per occurrence or its equivalent.

10.4.2 The City shall be named as an additional insured on said policies, and the Grantee shall furnish a certificate of insurance as part of its acceptance of this Franchise as required by Subsection 3.2 herein.

## **10.5 Indemnity**

10.5.1 Grantee shall be responsible to the City for all damages, costs, losses or expenses for the repair, replacement, or restoration of City's property, equipment, materials, structures and facilities if and to the extent damaged, destroyed or found to be defective as a result of Grantee's negligence, willful misconduct, or strict liability.

10.5.2 Grantee, for itself and its agents, employees, directors, officers, subcontractors, and the agents and employees of said subcontractors, shall defend, indemnify, and hold the City, its successors, assigns, officers, employees and elected officials harmless from and against any and all claims, demands, suits, causes of action, and judgments for: (A) damage to or loss of the property of any person (including, but not limited to Grantee, its agents, officers, employees, directors and subcontractors, City's agents, officers and employees, and third parties); and/or (B) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of Grantee, Grantee's subcontractors and City, and third parties), if and to the extent arising out of, or resulting from the negligence, willful misconduct or strict liability of Grantee, its agents, employees, and/or subcontractors, in the performance of all activities and services pursuant to this Franchise.

10.5.3 In the event that any claim or loss is found by a court of competent jurisdiction or administrative tribunal to be caused by the concurrent fault of both Grantee and City, then each party shall be responsible to the extent found by such court or administrative tribunal.

10.5.4 Grantee shall use its commercially reasonable efforts to ensure that the terms of each contract awarded by Grantee for activities pursuant to this Franchise shall contain indemnity and insurance provisions whereby the contractor shall indemnify City and provide insurance coverage to the same extent as described above.

10.5.5 The City shall be responsible to the Grantee for all damages, costs, losses or expenses for the repair, replacement, or restoration of Grantee's property, equipment, materials, structures and facilities if and to the extent damaged, destroyed or found to be defective as a result of the City's negligence, willful conduct, or strict liability.

10.5.6 The City, for itself and its agents, employees, directors, officers, elected officials, subcontractors, and the agents and employees of said subcontractors, shall defend, indemnify, and hold Grantee, its successors, assigns, officers, employees, directors, agents, affiliates and subcontractors harmless from and against any and all claims, demands, suits, causes of action, and judgments for: (A) damage to or loss of the property of any person (including, but not limited to the City, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or (B) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, City's subcontractors and City, and third parties); and/or (C) claims arising out of the City's use of Access Channels under this Franchise; if and to the extent arising out of or resulting from negligence, willful misconduct or strict liability of the City, its agents, employees, directors, officers, elected officials and/or subcontractors.

10.5.7 Either party shall give the other party prompt written notice of any claims or suits. Either party shall, at its sole cost and expense, have the right to investigate and defend same to the extent of its own interests.

## **10.6 Audits**

10.6.1 The City reserves the right to conduct financial audits, at the Grantee's offices during normal business hours and upon thirty (30) days written notice to inspect and audit the Grantee's records showing the Gross Revenue from which its Franchise fee payments are computed. Any such inspection or audit shall take place within thirty-six (36) months following the respective calendar year and/or records thereof in question. In the event an audit results in a determination that Grantee has underpaid any Franchise fee arising under this Franchise by five percent (5%) or more, Grantee shall reimburse the City for the reasonable costs of the audit.

10.6.2 Grantee shall pay the City any amounts which any audit indicates are underpaid, and City shall pay to Grantee any amounts which any audit indicates are overpaid. Any such payments are to be made within thirty (30) days of final determination.

10.6.3 Upon written request and during normal business hours, the City reserves the right to perform other audits, at its sole cost and expense, and with a representative of Grantee present, for Franchise compliance purposes.

## **Section 11 – Reporting Requirements.**

**11.1 Reports.** Within forty-five (45) days of the City's written request, Grantee shall file a report addressing the City's comments or concerns with respect to Grantee's operations under this Franchise.

**11.2 Books and Records.** At its sole cost and expense and upon written notice to Grantee, the City may review such of Grantee's books and records, at Grantee's office serving the Franchise Area, during normal business hours and on a non-disruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such records may include records required to be kept by Grantee pursuant to the rules and regulations of the FCC, and financial and other supporting information underlying reports pertaining to the Franchise Fee.

**11.3 Filings.** FCC Filings. Upon prior written request, the City shall have the right to inspect and copy all filings related to this Franchise it makes with State and Federal agencies.

**11.4 Confidentiality of Information.** The City will maintain confidentiality of any and all information provided or made available by Grantee to the extent permitted by law when Grantee has notified the City of the confidential nature of the information.

## **Section 12 – Regulatory Provisions.**

### **12.1 Transfer of Ownership and Control**

12.1.1 Neither this Franchise, nor any of the City's I-Net exclusive rights, held by Grantee for use under this Franchise, which are in the Public Rights-of-Way, nor any rights or privileges of Grantee under this Franchise, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, or entity, without the prior written consent of the City. Such approval shall not be unreasonably withheld or delayed; provided, however, such approval is not required in the event Grantee sells or otherwise transfers and assigns the Franchise to (i) an Affiliate, and/or (ii) Grantee's lender(s), from time to time, for security purposes.

12.1.2 Except as set forth in Subsection 12.1.1, should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this Franchise, without the City's prior consent, the City may revoke this Franchise for default, in which event all rights and interest of the Grantee shall cease. Any transfer in violation of this Section shall be null and void and unenforceable.

### **12.2 Forfeiture and Termination.**

12.2.1 In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to forfeit and terminate this Franchise and all rights and privileges of Grantee hereunder in the event of a material breach of its terms and conditions, after informal and cooperative efforts have failed, followed by the City's reasonable notice and Grantee opportunity to cure, as provided in Subsection 12.3.

12.2.2 A violation of this Franchise shall not constitute a material breach if the violation occurs without the fault of Grantee or occurs as a result of circumstances beyond its commercially reasonable control. Grantee shall not be excused from performance of any of its

obligations under this Franchise by mere economic hardship, nor misfeasance or malfeasance of its directors, officers or employees.

12.2.3 A termination shall be declared only by a written decision of the City Council, by ordinance, resolution or motion, after an appropriate public proceeding before the City Council, which shall accord the Grantee due process and full opportunity to be heard and to respond to any notice of grounds to terminate. All notice requirements shall be met by providing the Grantee at least forty five (45) days prior written notice of any public proceeding concerning the proposed termination of this Franchise. Such notice shall state the grounds with particularity for termination alleged by City.

12.2.4 The City Council, upon finding the existence of grounds to terminate, may either declare this Franchise terminated or excuse such grounds upon a showing by the Grantee of mitigating circumstances or good cause for the existence of such grounds.

12.2.5 Neither Grantee's acceptance of this Franchise, Grantee's appearance before the City Council concerning proposed termination of this Franchise, nor any action taken by the City Council as a result of any such process, including a declaration of termination or a finding of grounds to terminate, shall be construed to waive or otherwise affect the Grantee's right to seek judicial determination of the rights and responsibilities of the parties under this Franchise.

### **12.3 Violations**

12.3.1 The procedures shown in Exhibit D and as described below shall apply. If the City has reason to believe that Grantee is in violation of this Franchise, after informal and cooperative efforts have failed after two (2) meetings or ten (10) business days, whichever occurred first, the City Manager shall notify Grantee in writing of the violation setting forth with particularity the nature of such violation. Within thirty (30) days of Grantee receipt of such notice, or such longer period specified by the City Manager, Grantee shall respond in writing that the violation has been cured, provide a cure plan or schedule that reasonably satisfies the City Manager, provide explanations in refutation or excuse with documentation to support that an alleged violation did not occur, refute the City's denial of Grantee's cure plan, or refute the City's denial of an additional time period to complete the cure plan. The City shall act on the Grantee's cure plan, if any, within thirty (30) days of City receipt of such plan. The City shall provide written acceptance or denial of Grantee's cure plan, which acceptance shall not be unreasonably withheld or delayed.

12.3.2 Notwithstanding Subsection 12.3.1 above, Grantee shall be allowed thirty (30) days to cure violations after written notice per Subsection 12.3.1 is received from the City, by taking appropriate steps to comply with the terms of this Franchise and any other applicable lawful regulations. If the nature of the violation is such that it cannot be fully cured within 30 days due to circumstances not under Grantee's commercially reasonable control, the period of time in which Grantee must cure the violation shall be extended by the City Manager in writing for such additional time reasonably necessary to complete the cure, provided that (1) Grantee shall have promptly commenced to cure, and (2) Grantee is diligently pursuing its efforts to cure in the City Manager's reasonable judgment.

12.3.3 If the violation has not been cured within the time allowed under Subsection 12.3.2 above, then Grantee shall be liable for liquidated damages for the following violations:

- (1) Failure to provide and maintain requested Cable Service to any household within the Franchise Area as required by this Franchise: \$0.15 per day per affected household; provided, however, in no event shall the aggregate amount for all such violations exceed \$5,000.00 per year.
- (2) Failure to promptly provide bonds, insurance or reports, records, filings or other data to the City, in accordance with Sections 10 and 11: \$100.00 dollars per day; provided, however, in no event shall the aggregate amount for all such violations exceed \$5,000.00 per year.
- (3) Failure to provide resources and an Access Channel in strict compliance with Sections 6 and 7: \$100.00 dollars per day; provided, however, in no event shall the aggregate amount for all such violations exceed \$5,000.00 per year.
- (4) Failure to comply with lawful City requirements concerning construction in the Public Rights-of-Way: \$100.00 dollars per day; provided, however, in no event shall the aggregate amount for all such violations exceed \$5,000.00 per year.
- (5) Failure to comply with a material requirement of Section 8: \$100.00 per day; provided, however, in no event shall the aggregate amount for all such violations exceed \$5,000.00 per year.
- (6) Failure to comply with Subsection 4.2.1(1-2): the Term of this Franchise shall be reduced from fifteen (15) years to five (5) years.

12.3.4 Grantee agrees that each of the foregoing failures shall result in injuries to the City and its citizens and institutions, the compensation for which would be difficult to ascertain and to prove. Accordingly Grantee agrees that the foregoing amounts and reduced Franchise Term are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term “franchise fee” provided by federal law at 47 U.S.C. 542 (g) (2) (A-D) and therefore in no way part of the compensation paid to the City pursuant to Section 10 herein.

12.3.5 If Grantee fails to make full and complete liquidated damage payments as required by this Franchise within ten (10) business days after receipt of written notice from the City Manager, then the City Manager may immediately take steps to withdraw without further notice to Grantee the amount thereof from the bond maintained in accordance with Subsection 10.3, except as subject to Subsection 12.3.6 below. Liquidated damages shall accrue from whichever applies among the following: (1) thirty (30) days after City notice per Subsection 12.3.1, if no cure plan is submitted; (2) on the date of City denial of the Grantee’s cure plan; (3) the date of the City accepted cure plan completion date; or (4) the date of the

determination by the administrative hearing judge provided under Subsection 12.3.6, that either (a) there was a violation; or (b) the cure plan was not unreasonably denied.

12.3.6 Notwithstanding any other provision of this Franchise, upon Grantee's request, Grantee shall be afforded an opportunity to (i) refute that a violation has not occurred, (ii) refute the City's denial of Grantee's cure plan, (iii) refute the City's denial of an additional time period to complete the cure plan, and the City Manager may not act under Subsection 12.3.5 until the administrative hearing, as provided for herein, is concluded and a determination has been made as to whether a violation has occurred. This opportunity shall consist of an administrative hearing upon thirty (30) days' written notice before an impartial hearing examiner jointly designated by the City Attorney and Grantee within thirty (30) days of Grantee's request. The Grantee waives its right to request an administrative hearing if it fails to respond in writing in accordance with Subsection 12.3.1.

12.3.7 If as a result of the administrative hearing, the hearing examiner determines that a violation has not occurred, the City shall pay all of the expenses related to the administrative hearing. If a violation has occurred, Grantee shall pay the expenses. After the conclusion of the administrative hearing either party may seek any and all remedies that it may have at law.

12.3.8 Upon evidence being received by the City that violations of this Franchise or any ordinances lawfully regulating Grantee in the construction and operation of its Cable System have occurred, or continue to occur after the thirty (30) day cure period, and any additional time necessary to cure, as allowed under Subsection 12.3.2, the City may cause an investigation to be made. If the City reasonably finds that such a violation continues to exist or has occurred, then the City or Grantee may take any action authorized by law, including forfeiture of this Franchise and a suit in court to compel compliance. In any such proceeding the non substantially-prevailing party shall be required to pay the reasonable expenses incurred by the substantially prevailing party in such suit and all damages and costs (including attorney fees), but Grantee may be allowed, either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

12.3.9 Failure by the City or the Grantee to enforce any rights under this Franchise does not constitute a waiver of such rights.

#### **12.4 Forfeiture and Termination by Grantee.**

12.4.1 No earlier than 36 months from the Effective Date of this Franchise, unless the City has materially broken Subsection 8.11.2, the Grantee reserves the right to forfeit and terminate this Franchise in the event (i) of a material breach of the terms and conditions of this Franchise by the City, after informal and cooperative efforts have failed, followed by the Grantee's reasonable notice and City opportunity to cure, as provided in Subsection 12.5 or (ii) that Grantee's average monthly Penetration Level falls below fifty percent (50%) for any consecutive six (6) month period.

12.4.2 A violation of this Franchise by the City shall not constitute a material breach if the violation occurs without the fault of the City or occurs as a result of circumstances beyond its commercially reasonable control. The City shall not be excused from performance of any of its obligations under this Franchise by mere economic hardship, nor misfeasance or malfeasance of its directors, officers or employees.

12.4.3 A termination shall be declared by the Grantee only by a written notice to the City Manager delivered not less than nine (9) months prior to such termination. Such notice shall state the grounds with particularity for termination alleged by Grantee. The Grantee's termination notice to the City Manager shall include the following:

- (1) City Right to Purchase. If Grantee terminates or forfeits this Franchise, or in the event of a denial of a renewal of this Franchise, then the City shall have the right to purchase such portion of the Grantee's Cable System as is located in the Franchise Area. The City Council may exercise this right by delivering written notice to Grantee of the City's decision to purchase Grantee's System within ninety (90) days after the Grantee's forfeiture or termination notice to the City Manager.
- (2) Cable System Valuation. The value of Grantee's Cable System shall be determined in accordance with 47 U.S.C. § 547(a)(1) as though renewal of the Franchise were denied.
- (3) Removal of Cable System. If the City elects not to purchase Grantee's Cable System pursuant to Subsection 12.4.3(1) then Grantee shall, upon notice by the City Manager, remove at Grantee's own expense all portions of Grantee's Cable System designated by the City Manager to be removed from all Rights-of-Way and other public property within the City. If Grantee fails to do so, then the City may perform such work at Grantee's expense. Any portion of Grantee's Cable System not removed within twelve (12) months of termination of the Franchise shall be considered abandoned and shall become the City's property.

12.4.4 Nothing in this Section 12.4 shall be construed to waive or otherwise affect the City's right to seek judicial determination of the rights and responsibilities of the parties under this Franchise.

## **12.5 Violations of Section 8 by the City**

12.5.1 If the Grantee has reason to believe that the City is in violation of Section 8 or Subsections 3.1.1, 4.5.1, or 4.5.2 of this Franchise, after informal and cooperative efforts have failed after two (2) meetings or ten (10) days, whichever occurred first, the Grantee shall notify the City Manager in writing of the violation setting forth with particularity the nature of such violation. Within thirty (30) days of the City Manager's receipt of such notice, or such longer period specified by the Grantee, the City Manager shall respond in writing that the violation has been cured, provide a cure plan or schedule that reasonably satisfies the Grantee, provide explanations in refutation or excuse with documentation to

support that an alleged violation did not occur, refute the Grantee's denial of the City's cure plan, or refute the Grantee's denial of an additional time period to complete the cure plan. The Grantee shall act on the City's cure plan, if any, within thirty (30) days of Grantee's receipt of such plan. The Grantee shall provide written acceptance or denial of the City's cure plan, which acceptance shall not be unreasonably withheld or delayed.

12.5.2 Notwithstanding Subsection 12.5.1 above, the City shall be allowed thirty (30) days to cure a violation of Section 8 or Subsections 3.1.1, 4.5.1, or 4.5.2 after written notice per Subsection 12.5.1 is received from the Grantee, by taking appropriate steps to comply with the terms of this Franchise and any other applicable lawful regulations. If the nature of the violation is such that it cannot be fully cured within 30 days due to circumstances not under the City's commercially reasonable control, the period of time in which the City must cure the violation shall be extended by the Grantee in writing for such additional time reasonably necessary to complete the cure, provided that (1) the City shall have promptly commenced to cure, and (2) the City is diligently pursuing its efforts to cure in the Grantee's reasonable judgment.

12.5.3 Notwithstanding any other provision of this Franchise, upon the City Manager's request, the City shall be afforded an opportunity to (i) refute that a violation has not occurred, (ii) refute the Grantee's denial of the City's cure plan, (iii) refute the Grantee's denial of an additional time period to complete the cure plan, and the Grantee may not act to forfeit and terminate this Franchise until the administrative hearing, as provided for herein, is concluded and a determination has been made as to whether a violation has occurred. This opportunity shall consist of an administrative hearing upon thirty (30) days' written notice before an impartial hearing examiner jointly designated by the City Attorney and Grantee within thirty (30) days of the Grantee's request. The City waives its right to request an administrative hearing if it fails to respond in writing in accordance with Subsection 12.5.1.

12.5.4 If, as a result of the administrative hearing, the hearing examiner determines that a violation of Section 8 or Subsections 3.1.1, 4.5.1, or 4.5.2 has not occurred, the Grantee shall pay all of the expenses related to the administrative hearing. If a violation has occurred, the City shall pay the expenses. After the conclusion of the administrative hearing either party may seek any and all remedies that it may have at law.

12.5.5 Upon evidence being received by the Grantee that violations of Section 8 or Subsections 3.1.1, 4.5.1, or 4.5.2 of this Franchise by the City have occurred, or continue to occur after the thirty (30) day cure period, and any additional time necessary to cure, as allowed under Subsection 12.5.2, the Grantee may cause an investigation to be made. If the Grantee reasonably finds that such a violation continues to exist or has occurred, then the City or Grantee may take any action authorized by law, including forfeiture of this Franchise and a suit in court to compel compliance. In any such proceeding the non substantially-prevailing party shall be required to pay the reasonable expenses incurred by the substantially prevailing party in such suit and all damages and costs (including attorney fees), but the City may be allowed, by the court in the judgment of forfeiture, a reasonable time thereafter, as fixed by such judgment, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if the City does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

**12.6 Governing Law.** This Franchise is subject to the provisions of the Constitution and laws of the United States of America and the State of Washington.

**12.7 Force Majeure.** The term “Force Majeure” shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, failure of supplier(s), or other similar causes beyond the commercially reasonable control of Grantee. The time within which Grantee shall be required to perform any act under the Franchise shall be extended by a period of time equal to the number of days performance is delayed due to a Force Majeure. Grantee shall not be subject to any penalty hereunder because of acts or failure to act due to Force Majeure.

**12.8 Severability And Preemption.**

12.8.1 Except as provided in Subsection 12.8.2, if any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Franchise shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection sentence, clause, phrase, provision, condition, covenant and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.

12.8.2 If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate a replacement provision to fulfill the purpose and intent of the superseded provisions consistent with applicable law.

12.8.3 In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments to this Franchise negotiated pursuant to Subsection 12.8.2 as a result of such provision being preempted shall no longer be of any force or effect.

**Section 13 – Miscellaneous Provisions.**

**13.1 Notices**

13.1.1 All notices from Grantee to the City pursuant to this Franchise shall be directed to the City Manager at City Hall, 321 East Fifth Street, P.O. Box 1150, Port Angeles, WA 99362-0217, or to such officer as designated by the City Manager.

13.1.2 All notices to Grantee pursuant to this Franchise shall be directed to the Legal Department at 1201 Third Avenue, Suite 3600, Seattle, WA 98101, with a copy to the System Manager at 725 East First Street, Port Angeles, WA 98362. Grantee shall maintain within the City throughout the term of this Franchise an address for service of notices by mail. Grantee shall also maintain within the City of Port Angeles a local telephone number operational during normal business hours for the conduct of matters related to this Franchise. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

**13.2 Entire Agreement.** This Franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this Franchise and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Franchise may be amended or added to except by agreement in writing signed by both of the parties.

**13.3 Repeal of Prior Ordinances.** Cable Franchise Ordinance No. 2470 is hereby repealed and is no longer in force and effect, effective as of the Effective Date.

**13.4 Attorney's Fees.** If any suit or other action is instituted in connection with any controversy arising under this Franchise, the substantially prevailing party shall be entitled to recover all of its costs and expenses including such sum as the Court may judge reasonable for attorney's fees, including fees upon appeal of any judgment or ruling.

**13.5 Time is of the Essence.** Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

**13.6 Remedies are Cumulative.** Any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City and Grantee at law, in equity, or by statute.

**13.7 Equal Protection.** In the event the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the City's streets and public rights-of-way for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, the material provisions thereof shall be no more favorable or less burdensome to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

**13.8 Franchise Governs.** All terms, conditions and provisions of this Franchise shall prevail over conflicting or inconsistent provisions of any City Requirement.

**Section 14 - Effective Date.** This Ordinance shall take effect five days following the date of its publication by summary.

PASSED by the City Council of the City of Port Angeles at a regular meeting of said Council held on the \_\_\_\_\_ day of May, 2002.

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Craig D. Knutson, City Attorney

\_\_\_\_\_  
Becky J. Upton, City Clerk

**EXHIBITS**

- Exhibit A – Acceptance of Franchise Verbatim Form
- Exhibit B – Grantee Furnished Connections to Community Facilities
- Exhibit C – Northland Fiber Upgrade Plan and Node Areas
- Exhibit D – Franchise Violation Procedure

**Exhibit A – Acceptance Of Franchise Verbatim Form**

In accordance with Section 3.2, the Grantee hereby submits this acceptance of the Franchise and all terms and conditions thereof to the City at the Clerk’s Office. The Grantee hereby certifies that the undersigned is a duly authorized officer of the Grantee with the authority to execute acceptance of this Franchise.

Attached herewith are the following documents in accordance with the requirements of the Franchise:

1. A bond in accordance with Section 10.3.
2. A certificate of insurance in accordance with Section 10.4.
3. Payment of the City’s expenses in accordance with Section 3.2.

**ACCEPTED BY NORTHLAND CABLE TELEVISION**

\_\_\_\_\_ Date: \_\_\_\_\_, 2002.  
Name and title

**Exhibit B – Grantee Furnished Connections To Community Facilities**

Map ID	City Municipal Facilities	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
8.	City Hall (includes sites below)	321	E 5th Street	1		1		1
8.	PA Police Department			1		incl		
8.	Dispatch 911			1		incl		
166	Vern Burton Community Center	308	E 4th Street	1		1		
10.	Fire Station	102	E 5th St	1		1		
69.	Senior Center	328	E 7th St	1		1		
72.	Carnegie Library	205	S Lincoln St	1		1		
73.	Fine Arts Center	1203	E Lauridsen		1	1		
75.	William Shore Pool	225	E 5th St	1			1	
86.	Parks Maintenance	16th St	F St	1				
87.	Cemetery-Office	3127	W 18th St		1	1		
65.	Civic Field	307	S Race St		1		1	
70.	Lincoln Park Fairgrounds				1		1	
71.	Veterans Memorial	215	S Lincoln St		1		1	
76.	Crown Park	1901	W 4th St		1		1	
77.	Erickson Park	302	S Race St		1		1	
78.	Lion's Park	600	Whidbey		1		1	
79.	Rains Park	915	E 8th St		1		1	
80.	Shane Park	613	S G St		1		1	
82.	Harbor View Park	Ediz	Hook		1		1	
83.	Wolverton Park	A/B	11/10 Alley		1		1	
85.	Bmx Track	1521	W Lauridsen		1		1	
132.	Volunteer Park	16th	and L		1		1	
Map ID	City & State (WSDOT) Traffic Signals	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
92.	T1	Front St	Laurel St	n/a			1	
93.	T2	1st St	Laurel St	n/a			1	
94.	T3	Front St	Oak St	n/a			1	
95.	T4	1st St	Oak St	n/a			1	
96.	T5	8th St	Race St	n/a			1	
97.	T6	5th St	Race St	n/a			1	
98.	T7	Lauridsen Blvd	Race St	n/a			1	
99.	T8	5th St	Peabody St	n/a			1	
100.	T9	8th St	Race St	n/a			1	
101.	T10	8th St	Cherry St	n/a			1	
102.	T11 (WSDOT)	8th St	Lincoln St	n/a			1	

Map ID	City & State (WSDOT) Traffic Signals continuation	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
103.	T12 (WSDOT)	5th St	Lincoln St	n/a			1	
104.	T13 (WSDOT)	1st St	Lincoln St	n/a			1	
105.	T14 (WSDOT)	Front St	Lincoln St	n/a			1	
106.	T15 (WSDOT)	1st St	Peabody St	n/a			1	
107.	T16 (WSDOT)	Front St	Race St	n/a			1	
108.	T17 (WSDOT)	1st St	Race St	n/a			1	
109.	T18 (WSDOT)	Front St	Ennis St	n/a			1	
110.	T19 (WSDOT)	1st St	Ennis St	n/a			1	
111.	T20 (WSDOT)	Hwy 101	Golf Course Rd	n/a			1	
112.	T21 (WSDOT)	Hwy 101	Del Guzzi Dr	n/a			1	
113.	T22 (WSDOT)	Marine Dr	Tumwater Route	n/a			1	
114.	T23 (WSDOT)	14th St	Lincoln St	n/a			1	
Map ID	City Utility Systems Facilities	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
54.	Landfill	3501	W 18th		1	1		
55.	Corp Yard	1703	S B St		1	1		1
56.	Light Ops	240	W Front	1		1		
57.	Wastewater Treatment Plant	1509	Columbia		1	1		
11.	Raney Well		Elwha River	n/a			1	
12.	E St. Reservoir	1016	S E St	n/a			1	
13.	Jones St. Reservoir	1200	E 9th St	n/a			1	
14.	Black Diamond Reservoir	Black	Diamond Rd	n/a			1	
15.	Peabody Heights Reservoir	600	Viewcrest	n/a			1	
16.	Mill Creek Reservoir	600	Viewcrest	n/a			1	
17.	Spruce Booster Station	1000	Spruce St	n/a			1	
18.	Scrivner Pump	300	E Scrivner	n/a			1	
19.	Mill Creek Pump Station	600	Viewcrest	n/a			1	
20.	McDougal Booster Pump	3500	McDougal	n/a			1	
21.	Jones St. Pump Station	1200	E 9th St	n/a			1	
22.	Jones St. Emergency Pump Station	1200	E 9th St	n/a			1	
23.	Water St. Pump Station		Water St	n/a			1	
29.	Pump Station #1	5th St &	N St	n/a			1	
30.	Pump Station #7		W 19th St	n/a			1	1
31.	Pump Station #10	1829.5	W 12thst	n/a			1	
32.	Pump Station #3	Marine &	Hill	n/a			1	

Map ID	City Utility Systems Facilities continuation	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
33.	Pump Station #8	H St &	14th	n/a			1	
34.	Pump Station #4	313	Marine Drive	n/a			1	
35.	Pump Station #2	1/2 Alley &	Cherry	n/a			1	
36.	Pump Station #5	219	E 2nd St	n/a			1	
37.	Pump Station #9	Del Guzzi Dr.		n/a			1	
38.	Pump Station #6	933	Church St	n/a			1	
39.	Peabody Substation	2803	S Peabody	n/a			1	
40.	Race Substation			n/a			1	
41.	Albert Substation			n/a			1	
42.	Laurel Substation	110	E 14th St	n/a			1	
43.	Washington Substation	224	S Washington	n/a			1	1
44.	College Substation	1306	E Park St	n/a			1	
45.	Valley Substation	206	S Valley St	n/a			1	
46.	A Street Substation	1616	S A St	n/a			1	
47.	F Street Substation	1604	S F St	n/a			1	
48.	I Street Substation	1538	W 7th St	n/a			1	
49.	CSO PS 1	5th St &	N St	n/a			1	
50.	CSO RR/Oak	Railroad Ave &	Oak St	n/a			1	
51.	CSO RR/Laurel	Railroad Ave &	Laurel St	n/a			1	
52.	CSO Lincoln	Lincoln &	2nd St	n/a			1	
53.	CSO Francis	Francis St &	Caroline St	n/a			1	
88.	Elwha Emergency Valve	2700	S Milwaukie Dr	n/a			1	
89.	PUD Intertie	Baker St.		n/a			1	
90.	PUD Intertie	Monroe St.		n/a			1	1
Map ID	Clallam County	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
9.	County Courthouse (includes sites below)	223	E 4th St		1	1		
9.	Health And Human Services				1			
9.	Sheriff				1			
126.	Fairgrounds	1608	W 18th St		1	1		
127.	Juvenile Services	1912	W 18th		1	1		
128.	Maintenance Shops	1033	W Lauridsen Blvd		1	1		
129.	Child Support Enforcement	421	E 5th Ave		1		1	
163.	Hospice	540	E 8th St		1		1	
56	Drug Task Force (site 56)	240	W Front			1		

Map ID	Port Angeles Educational	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
1.	Jefferson School	218	E 12th St	1			1	
4.	Peninsula College	1502	Lauridsen Blvd	1		1		
5.	Monroe School	102	Monroe Rd	1		1		
6.	Roosevelt Middle School	106	Monroe Rd	1		1		
59.	Hamilton School	1822	W 7th St	1			1	
66.	North Olympic Library System	2210	S Peabody St	1		1		1
160.	Marine Lab	315	N Lincoln St		1	1		
162.	Bus Garage	639	Monroe Rd		1	1		
2.	P.A. High School	304	E Park Ave	1			1	
3.	Franklin School	2505	S Washington St	1			1	
60.	Stevens Middle School	1139	W 14th St	1			1	
151.	The Choice	924	W 9th St	1			1	
153.	Central Services	216	E 4th St	1		1		
154.	Dry Creek School	25	Rife Rd	1		1		
167.	Fairview	166	Lake Farm Rd	1		1		
Map ID	Health Care	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
7.	Olympic Memorial Hospital	1005	Georgiana St		1	1		
156.	Olympic Medical Center	920	Caroline St		1	1		
168.	Olympic Medical Center - MRI	1102	E Front St			1		
157.	PCMH - Children's Center	1004	W 16th St		1	1		
158.	PCMH - Second Street House	138	W 2nd St		1	1		
159.	PCMH - Horizon Center	205	E 5th St		1	1		
164.	Olympic Medical Center	939	Carolina		1	1		
169.	Virginia Mason	433	E 8th St			1		
170.	Virginia Mason	813	E 8th St			1		
171.	Virginia Mason	912	Caroline St			1		
172.	Virginia Mason	923	Georgiana St			1		

Map ID	Port of Port Angeles	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
61.	Port Of PA	338	W 1st St		1	1		1
62.	Port Of PA	2138	W Lauridsen Blvd		1		1	

115.	PABH	832	Boat Haven Drive		1	1		
116.	Port Of PA	115	E Railroad Ave		1		1	
117.	Port Of PA	112	S Valley St		1	1		
118.	Marine Terminal	202	N Cedar St		1	1		
120.	Port Of PA	2007	S O St		1		1	
121.	Port Of PA	1901	W Lauridsen Blvd		1		1	
122.	Port Of PA	2203	W Lauridsen Blvd		1		1	
123.	Fairchild International Airport				1	1		
124.	Industrial Park East				1		1	
125.	Industrial Park West				1		1	
173.	Port Of PA	1301	Marine Drive			1		

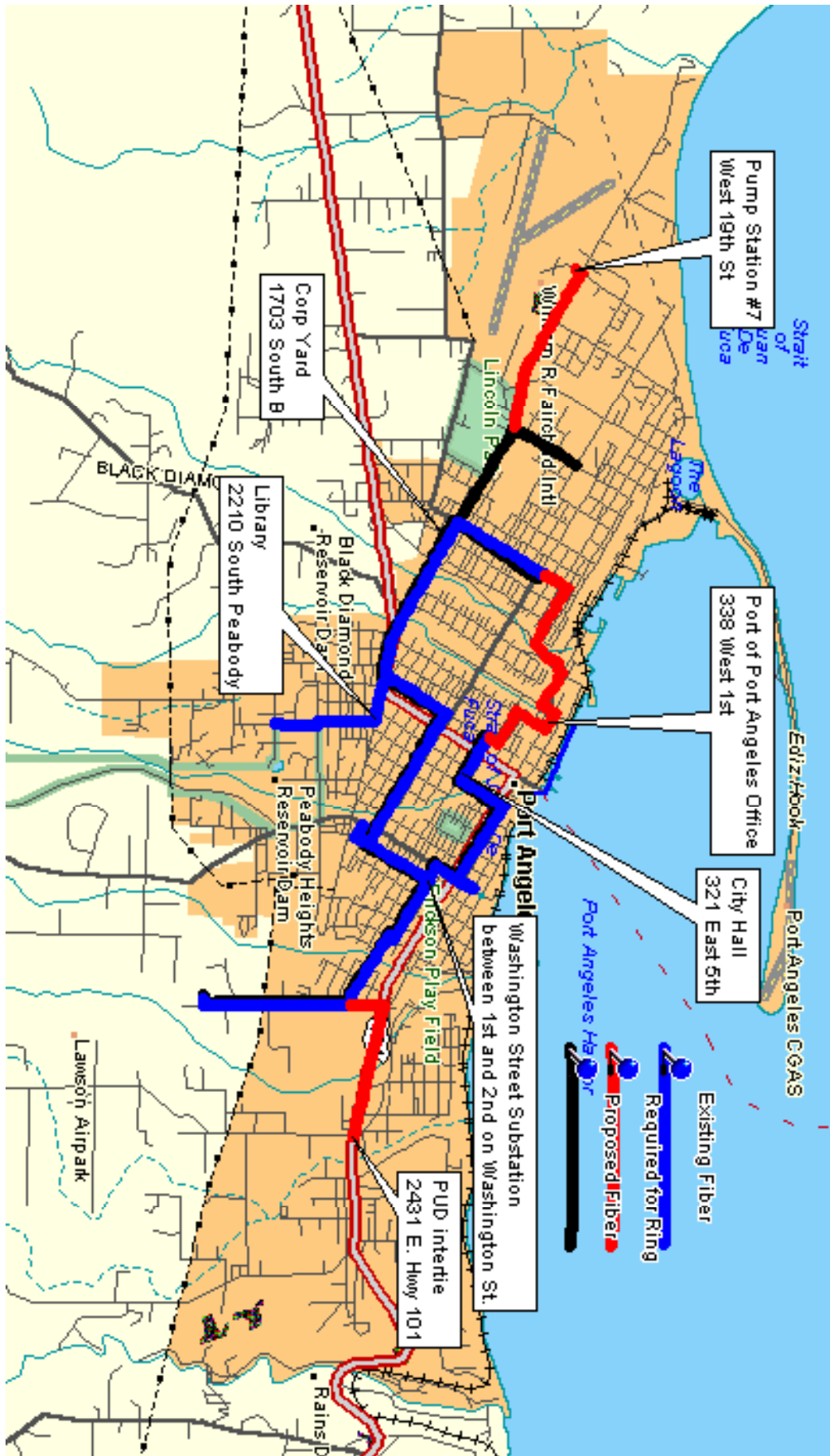
Map ID	Regional	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
130.	Clallam County PUD.	2431	E Hwy 101		1	1		
131.	Clallam Transit	830	W Lauridsen Blvd		1	1		
133.	Clallam County PUD.	1936	W 18th St		1	1		
134.	Housing Authority	2603	S Francis St		1	1		
135.	North Olympic Youth Centers	535	E 1st St		1	1		
136.	Lower Elwha Klallam Tribe	1026	E 1st St Suite 2		1	1		

Map ID	State of Washington	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
137.	Children & Family Services (includes site below)	201	W 1st St		1		1	
137.	Community Services Office	201	W 1st St		1		incl	
138.	Juvenile Rehabilitation (includes sites below)	228	W 1st St, Suite V		1		1	
138.	Dept. of Community Corrections	228	W 1st St		1		incl	
138.	Drivers License Examining Office	228	W 1st St		1		incl	

Map ID	State of Washington continuation	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
138.	Developmental Disabilities	228	W 1st St, Suite F		1		incl	
139.	Home & Community Services	235	W 1st St		1		1	
140.	Dept. of Revenue	734	E 1st St, Suite B		1		1	

141.	Vocational Rehabilitation	1026	E 1st St, Suite 2		1		1	
142.	Dept. of Revenue and L&I	1601	E Front St		1		1	
143.	Dept. of Highway Maintenance	1707	S C St		1		1	
Map ID	U.S. Government	Address		CATV drops		I-Net Drops		
				initial	future	initial	future	Node
64.	Olympic National Park	600	E Park		1		1	
144.	Social Security Admin. (includes site below)	138	W 1st St		1		1	
144.	Olympic Coast National Marine Sanctuary	138	W 1st St		1			
145.	Natural Resources Conservation Service	113	E 3rd St, Room 2B		1		1	
146.	Postal Service	424	E 1st St		1		1	
147.	Navy Recruiting Station	721	E 1st St		1		1	
148.	Marines Recruiting Station	701	E Front St		1		1	
149.	Army Recruiting Station	703	E Front St		1		1	
150.	Air Force Recruiting Station	1520	S.Critchfield Rd		1		1	
161.	BPA PA Substation	1400	E Park Ave.		n/a		1	

**Exhibit C - Northland Fiber Upgrade Plan And Node Areas**



## Exhibit D - Franchise Violation Procedure

