

**ORDINANCE NO. 1143**

**CITY OF WOODLAND, WASHINGTON**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE COMMUNICATION SYSTEM  
FRANCHISE TO CASCADE NETWORKS, INC.**

Whereas, Washington cities are granted the authority to grant franchises pursuant to RCW 35.23.251;

Whereas, Cascade Networks, Inc. has requested a non-exclusive franchise for the purpose of constructing, operating and maintaining a communications system within the corporate boundaries of the City of Woodland;

Whereas, this Ordinance was not passed by the City Council either on the day of its introduction nor within six days of its introduction but was passed in a regular meeting;

Whereas, the franchise agreement was submitted to the city attorney pursuant to RCW 35.23.251;

Whereas, public notice of the public hearing was duly published in accordance with statutory requirements;

And Whereas , the City Council held a public hearing on November 3, 2008 during its regular meeting on that date, reviewed and considered staff, public and council comments and found that the franchise agreement was in the public interest;

NOW THEREFORE, the City Council of the City of Woodland, Washington do ordain as follows:

**Section 1. Franchise Granted:** The franchise agreement between the City of Woodland and Cascade Networks, Inc, is approved and a non-exclusive franchise is hereby granted to Cascade Networks, Inc. A true copy of said franchise agreement is attached hereto and incorporated by reference herein as Exhibit "A".

**Section 2. Savings:** The ordinance, or portions or the ordinance, which are amended by this ordinance shall remain in full force and effect until the effective date of this ordinance.


**Section 3. Severability:** If any section sentence, clause or phrase of this ordinance is ruled invalid by a court of competent jurisdiction, the remaining portion of this ordinance shall remain valid and in full force and effect.

**Section 4. Effective Date:** This ordinance shall be effective five (5) days after publication and shall be published according to the law.

ADOPTED IN AN OPEN PUBLIC MEETING THIS 17th day of November, 2008.

CITY OF WOODLAND, WA

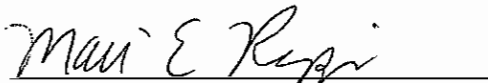
Approved:



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Charles E. Blum, Mayor

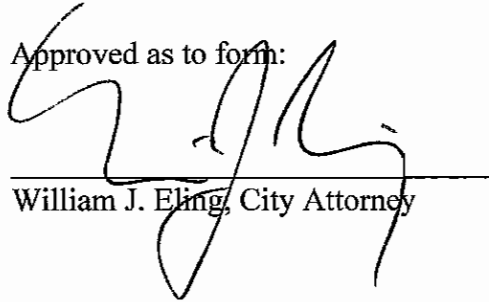
Attest:



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Mari E. Ripp, Clerk-Treasurer

Approved as to form:



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William J. Eling, City Attorney

**SUMMARY OF ORDINANCE NO. 1143  
OF THE CITY OF WOODLAND, WASHINGTON**

On November 17, 2008 the City Council of the City of Woodland, Washington, approved Ordinance No. 1143 the main point which may be summarized by its title as follows:

**AN ORDINANCE GRANTING A NON-EXCLUSIVE COMMUNICATION SYSTEM FRANCHISE TO CASCADE NETWORKS, INC. AND APPROVING AN ORDINANCE SUMMARY FOR PUBLICATION AS MORE PARTICULARLY SET FORTH HEREIN.**

The full text of this Ordinance will be mailed upon request.

APPROVED by the City Council at their meeting on 17<sup>th</sup> day of November, 2008.

  
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Mari E. Ripp, Clerk-Treasurer

Published: November 26, 2008  
Effective: December 1, 2008

## CASCADE NETWORKS, INC. FRANCHISE

### 1. PURPOSE AND INTENT

1.1 City of Woodland, Washington (hereinafter Grantor) is authorized to and by this Franchise Agreement does grant to Cascade Networks, Inc. (hereinafter Grantee) a non-exclusive 13-year (thirteen) franchise, revocable as provided herein, to construct, operate and maintain a communications system in the franchise area comprised of all of the territory within the City's corporate boundaries as those boundaries may change from time-to-time. Grantee is not subject to regulation as a telephone company as set forth in RCW 80.

1.2 The purpose of this franchise agreement is to create a binding, enforceable contract between Grantor and Grantee. The franchise agreement provides a framework for defining relations between the parties for the franchise period, during which time the parties expect there to be rapid technological changes in the telecommunications industry, as well as substantial population growth in the City. Because of these changes and certain unforeseen impacts for both the Grantor and Grantee, provisions have been established in the franchise agreement to address issues that may arise.

### 2. DEFINITIONS

For the purposes of this Franchise Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- a. "**Affiliate**" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- b. "**Franchise Area**" means the area within the boundaries of the City of Woodland, as now or hereinafter constituted.
- c. "**Grantee**" or "**Franchisee**" means Cascade Networks, Inc., a Washington Corporation, and the lawful successors, transferees, or assignees thereof.
- d. "**Grantor**" means the City of Woodland, a municipal corporation of the State of Washington.
- e. "**Gross Revenues**" means all amounts earned by the Grantee, less bad debts, derived from the operation of Grantee's System to provide services within the Franchise Area. "Gross Revenues" shall include amounts for all services, including without limitation, and all other revenues

derived from the operation of Grantee's System to provide communication services, regardless of whether initially recorded to another entity and however characterized.

However, any sales, excise or other taxes or fees levied directly upon subscribers by a local, state, or federal government and collected by the Grantee for direct pass through to such government shall not be included in "Gross Revenues". Subject to the limits and restrictions of federal and state law, the amounts of franchise fees paid by the Grantee shall not be excluded from gross revenues. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an affiliate that represent a transfer of funds between the Grantee and the affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues.

- f. **"Interactive Services"** means services provided to subscribers where the subscriber either (a) receives information consisting of signals and transmits signals generated by the subscriber or equipment under the subscriber's control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; (b) transmits signals to any other location for any purpose.
- g. **"Person"** means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- h. **"Record"** means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, magnetic and laser disk files, and photographs, to the extent related to the enforcement or administration of this Franchise.
- i. **"Resident"** means any natural person residing within the franchise area.
- j. **"Section"** means any section, subsection or provision of this Franchise Agreement.
- k. **"Streets and Public Ways"** means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the franchise area, and any easements, rights of way or other similar means to access to the extent Grantor has the right to allow Grantee to use them.
- l. **"Year"** means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year."

### **3. GRANT OF FRANCHISE**

#### **3.1 Grant.**

Grantor hereby grants to the Grantee a non-exclusive, revocable franchise for a 13-year (thirteen) period from and after the effective date hereof, revocable as provided herein, to construct, operate and maintain a communications system within the franchise area. This franchise constitutes the authority, right, privilege and obligation to provide communications services over the facilities of the Communications System as required or conditioned by the provisions of this Franchise Agreement. This Franchise is subject to the laws of the United States and the State of Washington, and to the general ordinances of the City of Woodland enacted pursuant thereto affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now or existing or hereinafter enacted.

#### **3.2 Use of Public Streets and Ways.**

For the purpose of constructing, operating and maintaining a communications system in the franchise area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, across, and along the public streets and ways within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the system, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable fees, and receive approval as necessary before proceeding.

#### **3.3 Duration and Effective Date of Franchise.**

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be 13 (thirteen) years from the effective date of this Agreement, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be the date of acceptance by Grantee, unless the Grantee fails to file the franchise acceptance in accordance with Section 3.8 herein, in which event this franchise shall be null and void.

#### **3.4 Franchise Not Exclusive.**

The franchise granted herein is not exclusive. This franchise shall not be construed as any limitation upon the right of Grantor to grant other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways or public places by franchise, permit or otherwise.

### **3.5 Franchise Non-Transferable.**

This Franchise shall not be, sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized by leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing, which consent shall not be unreasonably withheld. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

If the Grantee wishes to transfer this franchise, the Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry, and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed transfer. Consent to the transfer shall not be unreasonably withheld. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The requirements of this section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a communications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

The requirements of this Section shall not be deemed to prohibit sale of tangible assets of the system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this Section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is communications systems operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

### **3.6 Change in Control.**

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee. If beneficial ownership of fifty percent (50%) or more of the stock of the Grantee, or of the majority of the stock of any parent company of the Grantee immediate or otherwise, or of any entity now owning or later acquiring such beneficial interest is acquired by or agent of common control is other than an organization with majority of its beneficial ownership held by the Grantee or a parent of the Grantee, then a change in control will be deemed to have taken place unless the Grantor, upon request of the Grantee, finds otherwise. Such change in

control shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

If the Grantee desires to operate the franchise under a change of control, the Grantee shall give the Grantor written notice of the proposed change, and shall request approval of the change by the Grantor. The Grantor shall have 120 days to act upon the request, following the receipt of the request, as well as all information required in writing by the Grantor prior to or subsequent to the request for approval. If the Grantor fails to render a final decision on the request within 120 days after receiving the request for approval and all such information, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective controlling party to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry. Consent to the change of control shall not be unreasonably withheld.

### **3.7 Franchise Acceptance.**

The Grantee, within sixty (60) days after the tender by the Grantor to Grantee of the Franchise Agreement adopted by the Grantor, shall file in the office of the City Clerk of the City of Woodland, a written Acceptance executed by Grantee, in the form attached hereto as Exhibit A.

In the event Grantee fails to file the Acceptance as required herein, then this Franchise shall be null and void.

## **4. CONSTRUCTION OF IMPROVEMENTS**

### **4.1 Right of Inspection of Construction.**

With reasonable notice to the Grantee, Grantor shall have the right to inspect all construction or installation work performed within the franchise area and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise Agreement and other pertinent provisions of law.

### **4.2 Erection of Poles.**

If additional poles in an existing aerial utility system route are required, Grantee shall negotiate with the utility company or provider for the installation of the needed poles. Grantee shall not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor which approval shall not be unreasonably withheld. The Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions, and shall comply with all applicable ordinances, resolution, rules and regulations of general applicability of the Grantor.

#### **4.3 Trimming of Trees or other Vegetation.**

In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Except in an emergency, tree or vegetation trimming shall be done only in accordance with the ordinance and other rules and regulations of Grantor and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands.

#### **4.4 Repair and Restoration of Streets, Public Ways and Grounds.**

Grantee is prohibited from disturbing the paved surface of newly constructed or substantially improved streets for a period of 18 months after completion of construction. However, if extraordinary circumstances dictate that such work must be done, Grantee must negotiate a non-discriminatory damage fee with Grantor, prior to undertaking the work.

Whenever the Grantee shall disturb the surface or otherwise damage any street, alley, public highway, other public way or ground for any purpose mentioned herein, it shall repair and restore the same in accordance with Grantor's public works standards. And when any opening is made by the Grantee in any hard surface pavement, in any street, alley, public highway or other way, the Grantee shall promptly refill the opening and restore the pavement in accordance with Grantor's public works standards. The Grantor may refill and/or repave in case of neglect of the Grantee. The actual cost thereof, including the cost of inspection, supervision and administration shall be paid by the Grantee. All excavations made by the Grantee in the streets, alleys, public highways or other ways shall be properly safeguarded for the prevention of accidents. All traffic control shall be in accordance with the then current MUTCD. The work hereby required shall be done in strict compliance with the rules, regulations and ordinances of Grantor as now or hereafter in effect.

#### **4.5 Construction Codes.**

The Grantee shall strictly adhere to all applicable building, zoning or other laws and codes of general applicability currently or hereafter in force in Grantor's jurisdiction. The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the removal of Grantee's lines, cables and appurtenances from the property in question.

#### **4.6 Reservations of Street Rights.**

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation, maintaining, repairing or constructing sanitary or storm sewers, grading, paving, repair and/or altering any sidewalk, street, alley, or public highway, or laying down, repairing, or removing water mains or maintaining, repairing, constructing, or establishing street

lighting, traffic signals, or any other public property or the relocation of any of the foregoing public works. If any property of the Grantee shall interfere with the construction, maintenance or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on reasonable notice from the Grantor all of Grantee's property, including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation of Grantee's property shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done in accordance with public works law and the actual cost thereof to the Grantor shall be paid by the Grantee.

#### **4.7 Street Vacation and Abandonment.**

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, and no easement for public utilities is retained therein by the Grantor, the Grantee shall forthwith remove its facilities there from unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. AT the time of removal thereof, the Grantee shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect or refusal of the Grantee to undertake such action, the Grantor may do such work or cause it to be done and the cost thereof to the Grantor shall be paid by the Grantee.

#### **4.8 Movement of Facilities.**

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense, paid in advance, of the person requesting the temporary removal of its facilities as may be required to facilitate such movements.

#### **4.9 Under grounding.**

Cable must be installed underground where (a) all other existing utility lines are or have been placed underground; (2) statute, ordinance, policy or other regulation of Grantor requires utility lines to be underground; (3) overhead utility lines are moved and placed underground (Grantee shall bear its proportionate share of the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case); (4) Grantee is unable to get pole clearance; (5) underground easements are provided by or obtained from developers of new residential areas; or (6) utilities are overhead but

residents request underground (under grounding of cable in this circumstance to be provided at resident's expense, at Grantee's actual cost).

Grantee shall use conduit or its functional equivalent on 100% of under grounding, except for drops from pedestals to subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

#### **4.10 As Built.**

Grantee shall maintain "as built" drawings of the system and make them available to the Grantor for inspection upon request. "As built" shall be updated as changes occur in the system. The Grantee shall provide to the Grantor, on request, a copy of drawings showing the location of the Grantee's facilities in the streets and public ways ("strand maps"). Consistent with Washington State law, the information provided to the Grantor under this Section shall be considered proprietary and of a confidential, competitive nature. The Grantor shall notify the Grantee in writing prior to releasing any data relating to the Grantee's system to a third party requesting the same. The Grantor agrees that its use of this information will solely be in connection with the management of its public right of way.

#### **4.11 Emergency.**

In the event of an emergency or when the communication system creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's communication system without prior notice.

### **5. GENERAL FINANCIAL AND INSURANCE PROVISIONS.**

#### **5.1 Compensation.**

- a. Utility Tax in lieu of Franchise Fee: As compensation for the franchise to be granted and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a communications system within the franchise area, the Grantee shall pay to Grantor an amount equal to six percent (6%) of the gross revenue as defined herein, which is a utility tax on the Grantee's Gross Revenues.
- b. Payment of Utility Taxes:
  1. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable sixty (60) days after the end of the quarter. A quarterly report shall be made and shall contain the relevant facts

necessary for the Grantor to verify the amounts of the payments. The Grantor shall have the right to specify the initial form of reports accompanying utility tax payments. Payment for any utility tax, or portion thereof, due under the Grantee's previous franchise, or any extensions of the same, or the time between the last effective date of such prior franchise or extensions thereof to the effective date of this franchise, shall be made in one lump sum no later than sixty (60) days following the effective date of this franchise.

2. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this franchise. All amounts paid shall be subject to audit and re-computation by Grantor.

## **5.2 Liability Insurance and Indemnification.**

- a. The Grantee shall maintain, throughout the first six years of the franchise, liability insurance covering any and all claims for damages or injury arising from operations under this franchise, insuring the Grantee in the minimum amounts of:

- \$1,000,000 for personal injury or death to any one person;
- \$1,000,000 for personal injury or death resulting from any one accident;
- \$500,000 for property damage resulting from any one accident; and
- \$1,000,000 for all other types of liability.

For the remainder of the franchise, the Grantee shall maintain liability insurance covering any and all claims for damages or injury arising from operations under this franchise, insuring the Grantee in the minimum amounts of:

- \$1,500,000 for personal injury or death to any one person;
- \$1,500,000 for personal injury or death resulting from any one accident;
- \$1,000,000 for property damage resulting from any one accident; and
- \$1,500,000 for all other types of liability.

Such insurance shall name the City of Woodland as an additional insured, together with its officers, agents, and employees, and shall further provide that the policy shall not be modified or canceled during the life of this franchise without giving 30 days written notice to the Grantor. The Grantee shall at all times maintain on file with the Grantor a copy of the endorsement naming the City as an additional insured.

- b. Grantee shall file with the Grantor certificates of insurance showing up-to-date coverages, additional insured coverages, and evidence of payment of premiums as set forth above. The Grantor may review the certificates for compliance of the insurance with Section 5.4(a). The

required coverage shall not be canceled without the approval of the Grantor, and failure to maintain required insurance may be considered a breach of this franchise. All insurance shall provide thirty (30) days prior written notice to the Grantor in the event of reduction or cancellation.

- c. The Grantee is an insured employer for purposes of the Washington Workers Compensation Law and is solely liable for any workers' compensation coverage as to work performed by Grantee under this agreement. Grantee agrees that Grantee (and other persons retained by Grantee to perform work under this agreement) shall be insured prior to commencement of work under this agreement, and that Grantee and such persons shall remain so insured during the term of this agreement. The Grantee shall also comply with the Unemployment Compensation Act of the State of Washington. The Grantee shall provide the Grantor, prior to the effective date of this agreement, with evidence showing protection for its workers under the Workers' Compensation Act and registration with the State Unemployment Compensation Commission.

## **6. BOOKS AND RECORDS**

### **6.1 Right to Perform Audit.**

In addition to all rights granted under Section 6.2, the Grantor shall have the right to perform, or cause to have performed, a formal audit or review of the Grantee's books and records, and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, the books and records of Grantee for the purpose of determining the gross revenue of the Grantee generated in any manner through the operation of the communication system to provide Communication Services under this franchise and the accuracy of amounts paid as franchise fees/utility taxes to the Grantor by the Grantee, provided that any audit or review must be commenced not later than three (3) years after the date on which franchise fees/utility taxes for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the Grantor, except that if through the audit or review it is established that the Grantee has made underpayment of three percent (3%) or more in franchise fees/utility taxes than required by this franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the actual cost of the audit or review. In any case of underpayment of franchise fees/utility taxes, the Grantee shall pay the prime rate of interest on all amounts underpaid.

### **6.2 Right of Inspection of Construction.**

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this and any previous franchise agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law.

### **6.3 Intervention.**

The Grantee shall not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the system.

### **6.4 Right to Require Removal of Property.**

At the expiration of the term for which the franchise is granted, providing no renewal is granted, or upon its forfeiture or revocation as provided for herein, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the communications system from all streets and public ways within the franchise area. If the Grantee fails to do so, the Grantor may declare the System abandoned and operate or dispose of the System without charge; or the Grantor may perform the work of removal and collect the cost thereof from the Grantee. The actual cost thereof shall be paid by the Grantee. Notwithstanding the other provisions of this Section, the Grantee, by written notice to the Grantor, may elect to abandon underground cable in place, in which event the Grantee shall have no further obligation hereunder as to the abandoned cable; except that the Grantor may, nevertheless, by written notice, require the Grantee to remove cable as deemed necessary by the Grantor to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

## **7. USE OF PRIVATE PROPERTY**

### **7.1 Permission of Property Owner Required.**

No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee shall be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved. If such permission is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee shall remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee shall perform all installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

## **8. TERMINATION AND EXPIRATION**

### **8.1 Revocation.**

In addition to any rights set out elsewhere in this agreement, the Grantor reserves the right to declare a forfeiture or otherwise revoke this franchise and all rights and privilege pertaining thereto in the event that:

- a. the Grantee is in violation of any material provision of the Franchise Agreement after application by the Grantor of a remedy lesser than franchise revocation pursuant to this

Franchise Agreement, and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation;

- b. the Grantee becomes insolvent, unable or unwilling to pay its debts to the City or any other person, or is adjudged a bankrupt;
- c. the Grantee is found to have engaged in fraud or deceit upon the Grantor, persons or subscribers;
- d. the Grantee fails to obtain and maintain any permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; provided, however, that the Grantee shall be allowed a reasonable time to cure failure the failure to obtain any permit. Upon the occurrence of one of the events set out above, following thirty (30) days written notice to Grantee of the occurrence and the proposed forfeiture and an opportunity for Grantee to cure and to be heard, Grantor may by resolution declare forfeiture. The decision of the Grantor, as set forth in the ordinance, shall be appealable to a court of competent jurisdiction.

## **8.2 Termination.**

Unless modified and extended pursuant to RCW 35A and RCW 35, this franchise terminates thirteen years from the date the Grantor has given its final approval pursuant to its statutory authority and does so in an open public meeting.

## **9. MISCELLANEOUS PROVISIONS.**

### **9.1 Safety.**

- a. The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or the employees of the Grantor.
- b. The Grantee shall install and maintain its wires, cable, fixtures, and other equipment in accordance with the requirements of the National Electrical Code, or other applicable electrical code, and in such manner that they shall not interfere with the installations of any public utility.
- c. All lines, equipment and connections in, over, under, and upon either the streets and public ways of Grantor or private property within the boundaries of Grantor, wherever

situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

#### **9.2 Compliance with Laws.**

The Grantee shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor hereto fore or hereafter adopted or established during the entire term of this franchise; provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder.

#### **9.3 Severability.**

If any section, subsection, sentence, clause, phrase or word of the Franchise Agreement is held to be invalid or unconstitutional by any court of competent jurisdiction or pre-empted by federal or state regulations or law, such section, subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

#### **9.4 Captions.**

The captions to sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

#### **9.5 Non-enforcement by Grantor.**

The Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise Agreement by reason of any failure of the Grantor to enforce prompt compliance.

#### **9.6 Entire Agreement.**

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

#### **9.7 Consent.**

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

#### **9.8 Notice.**

Any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail - return

**Cascade Networks, Inc. Franchise  
City of Woodland**

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receipt requested, or by overnight mail, addressed as follows, or to such address as the receiving party specifies in writing, or by FAX, or electronic mail ("email" or its equivalent):

If to the City: City Clerk  
City of Woodland  
PO Box 9  
Woodland, WA 98674  
Phone: (360) 225-8281  
E-mail: rippm@ci.woodland.wa.us

If to the Grantee: General Manager  
Cascade Networks, Inc.  
PO Box 887  
Longview, WA 98632  
Phone: (360)442-4440  
E-Mail: support@cni.net

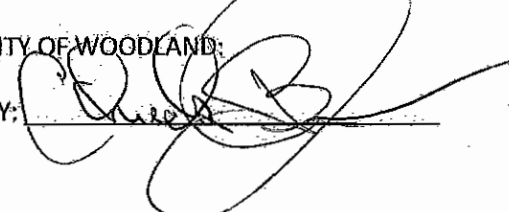
**9.9 Pass Through.**

The City acknowledges that certain external costs, including the utility tax described herein, are eligible for "pass through" to subscribers and separate itemization on the bill. At Grantee's discretion, these itemized charges may be shown either "above-the-line" (i.e., prior to the summation of the total amount due) or "below-the-line" (i.e., as a description of specific items included in the total amount due).

DATED THIS 3 DAY OF November, 2008.

CITY OF WOODLAND:

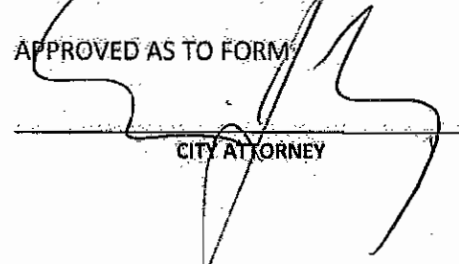
BY:



ATTEST/AUTHENTICATION:

Maui E Ripp  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

**ACCEPTANCE OF FRANCHISE**

TO: CITY CLERK  
CITY OF WOODLAND

The undersigned, Cascade Networks, Inc. does hereby accept the Franchise Agreement granted pursuant to Ordinance No. 1143, passed and approved on Nov 17, 2008 and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law.

CASCADE NETWORKS, INC.:

BY: Brian Magnuson  
TITLE: President  
DATE: 11-13-08