

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7664

A RESOLUTION Granting a Non-Exclusive Cable Television Franchise to Qwest Broadband Services, Inc. to Construct, Operate and Maintain a Cable Communications System in the City of Bellevue, Washington, and Setting Forth Conditions Accompanying the Grant of Franchise.

WHEREAS, Qwest Broadband Services, Inc. (hereinafter the "Franchisee") has applied for the grant of a cable television franchise; and

WHEREAS, the City of Bellevue (hereinafter the "City") has analyzed and considered the technical ability, financial condition, legal qualification, and general character of the Franchisee, and has determined that it is in the best interest of the City and its residents to grant a cable communications franchise to the Franchisee; and

WHEREAS, the Franchisee and the City have agreed to be bound by the conditions set forth herein; and

WHEREAS, the City determines to exercise its authority, consistent with state and federal law, to grant a non-exclusive franchise renewal to the Franchisee in accordance with the provisions of this Franchise;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

THIS FRANCHISE is made and entered into this 10th day of December 2007, by and between Qwest Broadband Services, Inc. (hereinafter referred to, together with any lawful successor, transferee, or assignee, as the "Franchisee") and the City of Bellevue, Washington (the "City").

SECTION 1. DEFINITIONS

For the purposes of this Franchise and all Exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" includes Educational Access, Governmental Access and Public Access, collectively, and means the availability for noncommercial use by various governmental and educational agencies, institutions, organizations, groups and

individuals in the community, including the City and its designees, of particular channels on the Cable Communications System to receive and distribute video programming to Subscribers, as permitted under applicable law, including, but not limited to:

(A) "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.

(B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

(C) "Public Access" means Access where the public is the primary user.

1.2 "Access Channel" means any Channel or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming.

1.3 "Access Capital Contribution" means any capital contribution paid to the City by the Franchisee in support of Public, Educational and/or Governmental Access.

1.4 "Affiliated Entity" or "Affiliate" when used in connection with the Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Franchisee.

1.5 "Bad Debt" means amounts lawfully owed by a Subscriber and accrued as revenues on the books of the Franchisee but not collected after reasonable efforts by the Franchisees.

1.6 "Basic Cable Service" means the lowest service Tier that includes the retransmission of local television broadcast signals and Access Channels, or as such service Tier may be further defined by federal law.

1.7 "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and any amendments thereto.

1.8 "Cable Communications System" or "System" means the Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term shall 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 right-of-way;

(C) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (47 U.S.C., 201 et seq.), except that such facility shall be considered a Cable Communication System (other than for purposes of Section 621 (c) (47 U.S.C. 541 (c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(D) An open video system that complies with Section 653 of the Cable Act;
or

(E) Any facilities of any electric utility used solely for operating its electric utility systems.

1.9 "Cable Company" means any Person or group of Persons, including the Franchisee, who provides Cable Service over the Cable Communications System and directly or through one or more Affiliates owns a significant interest in such System or who otherwise controls or is responsible for, through any arrangement, any of the management and/or operation of the System.

1.10 "Cable Service" means the one-way transmission of video programming, or other programming service, to Subscribers and the Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.11 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, as television channel is defined by FCC regulations.

1.12 "City" means the City of Bellevue, Washington, a municipal corporation, of the State of Washington.

1.13 "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Educational or Governmental Access Channels and facilities. The City may be a Designated Access Provider.

1.14 "Dwelling Unit" means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

1.15 "Franchise" means the non-exclusive right and authority to construct, maintain, and operate a Cable Communications System through use of the public streets, dedications, public utility easements, or other public ways in the Franchise Area pursuant to a contractual agreement executed by the City and the Franchisee.

1.16 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.17 "Franchise Fee" means consideration paid by the Franchisee for the privilege granted under this Franchise for the use of Streets and Public Ways and the privilege to construct and/or operate a Cable Communication System in the Franchise Area. The term Franchise Fee does not include:

- (A) Any tax, fee, or assessment of general applicability;
- (B) Access Capital Contribution costs which are required by the Franchise to be incurred by the Franchisee for support of Public, Educational, or Governmental Access;
- (C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
- (D) Any fee imposed under Title 17, United States Code.

1.18 "Fully Allocated Costs" means the City's proportionate share of all direct and actual material and labor costs (excluding profit) of constructing, relocating, or placing additional ducts, conduit, or related structures by the Franchisee for the City alongside or together with ducts, conduit, or structures by and for the Franchisee.

1.19 "Gross Revenues" means all revenues derived directly or indirectly by the Franchisee or an Affiliated Entity from the operation of the Cable Communications System to provide Cable Services within the Franchise Area. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber by the State, City or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit; or (iii) any Access Capital Contributions as defined by this Franchise.

1.20 "Headend" means any facility used for signal reception and dissemination on the Cable Communications System, including cables, antennas, wires, satellite, dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and facilities.

1.21 "Incremental Costs" means the direct and actual material and labor cost (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by the Franchisee for the City excluding the costs of design, trenching, boring, pipe bedding, backfilling, compacting, restoring the surface, installation and other charges, costs or expenses that the Franchisee would

otherwise incur to construct, relocate or place ducts, conduit or related structures for the Franchisee.

1.22 "Interconnect" or "Interconnection" means the actual physical linking of the Cable System's Access Channels with the Access Channels of another geographically contiguous cable system, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of Access programming between the Cable Communications System and other cable systems.

1.23 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.24 "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some hours on Saturday.

1.25 "PEG Fee" means the amount, as set periodically throughout the term of the Franchise by the City, to be collected from the subscriber each month.

1.26 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.27 "Right-of-Way" means land previously acquired or dedicated to the public, or hereafter acquired or dedicated to the public, and maintained under public authority or by others, including but not limited to public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property located within the Franchise Area.

1.28 "School" means any State accredited K-12 public or private educational institution in the City of Bellevue.

1.29 "Subscriber" or "Customer" means any Person(s) who lawfully elects to receive Cable Services provided by the Franchisee by means of the Cable Communications System.

1.30 "Tier" means a category of Cable Services provided by the Franchisee for which a separate rate is charged.

1.31 "Remote Terminal" means a Digital Subscriber Line Access Multiplexer installed by Franchisee and capable of providing Cable Service to Subscribers.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to the Franchisee a nonexclusive authorization to make reasonable and lawful use of the Right-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair, and upgrade a Cable Communications System for the purpose of providing Cable Services. Such grant is subject to the terms and conditions set forth in this Franchise, and applicable law. This Franchise shall constitute both a right and an obligation to provide Cable Services and to fulfill the obligations set forth in the provisions of this Franchise.

(B) The Franchisee is granted the right to operate its Cable Communications System using the City's Right-of-Way in compliance with all lawfully enacted applicable City codes, ordinances, standards, procedures and regulations, provided that in the event of a conflict between the provisions of the City codes, ordinances, standards, procedures and regulations and this Franchise, the express provisions of this Franchise shall govern. The express provisions of this Franchise constitute a valid and enforceable contract between the parties. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of the City, except in the lawful exercise of the City's police power. The Franchisee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution, or other enactment of the City that conflicts with the rights granted by this Franchise, either now or in the future.

(C) This Franchise shall not be interpreted to prevent the City from imposing other conditions, to the extent permitted by law, including additional compensation for use of the Right-of-Way, should the Franchisee provide service(s) other than Cable Service.

(D) No rights shall pass to the Franchisee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement or authorization required by the City for Right-of-Way users in connection with operations on or in the Right-of-Way or other public property, including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise, including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(E) This Franchise is intended to convey limited rights and interests only as to those Right-of-Ways in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Franchisee with any interest in any particular location within the Right-of-Way. This Franchise shall not be deemed to authorize the Franchisee to provide service, or install cables, wires, lines, or any other equipment or facilities upon City property other than the Right-of-Way, or upon private property without the owner's consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof.

(F) No grant of use by this Franchise shall extend to the Franchisee any permission or use outside the purpose, dedication, or reservation granted to or held by the City. Nothing herein shall prohibit the City or the Franchisee from exercising its rights under Section 621 of the Communications Act of 1934, as amended, 47 U.S.C. 541.

(G) This Franchise is an express authorization to provide Cable Services. This Franchise is not a bar to the imposition of any lawful conditions on the Franchisee with respect to Franchisee's delivery of non-cable services, telecommunications services or information services, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve the Franchisee of any obligation it may have to obtain from the City an authorization to provide non-cable services, telecommunications services, or information services or relieve the Franchisee of its obligation to comply with any such authorization(s) that may be lawfully required. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide non-cable services, telecommunications services, or information services.

2.2 Acceptance

Within forty-five (45) days of Council approval of the Resolution granting this Franchise, the Franchisee shall signify its acceptance of this Franchise by executing a written acceptance of this Franchise. This Franchise is voidable unless accepted in writing by the Franchisee within this timeframe.

2.3 Effective Date

The effective date of this Franchise shall be January 1, 2008. This Franchise shall be deemed granted after final passage by the City and written acceptance by the Franchisee.

2.4 Duration

This Franchise shall continue in full force and effect for a period of ten (10) years unless earlier terminated or otherwise extended as hereinafter provided.

2.5 Franchise Term Extension.

(A) Seven (7) years into the initial ten (10) year term of the franchise, if Qwest is capable of providing service to fifty percent (50%) or more of the potential subscribers in the City, Qwest will be granted an additional two (2) years added at the end of the initial ten (10) year term of the franchise for a total franchise term of twelve (12) years.

Similarly, at the end of the tenth (10th) year of the franchise, if Qwest is capable of providing service to eighty five percent (85%) or more of the potential subscribers in the City, Qwest would be granted an additional two (2) years at the end of the extended franchise term for a total franchise term of fourteen (14) years.

(B) Any extension of the term of this Franchise, under Sections 2.5(A) above, shall not become effective unless and until the documentation of Franchisee's completion of the requirements, as provided above, is verified by the City and thereafter the City Council approves, by resolution, any such extension as an amendment to this Franchise.

2.6 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any Person to use any property, Right-of-Way, easement, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar uses allowed the Franchisee hereunder. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with the Franchisee's authority under this Franchise and for such additional franchises for other cable communication systems, as the City deems appropriate.

2.7 Grant of Other Franchises

In the event the City enters into a cable franchise with any other Person or entity other than the Franchisee to use the City's streets or Right-of-Way for the purpose of constructing or operating a cable system to provide Cable Service to all or any part of the Franchise Area in which the Franchisee is providing Cable Service under the terms and conditions of this Franchise then the parties agree that the terms and conditions of the cable franchise, taken as a whole and taking into account the relative market positions of the alternative cable operators, should be substantially similar in order that one Cable Company not be granted an unfair

competitive advantage over another. However, nothing in this provision shall be constructed in such a way as to limit the City's authority to enter into other cable franchises that the City, in its sole discretion, determines meet the cable related needs and interests of the community, considering both the added risk of entry into the market and the benefits of incumbency. The parties recognize and acknowledge that other cable franchises granted by the City might contain terms and conditions that are different than the terms and conditions the Franchisee has negotiated and accepted in this Franchise. Nothing in this provision shall be construed so as to require certain terms and conditions in other cable franchises granted by the City and/or require that the City modify or change the terms and conditions of this Franchise.

2.8 Familiarity with Franchise

The Franchisee acknowledges and warrants by acceptance of the rights and privileges granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms, and conditions herein. The Franchisee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.9 Effect of Acceptance

By accepting the Franchise, the Franchisee: acknowledges and accepts the City's legal right to issue and enforce the Franchise; agrees that it will not oppose the City's intervening, to the extent it is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable Communications System; accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the use of the City's Right-of-Way, the Franchisee shall pay as a Franchise Fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Franchisee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.

3.2 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits the City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time during the term of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, it may do so with sixty (60) days written notice to the Franchisee, provided that all other franchised Cable Companies in the Franchise Area over which the City has jurisdiction are treated in an equivalent manner.

3.3 Payments

The Franchisee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates. Late payments shall be subject to applicable interest and penalties.

3.4 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of the Franchisee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by the Franchisee was due.

3.5 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City on a form approved by the City, verified by the Franchisee, containing an accurate statement in summarized form, as well as in detail, of the Franchisee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable Communications System.

3.6 Audits

On an annual basis, upon thirty (30) days' prior written notice, the City shall have the right to conduct an independent audit of the Franchisee's records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided the Franchisee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous six (6) years. Any additional amounts due

to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Franchisee by the City, which notice shall include a copy of the audit findings, and the Franchisee's agreement that the audit findings are correct. If the audit shows that there has been a material underpayment of Franchise Fees by three percent (3%) or more in a calendar year, then the Franchisee shall pay the cost of the audit, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period.

3.7 Financial Records

The Franchisee agrees to meet with a representative of the City upon request to review the Franchisee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records that are relevant to the enforcement of this Franchise.

3.8 Interest and Penalties on Late Payments

In the event that any Franchise Fee payment is not received by the City by the date due, interest shall be charged from such date at the rate of twelve percent (12%) per annum, or the statutory rate for judgments, whichever is less, in addition to any applicable penalties.

3.9 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect the Franchisee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of the Franchisee's Gross Revenues in any twelve (12) month period, the Franchisee agrees that the additional commitments including Access Capital Contribution, Access Channels and/or any PEG contributions are excluded from the definition of Franchise Fees herein and are not Franchise Fees. Such additional commitments will not be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law.

3.10 Payment on Termination

If this Franchise terminates for any reason, the Franchisee shall file with the City within one hundred twenty (120) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. Within forty-five (45) days of the filing of the certified statement with the City, the Franchisee shall pay any unpaid amounts as indicated. If the Franchisee fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in any security provided by the Franchisee.

SECTION 4. ADMINISTRATION AND REGULATION

The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right of administration, or any part thereof, to the extent permitted under federal, State and local law, to any agent in the sole discretion of the City.

4.1 Rates and Charges

The Franchisee shall comply with applicable laws regarding the setting of all rates and charges for Cable Services and cross subsidization. All Franchisee rates and charges for Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State, and local laws.

4.2 No Rate Discrimination

Franchisee's rates and charges shall be non-discriminatory so as to not disadvantage any Subscriber or class of Subscribers, including those who only subscribe to Cable Services offered by the Franchisee in favor of Subscribers who subscribe to Cable Services and one or more other types of service(s) the Franchisee might offer.

Nothing herein shall be construed to prohibit:

- (A) The temporary reduction or waiving of rates or charges in conjunction with limited promotional campaigns;
- (B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
- (C) The offering of bulk discounts for Multiple Dwelling Units.

The Franchisee shall as a voluntary initiative throughout the term of the Franchise, offer a discount of thirty percent (30%) from its published rate card to Subscribers for Basic Cable Services (provided they are not already receiving a package discount) who are aged 65 years or older or disabled, provided that such individual(s) are the legal owner or lessee/tenant of their Dwelling Unit and that their combined disposable income from all sources does not exceed the Housing and Urban Development Standards for the Seattle/Everett Area for the current and preceding calendar year.

The Franchisee shall permit Subscribers to make any in-residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefore. If any in-home connection requires service from the Franchisee due to signal quality, signal leakage or other factors caused by

improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by the Franchisee.

4.3 Filing of Rates and Charges

(A) Throughout the term of this Franchise, the Franchisee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require the Franchisee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than twelve (12) consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

(B) On an annual basis, the Franchisee shall, upon request, provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by the Franchisee. The schedule shall include a description of the price, terms and conditions established by the Franchisee for Leased Access Channels.

4.4 Late Fees

If the Franchisee assesses any kind of fee for late payment, such fee shall comply with applicable law.

4.5 Performance Evaluation

(A) Special evaluation sessions may be held at any time upon request by the City during the term of this Franchise.

(B) All evaluation sessions shall be open to the public and announced at least one (1) week in advance in a newspaper of general circulation in the Franchise Area.

(C) Topics which may be discussed at any evaluation session may include, but are not limited to Cable Service rates, Franchise Fees, free or discounted Cable Services, application of new technologies, System performance, Cable Services provided, customer complaints, privacy, amendments to this Franchise, judicial and FCC rulings, and the City's or the Franchisee's rules, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein.

(D) During evaluations under this Section, the Franchisee shall fully cooperate with the City and shall provide such information and documents as the

City may reasonably require under Section 7 of the Franchise to perform the evaluation.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. The Franchisee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, authorized agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for the Franchisee, its authorized agents, or its employees, or by reason of any neglect or omission of the Franchisee, its authorized agents or its employees. The Franchisee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Subject to applicable law, the Franchisee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising solely out of, or resulting solely from the Franchisee's failure to remove, adjust or relocate any of its facilities in the Streets in a timely manner in accordance with any relocation required by the City for a City project.

(C) Additional Circumstances. The Franchisee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and applicable law. These obligations include any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the City, regardless of the outcome of such proceeding;

(2) Damages arising out of any failure by Franchisee to secure consents from the owners, authorized distributors, or licensees/licensor of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall tender the defense of the claim or action to the, Franchisee, which defense shall be at the Franchisee's expense. The City may participate in the defense of a claim at its own cost and expense, and, in any event,

the Franchisee may not agree to any settlement of claims financially affecting the City without the City's written approval, which shall not be unreasonably withheld.

(E) Duty of Defense. The fact that the Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Franchisee's duty of defense and indemnification under this Section.

(F) Duty to Give Notice. The City shall give the Franchisee timely written notice of any claim or of the commencement of any action, suit, or other proceeding covered by this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Franchisee and the Franchisee shall have the obligation and duty to defend any claims arising there under, and the City shall cooperate fully therein.

(G) Separate Representation. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by the Franchisee to represent the City, the Franchisee shall pay attorneys' fees and expenses incurred by the City in defending itself with regard to any action, suit, or proceeding indemnified by the Franchisee. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by the Franchisee.

5.2 Insurance Requirements

(A) General Requirement. The Franchisee must have adequate insurance during the entire term of this Franchise to protect the City against claims for injuries to Persons or damages to property that in any way relate to, arise from or are connected with this Franchise, or involve the Franchisee, its agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits. The Franchisee must maintain during the Franchise term and for a period of twelve (12) months after expiration, termination, or non-renewal thereof, insurance in effect in accordance with the minimum insurance limits herein set forth by the City from time to time. The Franchisee shall obtain policies or provide evidence of self-insurance for the following initial minimum insurance limits:

(1) Commercial General Liability: Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, or death of a person and/or property damage;

(2) Automobile Liability: Two million dollars (\$2,000,000) per person property damage; and

(3) Employer's Liability: Two million dollars (\$2,000,000).

(4) Workers Compensation Insurance in accordance with state law requirements.

(5) The amounts listed above are the minimum deemed necessary by the City to protect the City's interests in this matter. The City has made no recommendation to the Franchisee as to the insurance necessary to protect the Franchisee's interests and any decision by the Franchisee to carry or not carry insurance amounts in excess of the above is solely that of the Franchisee. The Franchisee shall be responsible for judgments, settlements, damages, costs, attorneys' fees, and expenses that exceed the limits of the Franchisee's insurance coverage.

(C) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City shall be designated as an additional insured.

(b) The Franchisee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and duly authorized agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Franchisee's insurance and shall not contribute to it, provided the occurrence arises out of the Franchisee's acts or negligence; and

(c) The Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) The policy shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days written notice first being given to the City. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, the Franchisee shall provide a replacement policy. The Franchisee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

(D) Acceptability of Insurers. The insurance obtained by the Franchisee shall be placed with insurers with a Bests rating of no less than "A."

(E) Verification of Coverage. The Franchisee shall furnish the City with certificates of insurance and an endorsement reflecting additional insured status. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City at the time of acceptance of this Franchise by the Franchisee with existing insurance coverage to be maintained by the Franchisee until that date. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

5.3 Security

(A) The Franchisee shall provide a single Franchise performance bond to ensure Franchisee's faithful performance of any and all of the terms and conditions of this Franchise. The Franchise performance bond shall be in the amount of one hundred thousand dollars (\$100,000) for the first two (2) years of this Franchise and thereafter increasing to two hundred fifty thousand dollars (\$250,000).

(B) The City reserves the right, consistent with Bellevue City Code, Chapter 14.30, as from time to time amended, to require, and the Franchisee shall provide, additional construction and/or Right-of-Way bonds.

(C) The bond(s) shall be in a form reasonably acceptable to the City. The Franchisee shall pay all premiums or costs associated with maintaining the bond(s), and shall keep the same in full force and effect at all times during the term of this Franchise.

(D) The parties agree that the Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by the Franchisee or limit the liability of the Franchisee to the amount of the bond(s) or otherwise limit the City's recourse to any other remedy available at law or equity.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The Franchisee shall comply with Customer Service Standards as provided in the City Code, as it exists on the date of adoption of this Franchise, and as may be lawfully amended from time to time. It is acknowledged and agreed that the City may, from time to time, modify or add to the Customer Service Standards as permitted by applicable law. The Franchisee reserves the rights to challenge any Customer Service Standards that it believes are inconsistent with federal law or the contractual rights granted in this Franchise.

6.2 Subscriber Privacy

The Franchisee shall comply with privacy rights of Subscribers in accordance with applicable federal, State, and local laws.

6.3 Bill Payment Location(s)

Throughout the Franchise term, the Franchisee shall maintain a conveniently located bill payment center to allow subscribers the ability to pay bills for Cable Service.

6.4 Customer Service Agreement and Manual

(A) The Franchisee shall provide to Subscribers an accurate, comprehensive service agreement and customer installation packet for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

(1) The Franchisee's procedure for investigation and resolution of Subscriber service complaints.

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

(3) Billing procedures.

(4) Service termination procedure.

(5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.

(6) A complete statement of the Subscriber's right to privacy.

(7) Equipment policy.

(8) The name, address and phone number of the customer care department that is responsible for handling cable questions and complaints for the Franchisee. This information shall be prominently displayed in the installation packet.

(9) Upon request by the City, the Franchisee shall use its best efforts to include information about Access channel programming in the installation packet provided to Subscribers. The City shall supply such materials, for insertion in the packet, in a format consistent with the Franchisee's requirements.

(B) A copy of the installation packet shall be provided to each Subscriber at the time of initial installation and any reconnection or Cable Service upgrade requiring a home visit by the Franchisee (excluding reconnections to the same

Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Within thirty (30) days following material policy changes, information regarding the changes will be provided to Subscribers.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

The City shall have access to, and the right to inspect, any books and records of the Franchisee and/or its Affiliates, if necessary, so long as such inspection is directly related to the City's enforcement of the terms of this Franchise. The Franchisee shall not deny the City access to any of the Franchisee's records on the basis that the Franchisee's records are under the control of any parent corporation, Affiliated Entity, or a third party. The City may, in writing, request copies of any such records or books, and the Franchisee shall provide such copies within thirty (30) days of the receipt of such request. One copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Franchisee. If the requested books and records are too voluminous, or for security, reasons cannot be copied or removed, then the Franchisee may request, in writing within ten (10) days of receipt of such request, that the City inspect them at the Franchisee's local offices.

7.2 Confidentiality

The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. The Franchisee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under state or federal law. If the City receives a demand from any Person(s) for disclosure of any information designated by the Franchisee as confidential, the City shall, so far as consistent with applicable law, advise the Franchisee and provide the Franchisee with a copy of any written request by the party demanding access to such information within a reasonable time.

7.3 Copies of Federal and State Reports

Upon written request, the Franchisee shall submit to the City copies of any pleadings, applications, notifications, communications and documents of any kind, submitted by the Franchisee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of the Franchisee's Cable Communications System within the Franchise Area. The Franchisee shall submit such documents to the City no later than thirty (30) days after receipt of the City's request. The Franchisee shall not claim confidential, privileged, or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential

by a court of competent jurisdiction, or a federal or State agency. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating the Franchisee's Cable Communications System within the Franchise Area, the Franchisee shall make such documents available to the City upon the City's written request.

7.4 Complaint File and Reports

The Franchisee shall keep an accurate and comprehensive compilation of customer complaints and the Franchisee's actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. The Franchisee shall provide an executive summary report to the City on an annual basis (unless requested semi-annually by the City), in the form agreed to by the parties, within one-hundred twenty (120) days of the end of each year (or six month period as the case may be) which shall include the following information:

- (A) Nature and type of customer complaints;
- (B) A summary of unplanned service interruptions, including the frequency, location, and customer impact information if such information is available;
- (C) Any significant construction activities which affected the quality or otherwise enhanced the service of the Cable Communications System;
- (D) Average response time for service calls;
- (E) Phone activity report;
- (F) New areas constructed and available for Cable Service, including Multiple Dwelling Units;
- (G) Video programming changes (additions/deletions); and
- (H) Such other information as reasonably requested by the City.

7.5 False Statements

Any intentional false or misleading statement or representation in any report required by this Franchise shall be a material breach of this Franchise and may subject the Franchisee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise.

SECTION 8. PROGRAMMING. AND CHANNEL CAPACITY

8.1 Obscenity

The Franchisee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State, or local law.

8.2 Parental Control Device

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

8.3 Complementary Cable Service

Upon request of the City, the Franchisee shall provide without charge, a standard installation and one outlet of Basic Service to each fire station, police station, School, public library, and other municipal buildings (excluding those buildings or portions thereof that house or occupy prison/jail populations) provided that the buildings are located within four thousand feet (4,000) from an activated Remote Terminal. The Franchisee shall not be required to provide an outlet to such buildings, which are located, more than four thousand feet (4,000) from an area where Franchise has activated a Remote Terminal. If additional outlets of Cable Service are provided to such buildings beyond those required herein, the building owner/occupant shall pay the usual installation and service fees associated therewith. The Franchisee shall be permitted to recover the Franchisee's actual cost for any additional converters required.

Franchisee agrees to install one cable drop into the telecommunications room of City Hall, at its sole cost and expense, within thirty (30) days of initially offering service within the Franchise Area. The cable will be terminated at a designated internal location within City Hall, at a standard termination panel provided by Franchisee. The termination panel will be the point of demarcation. The City shall be responsible for maintenance of all internal cable wiring from the City side of demarcation point.

The Cable Service described herein is a voluntary initiative of Franchisee that shall be provided throughout the term of the Franchise.

The Cable Service provided in accordance with this subsection shall not be distributed beyond the originally installed outlet without authorization from the Franchisee.

The Cable Service provided shall not be used for commercial purposes and the City shall take reasonable steps to limit display in public areas to the City Access Channels. The City shall take reasonable precautions to prevent any use of the Franchisee's Cable Communication System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable Communication System. To the extent not inconsistent with other provisions in this Franchise, the City shall hold the Franchisee harmless from all liability or claims arising out of the use of Cable Service at the City facilities, educational facilities and other public buildings required by this Section.

8.4 Ascertainment of Programming and Customer Satisfaction

In lieu of any other customer survey requirements in the Bellevue City Code, the Franchisee shall, upon request of the City, conduct a statistically valid telephone survey of Subscribers. The survey shall not be requested more frequently than once every three (3) years and shall be at the sole expense of the Franchisee. The survey may include such items as programming, response to community needs, satisfaction, and dissatisfaction with the Cable Service offered by the Franchisee and customer service. The Franchisee shall consult and cooperate with the City in developing survey questions. The Franchisee shall provide the results of such survey to the City within one (1) month after the survey results become available. Nothing herein shall be construed to limit the right of the City to conduct its own surveys at its own expense

SECTION 9. GOVERNMENTAL AND EDUCATIONAL ACCESS

9.1 Access Channels

In order to meet the demonstrated community need for Access Channels and programming, the Franchisee shall make available the following Access Channels throughout the Franchise Area:

(A) Two (2) Access Channels, each of which shall be made available as part of the Basic Cable Service Tier, as follows:

(1) One Government Access Channel, as currently provided and programmed as BTV, for use by the City for Government Access programming, as the City sees fit; and

(2) One Educational Access Channel, as currently provided and programmed by Bellevue Community College, as part of the community college programming consortium, except that the City reserves the right to designate another Educational Access programmer, as the City may see fit; and

(B) Franchisee agrees, as a voluntary initiative, to continue to make available to Subscribers in the City a Public Access channel so long as it is carried on a regional basis, recognizing however, that neither the Franchisee nor the City programs or exercises editorial control over any Public Access Channel(s) carried by the Franchisee.

(C) If there is a demonstrated community need and Subscriber demand for additional Access Channel programming as reasonably determined by the City, then two (2) additional Access Channels shall be made available to the City within one-hundred eighty (180) days of receipt by the Franchisee of a written request from the City.

(D) In the event the Franchisee makes any change in the System and related equipment and facilities or in signal delivery technology, which change directly or indirectly affects the signal quality or transmission of any Access Channel programming or services, the Franchisee shall, at its own expense, take necessary technical steps, provide necessary technical assistance, acquire new equipment, provide training, and in addition, provide the necessary assistance and foregoing equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access signals is not diminished or adversely affected, including, among other things, so that live and taped programming can be cablecast with as good or better signal quality than existed prior to such change. For example, these provisions shall apply if Basic Service on the Cable Communication System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

9.2 Access Channel Identification/Location/Relocation/Bill Insertions

The Franchisee will use reasonable efforts to minimize the movement of Access Channel assignments. The Franchisee shall provide to the City a minimum of sixty (60) days notice prior to any relocation of any Access Channels, unless the change is required by federal law, in which case the Franchisee shall give the City the maximum notice possible.

The Franchisee, upon request, shall provide the City the opportunity to include one (1) Access Channel bill insertion and one (1) Access Channel bill message per year. The City shall be responsible for the costs of printing its bill insertion, the cost of inserting the information into the Franchisee's bills and for any incremental postage costs. Bill insertions must conform to the Franchisee's reasonable mailing requirements. The Franchisee shall be provided an opportunity to review and approve all Access bill insertions.

9.3 Access Interconnections

(A) The Access Channels required by this franchise shall be interconnected with the Access Channels of geographically adjacent cable communication systems that

are owned and operated by the Franchisee or an Affiliate of the Franchisee so long as the City has authorization for use of Access programming originated in geographically adjacent communities. In the alternative, the Franchisee may provide, at its sole cost and expense, a direct fiber connection, including all required optronic terminal equipment necessary to transmit and receive audio and video signals, to and from the designated access origination facilities. The Franchisee shall take all necessary technical steps to ensure that downstream transmissions provide an adequate signal quality in accordance with FCC regulations.

(B) At such time as the City has authorization for use of Access programming originated in geographically adjacent communities, the Franchisee shall, in accordance with this Franchise, Interconnect the Access Channels required by Section 9 herein with any other geographically adjacent cable communication systems not owned or operated by the Franchisee or an Affiliate of the Franchisee upon request of the City. Interconnections shall be located either at the jurisdictional boundaries or at another mutually agreed upon location. The City shall not request interconnection in this case except under circumstances where it can be accomplished without undue burden or excessive cost to the Subscribers. The Franchisee shall not be required to interconnect with the other cable communication system unless the cable operator of that system is willing to do so and pay for its own costs of constructing and maintaining the interconnect up to the demarcation point.

9.4 Support for Access

(A) In order to help the City meet the demonstrated need for Access programming, production equipment, facilities and the Institutional Network, the Franchisee shall pay to the City an initial, upfront, Access Capital Contribution in an amount of Thirty-Thousand Dollars (\$30,000) and thereafter, during the term of this Franchise, a semi-annual Access Capital Contribution equal to, but not to exceed, \$0.25 per Subscriber, per month.

(B) Access Capital Contribution payments shall be paid semi-annually for the periods January 1st through June 30th and July 1st through December 31st. Payment shall be received by the City not more than forty-five (45) days following the close of the semi-annual period.

9.6 Return Lines

(A) The Franchisee shall provide and maintain a fiber-optic return line, including all required optronic terminal equipment necessary to transmit and receive audio and video signals, from City Hall to the Franchisee's System Headend. The fiber-optic return line from City Hall to the System Headend will be terminated at a designated internal location within City Hall at a standard termination panel provided

by Franchisee. The City will provide wall mount backboard and a power source for the termination panel.

(B) The termination panel will be the fiber demarcation point. The Franchisee shall own and maintain the fiber optic return line from the termination panel at City Hall to the System Headend.

(C) The Franchisee shall provide the necessary optronic transmitter(s) and receiver(s), capable of accepting, transmitting, and receiving the video/audio signal(s) from the City without degradation, limitation, or loss of signal. For purposes of signal quality, the identified point of demarcation will be the input connector on the optronic transmitter(s) provided by the Franchisee. Once the optronic transmitter(s) provided by the Franchisee receives the signal(s) from the City it shall be transmitted to the System Headend.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Construction

The parties acknowledge that Qwest Corporation ("QC"), an affiliate of Franchisee, will be primarily responsible for the construction and installation of the facilities in the rights-of-way which will be utilized by Franchisee to provide Cable Services, and will own, operate and maintain all Cable Communications System facilities not installed by Franchisee. QC currently is regulated by the Washington Public Service Commission. As a result, so long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. To the extent QC constructs, installs, maintains, removes, operates, or otherwise deals with any facilities in the Public Ways, such actions will be governed under applicable Federal, state or local laws, and any local rules and regulations lawfully adopted by City, and not by this Franchise. Any provisions contained herein concerning the ownership operation, installation, construction, maintenance, removal, relocation, or use by Grantee of the Cable Communications System facilities shall apply to Grantee only to the elements of the Cable Communications System owned and operated by Grantee.

(A) Subject to applicable laws, regulations and ordinances of the City and the provisions of this Franchise, the Franchisee may perform all maintenance, construction, repair, upgrade, and reconstruction necessary for the operation of its System. All construction and maintenance of any and all of the Franchisee's facilities within the Right-of-Way shall, regardless of who performs the construction, be and remain the Franchisee's responsibility. The Franchisee shall apply for, and obtain, all permits necessary for construction of any facilities and for excavating and laying any facilities underground within the Right-of-Way. The Franchisee shall pay all applicable fees upon issuance of the requisite construction permits by the City to the Franchisee.

(B) The Franchisee may make excavations in Right-of-Way for any facility needed for the maintenance or extension of the Franchisee's System. Prior to doing such work, the Franchisee shall apply for, and obtain, appropriate permits from the City, and give appropriate notices to the City. As a condition of any permits so issued, City officials may impose such conditions and regulations as are lawful and necessary for the purpose of protecting any structures in such Right-of-Way, proper restoration of such Right-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic.

(C) In the event that emergency repairs are necessary, the Franchisee shall immediately notify the City of the need for such repairs. The Franchisee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.2 Location of Facilities

(A) Upon the City's reasonable request, in connection with the design of any City project, the Franchisee will verify the location of its underground System within the Franchise Area by marking on the surface the location of its underground facilities as required by law. However, when necessary for the actual design of any City project, the City may reasonably request that the Franchisee identify the exact location of its underground System by excavating (e.g., pot holing) at no expense to the City.

(B) Upon the City's reasonable request, the Franchisee will provide, at no expense to the City, copies of available drawings, maps, or plans showing the location of Franchisee's System within the Franchise Area.

10.3 Restoration of Right-of-Way and Other Public Property

If the Franchisee excavates, disturbs, or damages any Right-of-Way or other public property, then the Franchisee shall be responsible for restoration in accordance with applicable regulations. The City may, after providing notice to the Franchisee and an opportunity to cure a failure in restoration, or without notice where the excavation, disturbance, or damage may create a risk to public health, safety or welfare, or cause delay or added expense to a public project or activity, repair, refill or repave any excavation, disturbance, or damage. The cost thereof, including the costs of inspection and supervision, shall be paid by the Franchisee. All excavations made by the Franchisee in Right-of-Way shall be properly safeguarded for the prevention of accidents.

10.4 Maintenance and Workmanship

(A) The Franchisee's Cable Communications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any

other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the Right-of-Way by, or under, the City's authority.

(B) The Franchisee shall provide and use any equipment and appliances necessary to control and carry the Franchisee's signals so as to prevent injury to the City's property or property belonging to any Person. The Franchisee, at its own expense, shall repair, renew, change, and improve its facilities to keep them in good repair and safe and presentable condition.

(C) The Franchisee will maintain membership in good standing with the Utility Coordinating Council One Call Center or other similar or successor organization designated to coordinate underground equipment locations and installations. The Franchisee shall abide by RCW Chapter 19.122 (Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs, and practices relating to the one call locator service program.

(D) The Franchisee shall give reasonable notice to private property owners of construction work in adjacent Right-of-Way.

10.5 Acquisition of Facilities

Upon the Franchisee's acquisition of facilities in any Right-of-Way, or upon the addition or annexation to the City of any area in which the Franchisee owns or operates any facility, the Franchisee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent the Franchisee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise.

10.6 Relocation of Facilities

(A) Movement of the System For and By the City. Nothing in this Franchise shall prevent the City or public utilities from constructing any public work or capital improvement. The Franchisee shall assume the costs (in accordance with applicable law) associated with any requirement of the City to relocate its Cable Communications System facilities located in the Right-of-Way. Following sixty (60) days written notice by the City, the Franchisee shall remove, replace, relocate, modify or disconnect any of its Facilities within any Right-of-Way, or on any other property of the City, except that the City shall provide at least ninety (90) days written notice of any major City capital improvement project which would require the removal, relocation, replacement, modification or disconnection of the Franchisee's facilities or equipment from the Right-of-Way. If the Franchisee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Franchisee. The

Franchisee shall remit payment to the City within forty-five (45) days of receipt of an itemized list of those costs.

In the case of fire, disaster or other emergency, the City may remove or disconnect the Franchisee's facilities and equipment located in the Right-of-Way or on any other property of the City. The City shall provide reasonable notice to the Franchisee prior to taking such action and shall provide the Franchisee with the opportunity to perform such, action unless, in the City's sole judgment, the eminent threat to public health safety or welfare make such notice impractical.

(B) Movement for Other Permittees. At the request of any Person holding a valid City permit and upon reasonable advance notice, the Franchisee shall remove, replace, relocate, modify or disconnect any of its Facilities or temporarily raise, lower or remove its Facilities as necessary to accommodate the work under the permit. Unless the project is identified by the City as a part of a City capital improvement project, the cost must be paid by the permit holder, and the Franchisee may require the estimated payment in advance.

(C) If the City requires the subsequent relocation of any Cable Communications System equipment or facilities within five (5) years from the date of relocation of such facilities pursuant to this Section, the City shall bear the entire cost of such subsequent relocation.

(D) The City shall not be required to obtain easements for the Franchisee.

10.7 Right-of-Way Vacation

If any Right-of-Way or portion thereof used by the Franchisee is vacated by the City during the term of this Franchise, unless the City specifically reserves to the Franchisee the right to continue the use of vacated Right-of-Way, the Franchisee shall, without delay or expense to the City, remove its facilities from such Right-of-Way, and restore, repair or reconstruct the Right-of-Way where such removal has occurred. In the event of failure, neglect or refusal of the Franchisee, after thirty (30) days' notice by the City, to restore, repair or reconstruct such Right-of-Way, the City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be paid by the Franchisee within forty-five (45) days of receipt of an invoice and documentation.

10.8 Removal of Discontinued Facilities

Whenever the Franchisee intends to discontinue using any Cable Communications System facilities within the Right-of-Way, the Franchisee shall submit a complete description of the facilities and the date on which the Franchisee intends to discontinue using the facilities to the City. The Franchisee may remove the facilities or request that the City allow them to remain in place. Notwithstanding the Franchisee's request that any such facilities remain in place, the City may

require the Franchisee to remove the facilities from the Rights of Way or modify the facilities to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require the Franchisee to perform a combination of modification and removal of the facilities. The Franchisee shall complete such removal or modification in accordance with a reasonable schedule set by the City. Until such time as the Franchisee removes or modifies the facilities, or until the rights to and responsibility for the facilities are accepted by another Person having authority to construct and maintain such facilities, the Franchisee shall be responsible for all necessary repairs and relocations of the facilities, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facilities were in active use, and the Franchisee shall retain all liability for such facilities.

10.9 Hazardous Substances

(A) The Franchisee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Right-of-Way.

(B) The Franchisee shall maintain and inspect its Cable Communications System located in Right-of-Way. Upon reasonable notice to the Franchisee, the City may inspect the Franchisee's facilities in Right-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to the Franchisee's System. In removing or modifying the Franchisee's facilities as provided in this Franchise, the Franchisee shall also remove all residue of hazardous substances related thereto.

10.10 Undergrounding of Cable

(A) The following terms and conditions shall control the aerial and underground construction, installation, operation, and maintenance of Franchisee's Cable Communication System during the term of this Franchise.

(1) In areas of the Franchise Area where electrical or telephone utility wiring is aerial and Franchisee's existing Cable Communications System facilities are aerial, the Franchisee may continue to operate and maintain the existing Cable Communications System aerially.

Where construction or installation of any Cable Communications System coaxial wire or fiber sheaths results in a change in use or an intensification of an existing use, then the Cable Communications System coaxial wire or fiber sheaths shall be placed underground, unless the requirement to underground is delayed as part of a specific program to coordinate undergrounding of several utilities or in conjunction with an undergrounding program for several sites or related to future street improvements. For the purpose of this section the terms "change in use" or "intensification of an existing use" shall mean adding new coaxial

wire(s) or fiber sheaths where none previously existed; increasing the number of coaxial wires or fiber sheaths, or; increasing the size or dimension of the existing coaxial wires or fiber sheaths by one half inch (1/2") or more in diameter when do one for one change out.

(3) In those areas of the Franchise Area where electrical or telephone utility wiring is aerial and the Franchisee's construction or installation of any Cable Communications System coaxial wires or fiber sheaths results in a change in use or an intensification of an existing use, the Franchisee may request consent from the City for aerial construction. Consent by the City will be granted on a case by case basis and will not be unreasonably withheld.

(4) When electric and telephone utility wiring and the aerial lines of telecommunications providers in an area of the Franchise Area are subsequently relocated to underground the Franchisee shall relocate its aerial Cable Communications System facilities to underground, at no cost or expense to the City, at the same time.

(5) The Franchisee shall utilize existing poles wherever possible. This Franchise does not grant, give, or convey to the Franchisee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person.

(B) Related Cable Communications System facilities (such as pedestals, equipment cabinets, etc.) must be placed in accordance with applicable City code requirements and underground utility policies, as interpreted by the City.

(C) The City shall provide reasonable advanced notice of available opportunities for access to open trenches. To the extent technically and economically feasible, the Franchisee shall participate with other providers in joint trench projects to relocate its overhead facilities underground provided that Franchisee's share of the cost of participation in a joint trench project does not exceed Franchisee's cost of relocation to a single occupancy trench.

10.11 Avoid Interference

The Franchisee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of the Franchisee's lines, cables and other appurtenances from the property in question.

10.12 Tree Trimming

Upon obtaining a permit from the City, the Franchisee may trim or prune trees in the Right-of-Way that interfere with the System. Any such trimming or pruning will

be performed using standard practices accepted by the International Society of Arboriculture (ISA) addressing vegetation health and aesthetics.

10.13 Standards

(A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Franchisee must comply with all federal, State and local safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable Communications System. By way of illustration and not limitation, the Franchisee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

(B) The Franchisee shall ensure that all cable drops are properly bonded and grounded at the home, consistent with applicable code requirements. All nonconforming or non-performing cable drops shall be replaced by the Franchisee as necessary.

(C) All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices and of sufficient height to comply with all federal, State and local regulations, ordinances and laws so as not to interfere in any manner with the right of the public or individual property owner, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic.

(D) In the maintenance and operation of its System in the Right-of-Way and other public places, and in the course of any new construction or addition to its facilities, the Franchisee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the Right-of-Way or other public places made by the Franchisee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked.

10.14. Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions

Whenever the City determines that the Franchisee has taken any action or caused any condition within the Franchise Area in violation of the Bellevue City Code or other applicable City ordinances, standards, procedures and/or regulations that results in or produces any unsafe, nonconforming, or unauthorized condition the City may order the correction or discontinuance of such condition or any activity causing such condition, or take any other remedial action, pursuant to applicable

provisions of the Bellevue City Code or other applicable City ordinances, standards, procedures and/or regulations, as from time to time amended.

10.15 Work of Contractors and Subcontractors

The Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with local ordinances, regulations, and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations, and conditions as if the work were performed by the Franchisee. The Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law.

10.16 Additional Ducts and Conduit

If the City is interested in contracting with the Franchisee to place additional duct or conduit in a specific area within the Franchise Area, it shall notify the Franchisee of its interest and the Franchisee shall determine whether the request could be incorporated into any future construction, relocation, or maintenance projects. If a project is scheduled by the Franchisee wherein additional duct or conduit will be placed on behalf of the City, the following conditions shall apply:

(A) The City shall enter into a contract with the Franchisee consistent with RCW 80.36.150. The contract rates to be charged should recover the Incremental Costs of the Franchisee. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing Cable Service or telecommunications service for hire, sale or resale to the general public, the rates to be charged, as set forth in the contract with the Franchisee shall recover at least the Fully Allocated Costs of the Franchisee. The Franchisee shall state both contract rates in the contract. The City shall inform the Franchisee of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the City.

(B) The City shall not require that the additional duct or conduit space to be connected to the access structures and vaults of the Franchisee.

(C) The value of the additional duct or conduit requested by the City shall not be considered a public works construction contract.

(D) This section shall not affect the possible provision of an I-Net by the Franchisee as provided elsewhere in this Franchise or under federal law.

(E) At the City's sole option, the City may require Franchisee to furnish such additional duct or conduit and the related structures necessary to access the conduit or duct for the Incremental Costs (if such Incremental Costs have been mutually agreed to by the parties) by so notifying Franchisee no later than sixty (60)

days after the information is provided by the Franchisee. Notwithstanding the foregoing, Franchisee's construction, relocation, or maintenance projects shall not be unreasonably delayed as a result of the requirements contained within this section.

(F) If the City requires Franchisee to furnish additional duct, conduit or related structures pursuant to this section, the Franchisee shall construct these facilities to the same standards as Franchisee's own new facilities, and shall turn such additional duct, conduit or related structures over to the City upon completion of same and satisfactory inspection thereof by the City. The Franchisee shall be responsible for any required filings with State agencies or commissions.

SECTION 11. SYSTEM DESIGN AND CAPABILITY

(A) The Cable Communication System shall be capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of a particular manner in which signal is transmitted. The Franchisee agrees to maintain the Cable Communication System in a manner consistent with, or in excess of these specifications throughout the term of this Franchise.

(B) Throughout the term of this Franchise, the Franchisee shall provide additional Cable Communication System facilities and equipment, expand Cable Communication System channel capacity and otherwise upgrade, or re-build its Cable Communications System as required to incorporate improvements in technology as necessary to reasonably meet the needs and interests of the community, in light of the costs thereof.

SECTION 12. TECHNICAL STANDARDS

12.1 Technical Performance

The technical performance of the Cable Communication System shall meet or exceed all applicable technical standards authorized or required by law, including, without limitation, FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

12.2 Inspection of Construction

The City shall have the right to inspect any construction or installation work performed under this Franchise and to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order the Franchisee, in writing, to

make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within the time specified by the City. The City has the right to correct, inspect, administer, and repair the unsafe condition if the Franchisee fails to do so within the time specified, and to charge the Franchisee therefore.

12.3 Cable Communication System Performance Testing

(A) The Franchisee shall, at its expense, perform all tests on its Cable Communication System required by the FCC (including at least one (1) test point located within the City) and shall maintain written records of its test results. Copies of such test results will be provided to the City upon request.

(B) All required technical performance or other System tests shall be at the expense of the Franchisee and may be witnessed by representatives of the City. Upon request, the Franchisee will notify the City before any required technical proof-of-performance or other testing occurs.

(C) The Franchisee shall promptly take such measures as are necessary and diligently continue the same until completion in order to correct any performance deficiencies fully and to prevent their recurrence. The Franchisee's failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

12.4 Additional Tests

(A) Upon thirty (30) days prior written notice, the City may require the Franchisee to conduct proof of performance tests on up to seven (7) test points located within the City. This testing requirement may only be triggered by the City once during the thirty-six (36) month franchise renewal window.

(B) Notwithstanding Subsection (A) above, where there exists a pattern of poor technical performance or quality on the Cable Communication System, the City may upon thirty (30) days prior written notice, require the Franchisee to conduct an additional performance test within the City. The Franchisee shall fully cooperate with the City in performing such testing and shall prepare the results and a report if requested, within thirty (30) days after testing. Such report shall include the following information:

(1) The nature of the complaint or problem which precipitated the special tests;

(2) The Cable Communication System component tested;

(3) The equipment used and procedures employed in testing;

(4) The method, if any, in which such complaint or problem was resolved; and

(5) Any other information pertinent to said tests and analysis which may be required.

SECTION 13. SERVICE EXTENSION

13.1 Service Availability

(A) In general, except as otherwise provided herein, where the Franchisee has activated a Remote Terminal, the Franchisee shall provide a standard installation of Cable Service within seven (7) days of a request by any Person located within four thousand feet (4,000) of the activated Remote Terminal. Provided, however, that nothing in this Franchise shall be deemed to require mandatory service throughout the City within the term of this Franchise. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Franchisee, receipt of a written request by the Franchisee or receipt by the Franchisee of a verified verbal request. The Franchisee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere, in this Franchise, and;

(2) No customer shall be refused service arbitrarily.

SECTION 14. STANDBY POWER AND EMERGENCY ALERT SYSTEM

14.1 Standby Power

The Franchisee shall provide standby power generating capacity at the System Headend capable of providing at least twelve (12) hours of emergency operation.

14.2 Emergency Alert Capability

(A) In accordance with, and at the time required by, the provisions of FCC Regulations, as such provisions may from time to time be amended, Emergency Alert System ("EAS") activation will be accomplished in compliance with the EAS Plans that apply to the City.

(B) The City shall only permit its appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Franchisee's Cable Communication System that in any

manner results in an inappropriate use thereof. To the extent allowed by law, the City shall hold the Franchisee, its employees and officers harmless from any claims arising out of the emergency use of the EAS facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.

(C) The Franchisee shall ensure that the EAS system is functioning properly at all times. It will test the EAS system periodically, in accordance with FCC regulations.

SECTION 15. FRANCHISE VIOLATIONS

15.1 Procedure for Remediating Non-Material Franchise Violations

(A) If the City believes that the Franchisee has failed to perform any non-material obligation under this Franchise or has failed to perform in a timely manner, the City shall notify the Franchisee in writing, stating with reasonable specificity the nature of the alleged default. The Franchisee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or

(2) Cure the default; or

(3) Notify the City that the Franchisee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, the Franchisee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether the Franchisee's proposed completion schedule and steps are reasonable.

(B) If the Franchisee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A) (3), or denies the default and requests a meeting in accordance with subsection (A) (1), or the City orders a meeting in accordance with subsection (A) (3), then the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify the Franchisee of the meeting in writing and such meeting shall take place no less than thirty (30) days after the Franchisee's receipt of notice of the meeting. At the meeting, the Franchisee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists; the Franchisee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order the Franchisee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable timeframe as the City shall determine. In the event the Franchisee does not cure within such time, to the City's reasonable satisfaction, the City may:

(1) Pursue the revocation of this Franchise pursuant to Sections 15.2, Revocation and 15.3, Revocation Procedures and Process below; or

(2) Pursue any other legal or equitable remedy available under this Franchise or any applicable law;

(D) The determination as to whether a non-material violation of this Franchise has occurred shall be within the discretion of the City, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

15.2 Revocation

(A) In addition to all other rights and powers retained by the City, the City reserves the right to revoke and terminate this Franchise and all rights and privileges of the Franchisee in the event of a substantial violation or breach of its terms and conditions. A substantial violation or breach by the Franchisee shall include, but shall not be limited to, any of the following acts or omissions:

(1) An uncured substantial violation of any material provision of this Franchise, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;

(2) Any default in the performance of any of the Franchisee's material obligations under any other documents, agreements and other-terms and entered into by and between the City and the Franchisee;

(3) An intentional evasion or knowing attempt to evade any material provision of this Franchise or the practice of any fraud or deceit upon the Cable Communications System Subscribers or upon the City;

(4) Failure to begin or substantially complete any System construction or System extension as required;

(5) Failure to provide the services as specified in this Franchise, or a reasonable substitute therefor;

(6) Any use or occupation of the Right of Way that presents a risk to public health or safety or the construction, installation, operation or maintenance of the Cable Communications System in an unsafe or dangerous manner;

(7) The willful violation of any orders or rulings of any regulatory body having jurisdiction over the Franchisee relative to this Franchise;

(8) Misrepresentation of material fact in the application for, or during negotiations relating to, this Franchise;

(9) A continuous and willful pattern of inadequate service or failure to respond to legitimate subscriber complaints;

(10) Failure to provide insurance, bonds, letter of credit, or indemnity as required by this Franchise;

(11) An uncured failure to pay Franchise Fees as required by this Franchise agreement.

(B) None of the foregoing shall constitute a substantial violation or breach if the Franchisee is without fault or if the violation or breach occurs as a result of circumstances beyond the Franchisee's reasonable control. The Franchisee shall bear the burden of proof in establishing the existence of such circumstances. However, the Franchisee's substantial violation or breach shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, employees, agents or, contractors.

15.3 Revocation Procedures and Process

(A) This Franchise may be terminated in accordance with the following procedures:

(1) The City Manager, or other person designated by the City Manager, shall notify the Franchisee in writing of the exact nature of the alleged substantial violation or breach constituting a ground for termination. Said notice shall provide that the Franchisee shall have sixty (60) days from the date of receipt of the notice to correct and cure such alleged substantial violation or breach or to present facts and argument in refutation of the alleged substantial violation or breach. A copy of said notice of substantial violation or breach shall be mailed to the surety on any performance bond.

(2) If the Franchisee corrects any alleged substantial violation or breach within the sixty (60) day cure period, then in no event shall the violation be weighed against such Franchisee in any subsequent review of Franchise performance.

(3) If the Franchisee does not correct and cure the alleged substantial violation or breach within the sixty (60) day cure period then the City Council shall, within forty-five (45) days of the last day of the sixty (60) cure period designate the Hearing Examiner as the hearing officer to conduct a public hearing to determine if the revocation and termination of the Franchise is warranted and to make a recommendation to the City Council. That recommendation shall be transmitted to the City Council for final action on a closed record. The City Council shall act as the final decision maker.

(4) At least twenty (20) days prior to the public hearing, the City Clerk, shall issue a public hearing notice and order that shall: establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City shall hear any persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

(5) The Hearing Examiner shall hear testimony, take evidence, hear oral argument, and receive written briefs. The Hearing Examiner shall create for the City Council a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording.

(6) The Franchisee carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that there is not an uncured substantial violation or breach or that the substantial violation or breach is a result of circumstances beyond the Franchisee's reasonable control.

(7) Within ten (10) working days after the close of the record the Hearing Examiner shall issue a written decision that shall include the recommendation of the Hearing Examiner on the revocation and termination of the Franchise; a findings of facts upon which the recommendation is based; and the conclusions derived from those facts.

(B) The City Council shall, at a public meeting, consider and take final action on the recommendation of the Hearing Examiner. The City Council shall not accept new information, written or oral, but shall consider the complete record developed before the Hearing Examiner and the recommendation of the Hearing Examiner.

(C) At the public meeting the City Council shall either:

- (1) Accept the recommendation of the Hearing Examiner; or
- (2) Reject the recommendation of the Hearing Examiner; or;

(3) Remand the decision to the Hearing Examiner for an additional hearing limited to specific issues identified by the City Council.

(D) The City Council shall adopt an ordinance which accepts or rejects the recommendation of the Hearing Examiner by a majority vote of the membership of the Council. If the action by the City Council will result in the revocation and termination of the Franchise then the ordinance shall declare that the Franchise shall be revoked and terminated; any security fund or bonds are forfeited; and shall include findings of fact and conclusions derived from those facts which support the decision of the Council. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.

(E) The Franchisee shall be bound by the City Council's decision to revoke the franchise unless an appeal to a court of competent jurisdiction, as specified in Section 19.5, is filed within thirty (30) days of the date of the Council's decision.

15.4 Removal

(A) In the event of the termination, expiration, revocation or non-renewal of this Franchise, and after all appeals from any judicial determination are exhausted and final, the City may order the removal of the Cable Communications System facilities solely used to provide Cable Service, from the Franchise Area at the Franchisee's sole expense, within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, the Franchisee shall refill, at its own expense, any excavation that is made by it and shall leave all Right-of-Way, public places and private property in as good a condition as that prevailing prior to the Franchisee's removal of its equipment.

(B) If the Franchisee fails to complete any required removal to the satisfaction of the City, the City may cause the work to be done, and the Franchisee shall reimburse the City for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the City's expenses and costs, or the City may recover its expenses and costs from the security, or pursue any other judicial remedies for the collection thereof. Any expenses incurred in the collection by the City of such obligation shall be included in the monies due the City from the Franchisee, including reasonable attorneys' fees, court expenses, and expenses for work conducted by the City's staff or agents.

SECTION 16. ABANDONMENT

If the Franchisee abandons its System during the Franchise term, or fails to operate its Cable Communications System as required herein, the provisions of this Franchise and the City Code shall apply and the City, at its option, may operate the Cable Communications System or; designate another entity to operate the Cable Communications System temporarily until the Franchisee restores service, or until

the Franchise is revoked and a new franchisee is selected by the City. If the City designates another entity to operate the Cable Communications System, the Franchisee shall reimburse the City for all reasonable costs, expenses and damages incurred, including reasonable attorneys' fees, court expenses, and attributed expenses for work conducted by the City's staff or authorized agents.

SECTION 17. FRANCHISE TRANSFER

Transfer of Ownership or Control

(A) The Cable Communications System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall not be unreasonably withheld. Such consent shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.

(B) The Franchisee shall promptly notify the City of any actual or proposed sale, change in, transfer of, or acquisition by any other party of control of the Franchisee. The word "control" as used herein is not limited to majority stock ownership but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Franchisee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto. Such consent shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.

(C) The parties to the sale, transfer, or change in control of the Cable Communications System or the Franchisee shall make a written request to the City for its approval of a sale or transfer or change in control and furnish all information required by law.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee or new controlling Person or entity shall indicate whether, as applicable, it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable Communications System;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee or new controlling entity, along with any other data that the City may reasonably require; and

(5) Has the financial, legal, and technical capability to enable it to maintain and operate the Cable Communications System for the remaining term of the Franchise.

(E) The City shall act on the request within one hundred twenty (120) days of the request, provided it has received a complete application with all information required by FCC Form 394. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(F) Within thirty (30) days of any transfer, sale or change in control, if approved or deemed granted by the City, Franchisee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or change in control, certified and sworn to as correct by Franchisee and the transferee or new controlling Person or entity. In case of a sale or transfer of ownership, the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Franchisee is not replaced by another entity, the Franchisee will continue to be bound by all of the provisions of this Franchise, subject to applicable law, and will file a written acceptance as required.

(G) In reviewing a request for sale or transfer or change in control, the City may inquire into the legal, technical, and financial qualifications of the prospective controlling party or transferee, and Franchisee shall assist the City in so inquiring. The City may condition said sale or transfer or change in control upon such terms and conditions as it deems reasonably appropriate; provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee. Additionally, such Person shall effect changes as promptly as practicable in the operation of the Cable Communications System, if any changes are necessary, to cure any violations or defaults presently in effect or ongoing.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required (i) for any sale, assignment or transfer of the Franchise or Cable Communications System to an intra-company Affiliate; or, (ii) where there is an internal corporate restructuring or reorganization; provided that the proposed assignee or transferee must show financial responsibility as may be

determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Franchisee may pledge the assets of the Cable Communications System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Franchisee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 18. NOTICES

Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

The Franchisee's address shall be:

Qwest Communications
1600 7th Avenue, Room 3205
Seattle, Washington 98191
206-345-2002 Office

The City's address shall be:

City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012
Attention: Cable Franchise Manager

With a copy to:

City of Bellevue
P. O. Box 90012
Bellevue, WA 98009-9012
Attention: City Clerk

SECTION 19. MISCELLANEOUS PROVISIONS

19.1 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or

otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

19.2 Costs to be Borne by the Franchisee

The Franchisee shall pay for all costs of publication of this Franchise, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise.

19.3 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors, and assigns

19.4 Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

19.5 Venue

The venue for any dispute related to this Franchise shall be in the United States District Court for the Western District of Washington or in the King County Superior Court in Bellevue, Washington.

19.6 Governing Law

This Franchise shall be governed in all respects by federal law, the laws of the State of Washington and local laws. In the event that there is a change in law that affects the parties' rights and obligations under this Franchise, then the parties agree to meet and discuss in good faith the appropriate implementation, if any, of that change in law.

19.7 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

19.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either

party act toward third persons or the public in any manner that would indicate any such relationship with the other.

19.9 Waiver

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

19.10 Severability

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

19.11 Compliance with Federal, State, and Local Laws

The Franchisee shall comply with applicable federal, State and local laws, rules and regulations now existing or hereafter adopted.

19.12 Force Majeure

The Franchisee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Franchisee to anticipate and control, including war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages, slow downs, power outages exceeding back-up power supplies or work delays caused by waiting for utility providers to service or monitor their utility poles to which the Franchisee's Cable Communication System is attached.

19.13 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by the Franchisee, such time shall be deemed to be of the essence, and any failure of the Franchisee to perform within the allotted time may be considered a breach of this Franchise. However, in the event that the Franchisee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the reasonable control of the Franchisee, the Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation that is satisfactory to the City.

Passed by the City Council this 10th day of December, 2007,
and signed in authentication of its passage this 10th day of December,
2007.

(SEAL)



Grant S. Degginger, Mayor

Attest:



Myrna L. Basich, City Clerk

ACCEPTANCE OF RESOLUTION NO. 7664
OF THE CITY OF BELLEVUE WASHINGTON

The undersigned, Qwest Broadband Services, Inc., a Washington corporation, hereby accepts Resolution No. 7664, which was passed by the City Council of the City of Bellevue Washington on December 10, 2007 and is entitled:

A RESOLUTION Granting a Non-Exclusive Cable Television Franchise to Qwest Broadband Services, Inc. to Construct, Operate and Maintain a Cable Communications System in the City of Bellevue, Washington, and Setting Forth Conditions Accompanying the Grant of Franchise.

Qwest Broadband Services, Inc. hereby declares that it has carefully read the terms and conditions of this franchise and Bellevue City Code 5.30, as amended by Council action in conjunction with this franchise, and does hereby accept all of the terms and conditions and agrees to abide by same. By accepting this franchise, Qwest Broadband Services, Inc. hereby certifies that it has relied upon its own investigation of all relevant facts, it has had the assistance of counsel, it was not induced to accept a franchise, and it accepts all reasonable risks related to the interpretation of the franchise.

Qwest Broadband Services, Inc.

By: [Signature]

Title: Sr. Vice President

State of Colorado)
Washington) ss.
County of Denver)

On this 21st day of January, 2008, personally before me appeared R. Steven Davis who stated that (s)he is an authorized signer for Qwest Broadband Services, Inc. and that the instrument was signed on behalf of and with the knowledge and authority of the said corporation.

Before me: [Signature]
Notary Public for the State of Washington Colorado

My Commission Expires: 7-3-2010

