



ORDINANCE NO. 28634

1 AN ORDINANCE relating to cable television, granting a non-exclusive 20-year
2 franchise agreement to Rainier Connect North LLC, a Washington limited
3 liability company, to construct, operate, maintain and provide cable television
4 services in the City of Tacoma, setting forth provisions, terms, and conditions
5 of the grant of franchise; specifically making such grant subject to the
6 Tacoma Municipal Code, as well as the Tacoma City Charter; providing for
7 City regulation of the system and services; and prescribing remedies for
8 violation of franchise provisions in addition to those specified pursuant to the
9 Tacoma Municipal Code and the Tacoma City Charter.

10 WHEREAS, pursuant to Subtitle 16A of the Tacoma Municipal Code (“TMC”)
11 and in accordance with Section 546 of the Cable Communications Policy Act of
12 1984, as amended, (Pub. L. No. 98-549, 98 Stat. 2779 (codified at 47 U.S.C. § 521
13 et seq., hereinafter “Cable Act”), Rainier Connect North LLC, a Washington limited
14 liability company (“Franchisee”), seeks a Franchise in the City, and

15 WHEREAS the City is authorized to grant one or more nonexclusive cable
16 franchises pursuant to Subtitle 16A and applicable state and federal law, and

17 WHEREAS the City intends to exercise the full scope of its municipal powers
18 to the extent not prohibited by state and federal law, including both its police power
19 and contracting authority, to promote the public interest and to protect the health,
20 safety and welfare of the citizens of the City, and

21 WHEREAS the City has identified the future cable-related needs and
22 interests of the City and its community; has considered the financial, technical, and
23 legal qualifications of Franchisee; and has determined that Franchisee’s plans for
24 its Cable System are adequate, in a full public proceeding affording due process to
25 all Parties, and
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WHEREAS the City has found Franchisee to be financially, technically, and legally qualified to operate the Cable System, and

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

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

WHEREAS, in consideration of this request for a Franchise, Franchisee hereby agrees to comply with the provisions of this Franchise and Subtitle 16A of the Tacoma Municipal Code, and

WHEREAS the City Council has determined to grant such a franchise to Rainier Connect North LLC upon those certain terms and conditions which the City Council deems necessary as set forth herein, and

WHEREAS this City of Tacoma Telecommunications Franchise Ordinance contains the following sections:

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23 Now, Therefore,

24 BE IT ORDAINED BY THE CITY OF TACOMA:

25 Section 1. Definitions. For the purposes of this Franchise, the following

26 terms, phrases, words, and their derivations shall have the meaning given herein

where capitalized; words not defined herein which are defined in Subtitle 16A shall

have the same meaning or be interpreted as provided in Subtitle 16A and if not

defined there, shall be construed consistent with the Cable Act and if not defined

there, shall have their ordinary and common meaning. When not inconsistent with

the context, words used in the present tense include the future, words in the plural

number include the singular number, words in the singular number include the



1 plural number, and the use of any gender shall be applicable to all genders
2 whenever the sense requires. The words “shall” and “will” are mandatory and the
3 word “may” is permissive. A reference to Subtitle 16A, Chapter 10.22, the City
4 Code or to the City’s Charter refers to the same, as amended from time to time.
5 References to governmental entities (whether Persons or entities) refer to those
6 entities or their successors in authority. If specific provisions of law referred to
7 herein are renumbered, then the reference shall be read to refer to the renumbered
8 provision. References to laws, ordinances, or regulations shall be interpreted
9 broadly to cover government actions, however nominated, and include laws,
10 ordinances, and regulations now in force or hereinafter enacted or amended.
11

12 1.1 “Access” refers to the availability of the Cable System for Education or
13 Government Use by various agencies, institutions, organizations, and groups,
14 including the City and its Designated Access Providers, to acquire, create, and
15 distribute programming not under Franchisee’s editorial control, including, but not
16 limited to:
17

18 A. “Education Access” or “Education Use” means Access where
19 accredited educational institutions are the primary or designated programmers or
20 users having editorial control over their programming; and
21

22 B. “Government Access” or “Government Use” means Access where
23 government institutions or their designees are the primary or designated
24 programmers or users having editorial control over their programming.
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26 1.2 “Access Channel” means a Channel set aside for EG Use.



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1.3 "Access Facilities" means facilities designated for EG Use, and equipment, including, but not limited to, modulators, demodulators, and transmitters, as well as production facilities and equipment for EG Use of EG Channels.

1.4 "Applicable Law" means any local law, or federal or state statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

1.5 "Basic Service" means any service tier that includes the retransmission of local television broadcast signals.

1.6 "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

- 1.7 "Cable Service" means:
- A. The one-way transmission to Subscribers of (1) video programming, or (2) other programming services; and
 - B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

1.8 "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple Subscribers within a community; but, such term does not include:



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A. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

B. A facility that serves Subscribers without using any Public Rights-of-Way;

C. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of 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 47 U.S.C. § 573; or

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

1.9 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission by regulation).

1.10 "City" means the City of Tacoma, a first-class city of the state of Washington, existing pursuant to its Charter, the Washington State Constitution, and the laws of the state of Washington.

1.11 "Code" means the City of Tacoma, Washington, Municipal Code as may from time to time be amended.



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1.12 "Commercial Use," as applicable to Access Facilities, shall mean the use of such Access Facilities where the primary purpose is generating profit, and includes, by way of example, the selling of air-time, and any programming or use which, in whole or in part, depicts, demonstrates, or discusses products, services, or businesses for the primary purpose of benefiting or enhancing a profit-making enterprise.

Commercial Use does not include, by way of example, (a) programming and the identification of financial supporters similar to what is provided on public broadcasting channels; (b) the solicitation of financial support for the provision of EG Access by Designated Access Providers and for charitable, educational, or governmental purposes; or (c) programming offered by accredited public educational institutions which may offer tele-courses over an educational EG Channel.

1.13 "Day," unless otherwise specified, shall mean a calendar day.

1.14 "Designated Access Provider(s)" or "DAP" means the entity or entities that control, operate, manage or co-manage the use of any Access Facilities or part of any Access Facilities.

1.15 "Downstream" means the direction of signal transmission from the headend to Subscriber terminals.

1.16 "Effective Date" means March 31, 2020, unless such date is modified by mutual written agreement between the City and Franchisee.



1.17 "EG Access Channel" means any Channel on a cable system set aside
1 by Franchisee for EG Use, including, by way of example and not limitation, an
2 Access Channel as that term is defined in this Franchise.

3
4 1.18 "Expanded Basic Service" refers to the next tier of service above the
5 Basic Service tier, excluding premium or pay-per-view services.

6 1.19 "Franchise" means this document executed between the City and
7 Franchisee, containing the specific provisions of the authorization granted and the
8 contractual and regulatory agreement created hereby.

9
10 1.20 "Franchise Area" means that area within the present and future
11 corporate limits of Tacoma that Franchisee is authorized to serve.

12 1.21 "Franchisee" means Rainier Connect North, LLC, D/B/A Rainier
13 Connect, a Washington limited liability company and permitted successors and
14 assigns.

15
16 1.22 "Gross Revenues" means any and all revenue derived directly or
17 indirectly by Franchisee, or by any other entity that is a cable operator of the Cable
18 System including Franchisee's affiliates, from the operation of Franchisee's Cable
19 System to provide Cable Services in the Franchise Area. Gross Revenues include,
20 by way of illustration and not limitation, monthly fees charged Subscribers for Cable
21 Services including Basic Service, any expanded tiers of Cable Service, optional
22 Premium Services; pay-per-view services; installation, disconnection, reconnection
23 and change-in-service fees, Leased Access Channel fees, all Cable Service lease
24 payments from the Cable System to provide Cable Services in the City, late fees
25 and administrative fees, payments or other consideration received by Franchisee
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1 from programmers for carriage of programming on the Cable System and
2 accounted for as revenue under GAAP; revenues from rentals or sales of
3 converters or other Cable System equipment; advertising sales revenues booked in
4 accordance with Applicable Law and GAAP; revenues from program guides and
5 electronic guides, additional outlet fees, Franchise fees required by Section 12.1 of
6 this Franchise, revenue from interactive services to the extent they are considered
7 Cable Services under Applicable Law; revenue from the sale or carriage of other
8 Cable Services, and revenues from home shopping, and other revenue-sharing
9 arrangements. Gross Revenues shall include revenue received by any entity other
10 than Franchisee where necessary to prevent evasion or avoidance of the obligation
11 under this Franchise to pay the Franchise Fees. Gross Revenues shall not include
12 (a) to the extent consistent with GAAP, bad debt, provided, however, that all or part
13 of any such bad debt that is written off but subsequently collected shall be included
14 in Gross Revenues in the period collected; (b) the Capital Fee specified in
15 Section 6.3 of this Franchise; or (c) any taxes on services furnished by Franchisee
16 which are imposed directly on any Subscriber or user by the state, City, or other
17 governmental unit and which are collected by Franchisee on behalf of said
18 governmental unit. The Franchise fee is not such a tax.
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22 The Parties intend for the definition of Gross Revenues to be as inclusive as
23 possible consistent with existing Applicable Law. However, the definition of Gross
24 Revenue does not include Internet access services. If there is a change in federal
25 law subsequent to the Effective Date of this Franchise, such change shall not
26 impact this Gross Revenues definition unless the change specifically preempts the



1 affected portion of the definition above or modifies the definition of what is
2 considered a Cable Service under the Cable Act.

3 1.23 "Interconnect" or "Interconnection" means the linking of the Cable
4 System with another cable system, communications system, or those portions of
5 the Cable System outside the Franchise Area, including technical, engineering,
6 physical, financial, and other necessary components to accomplish, complete, and
7 adequately maintain such linking, in a manner that permits the transmission and
8 receiving of electronic or optical signals between the interconnected facilities.

9 1.24 "Leased Access" means the use of Channel capacity designated for
10 Commercial Use by Persons unaffiliated with Franchisee as defined in Section 532
11 of the Cable Act (47 U.S.C. § 532).

12 1.25 "Master Control Center" refers to the designated site located at
13 1224 S. Martin Luther King Jr. Way, where EG programming may be originated,
14 produced, collected, switched, managed, processed and retransmitted by the City
15 to Franchisee's headend or other location.

16 1.26 "MVPD" means a multichannel video programming distributor, which is
17 an entity engaged in the business of making available for purchase by Subscribers
18 or customers, multiple Channels of video programming.

19 1.27 "Pay Service" or "Premium Service" refers to a Cable Service (such as
20 movie Channels or pay-per-view programs) offered to Subscribers on a
21 per-Channel, per-program or per-event basis.

22 1.28 "Person" includes any individual, corporation, partnership, association,
23 joint stock company, trust, or any other legal entity, but not the City.
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1.29 "Rights-of-Way" or "Public Rights-of-Way" shall have the meaning set forth in Subtitle 16A, Section 16A.01.030.

1.30 "School" means accredited public or private, non-profit primary and secondary schools and colleges (which term includes all accredited post-secondary institutions, including, by way of example and not limitation, community colleges, technical colleges and universities).

1.31 "Subscriber" means the City, any government entity, or any Person who lawfully receives any Cable Service from Franchisee over the Cable System.

1.32 "Subscriber Network" means that portion of the Cable System used primarily by Franchisee in the transmission of Cable Services to residential Subscribers.

1.33 "System" means Franchisee's Cable System.

1.34 "Subtitle 16A" refers to Subtitle 16A of the Tacoma Municipal Code, as amended from time to time.

1.35 "Title 10" refers to Title 10 of the Tacoma Municipal Code, as amended from time to time.

1.36 "Upstream" means the direction of signal transmission from Master Control Center toward the headend.

1.37 "Video Services" means programming provided by, or generally considered comparable to programming provided by, a cable operator as the term "cable operator" is defined in the Cable Act.



Section 2. Franchise.

2.1 Grant of Franchise.

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3 A. The City hereby grants to Franchisee a non-exclusive Franchise
4 authorizing Franchisee to occupy the City's Public Rights-of-Way within the
5 Franchise Area to construct, repair, and operate a Cable System to provide Cable
6 Services. Provided, however, that such grant is subject to and must be exercised in
7 strict accordance with the provisions hereof, Title 10 and Title 16A of the Code, and
8 the Tacoma City Charter, including, but not limited to, the provisions set forth in
9 Article VIII. Said Franchise shall constitute both a right and an obligation to provide
10 the services of the Cable System in accordance with the provisions of this
11 Franchise.
12

13 B. This Franchise does not authorize the provision of any service other than
14 the services specified above, or in any way relieve Franchisee of any obligation to
15 obtain any authorizations, licenses, or franchises to use the Rights-of-Way to
16 provide other services, or to comply with any requirements with respect to the use
17 of the Rights-of-Way or the provision of such services to the extent consistent with
18 Applicable Law. The provisions of this Franchise are not a bar to the imposition of
19 similar, different, or additional conditions with respect to the use of the
20 Rights-of-Way in connection with the provision of services other than Cable
21 Services. Nothing herein shall be read to prevent Franchisee from providing other
22 non-cable services to the extent consistent with Applicable Law.
23

24 C. No Public Rights-of-Way shall be used by Franchisee if the City
25 determines that such use is inconsistent with the terms, conditions, or provisions by
26



1 which such Public Rights-of-Way were created or dedicated, or presently used
2 under Applicable Laws.

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

6 1. Any other permit or authorization generally required under the
7 Code for the privilege of transacting and carrying on a business within the City that
8 may be required by the City;

9 2. Any permit, agreement, or authorization generally required under
10 the Code in connection with operations on or in public streets or property, including,
11 by way of example and not limitation, street cut permits; or

12 3. Any permits or agreements for occupying any other property of the
13 City or private entities to which access is not specifically granted by this Franchise
14 including, without limitation, permits and agreements for placing devices on or in
15 poles, conduits, other structures, or railroad easements, whether owned by the City,
16 including the Tacoma Department of Public Utilities, or a private entity.

17 E. By way of further example, and without limiting the foregoing, this
18 Franchise shall not be read to diminish, or in any way affect, the authority of the
19 Tacoma Department of Public Utilities to control and charge for the use of the Light,
20 Water, and Belt Line Divisions' real estate, fixtures, or personal property.
21 Therefore, if Franchisee desires to use such property, it must obtain necessary
22 agreements or consents for that purpose, as may be required by the City.
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2.2 Acceptance of Franchise.

1 A. Franchisee shall execute and return to the City three (3) original
2 countersigned copies of this Franchise together with all required documents and
3 payments as set forth in this Section 2.2 within thirty (30) Days after the date of
4 passage of the ordinance by the City Council. The countersigned ordinance and
5 acceptance shall be returned to the City accompanied by the required evidence of
6 insurance; a payment for publication costs; billable work order deposit, if one is not
7 already in place; letter of credit; or any required security deposit. The Franchise
8 rights granted herein shall not become effective until all of the foregoing are
9 received in acceptable form. In the event Franchisee fails to submit the
10 countersigned ordinance and acceptance as provided for herein, or fails to provide
11 the required accompanying documents and payments, within the time limits set
12 forth in this section, the grant of the Franchise shall be null and void.

13 B. By this acceptance, Franchisee does not waive its rights to challenge the
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18 C. If any section, subsection, sentence, clause, phrase, or other portion of
19 this Franchise is, for any reason, declared invalid, in whole or in part, by any court,
20 agency, commission, legislative body, or other authority of competent jurisdiction,
21 such portion shall be deemed a separate, distinct, and independent portion. Such
22 declaration shall not affect the validity of the remaining portions hereof, which other
23 portions shall continue in full force and effect.

25 2.3 Relation to Other Provisions of Law. Franchisee, through this
26 Franchise, is granted the right to operate its Cable System using the Public



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

2.4 Franchise Term. The term of the Franchise shall be twenty (20) years, unless extended by mutual agreement of the Parties or terminated sooner in accordance with this Franchise, the Code, or the City Charter.

2.5. Franchise Non-exclusive. The grant of authority for use of the City's Public Rights-of-Way, as conferred herein, is not exclusive and does not establish priority for use over other franchise holders, permit holders, and the City's own use of public property. Nothing in this Franchise shall affect the right of the City to grant to any other Person a similar franchise or right to occupy and use the Public



1 Rights-of-Way or any part thereof for the erection, installation, construction,
2 reconstruction, operation, maintenance, dismantling, testing, repair, or use of a
3 Cable System within the City. Additionally, Franchisee shall respect the rights and
4 property of the City and other authorized users of Public Rights-of-Way. Disputes
5 between Franchisee and other parties over the use, pursuant to this Franchise, of
6 the Public Rights-of-Way shall be submitted to the City for resolution consistent with
7 the requirements of the Code.

8 2.6 Competitive Equity.

9 A. New Video Service Provider. If any other wireline MVPD enters into any
10 agreement with the City to provide Video Services to subscribers in the City, the
11 City, upon written request of Franchisee, shall permit Franchisee to construct
12 and/or operate its Cable System and provide Video Services to Subscribers in the
13 City under the same agreement as applicable to the new MVPD. Within one
14 hundred twenty (120) Days after Franchisee submits a written request to the City,
15 Franchisee and the City shall enter into an agreement or other appropriate
16 authorization (if necessary) containing the same terms and conditions as are
17 applicable to the new wireline MVPD.

18 B. Subsequent Change in Law. If there is a change in federal, state or local
19 law that provides for a new or alternative form of authorization for a wireline MVPD
20 to provide Cable Service or Video Service to Subscribers in the City, or that
21 otherwise changes the nature or extent of the obligations that the City may request
22 from or impose on a wireline MVPD providing Cable Service or Video Service to
23 Subscribers in the City, the City agrees that if another wireline MVPD avails itself of
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1 such new law and provides Cable Service or Video Service in the City, upon
2 Franchisee's written request, the City shall permit Franchisee to terminate this
3 Franchise and, subject to Applicable Law, provide Cable Service or Video Service
4 to Subscribers in the City on the same terms and conditions as are applicable to the
5 other wireline MVPD under the changed law. The City and Franchisee shall
6 implement the provisions of this section within one hundred twenty (120) Days after
7 Franchisee submits a written request to the City.

8 2.7 Periodic Public Review of Franchise. Within sixty (60) Days of the fifth
9 (5th), tenth (10th) and fifteenth (15th) annual anniversary of the Effective Date of
10 this Franchise, the City may conduct a public review of the Franchise. The purpose
11 of any such review shall be to ensure, with the benefit of full opportunity for public
12 comment, Franchisee continues to effectively serve the public in the light of new
13 developments in cable law and regulation, cable technology, cable company
14 performance, local regulatory environment, community needs and interests, and
15 other such factors. Both the City and Franchisee agree to make a full and good
16 faith effort to participate in the review.

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19 2.8 Transfers.

20 A. Every transfer shall be subject to the prior written approval of the City
21 except as provided herein. A transfer means any transaction in which:
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23 1. All or a portion of the Cable System is sold or assigned (except a
24 sale or assignment that results in removal of a particular portion of the facility from
25 the Public Rights-of-Way);
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2. There is any change, acquisition, or direct or indirect transfer of control of the Franchisee of twenty percent (20%) or greater;

3. The rights and/or obligations held by Franchisee under this Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or

4. The transfer of stock in a corporation so as to create a new controlling interest constitutes a transfer. The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

B. A transfer without the prior written approval of the City is a material violation of this Franchise and shall make the Franchise subject to termination by the City, as provided herein and in Subtitle 16A, Section 16A.01.110.

C. If Franchisee submits an application for approval of any transfer in accordance with federal regulations (47 C.F.R. § 76.502), the City shall process said application in accordance with those regulations. Applications for approval of any transfer shall also be filed, and the City shall process such applications, in accordance with procedures set out in Subtitle 16A, Section 16A.03.060, so long as they are not in conflict with Applicable Law.

D. Franchisee shall, within sixty (60) Days of the closing date of any transfer, file with the City Clerk a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by Franchisee. Every such transfer,



whether voluntary or involuntary, may be deemed void and of no effect by the City unless Franchisee files the required copy within the sixty (60) Day period.

E. In addition to the exceptions noted in Subtitle 16A, Section 16A.03.060.F, the requirements of this section shall not be deemed to prohibit the use of Franchisee's property as collateral for security in financing the construction or acquisition of all or part of the Cable System franchised hereunder. However, no such arrangement may be made if it would in any respect under any condition prevent Franchisee or any successor from complying with the Franchise and Applicable Law, nor may any such arrangement permit a third party to succeed to the interest of the Franchisee, or to own or control the Cable System, without the prior consent of the City. No consent shall be required for intra-corporate reorganizations between or among entities or affiliates wholly owned and wholly controlled by Franchisee's parent company to the extent such transaction does not involve a change in the management or control of Franchisee. However, in such case Grantee will notify the City within thirty (30) days after receiving notice of such a transaction. Any mortgage, pledge, or lease shall be subject to and subordinate to the rights of the City under this Franchise, and other Applicable Law. The City acknowledges that Franchisee is a closely held, family owned business and therefore the City agrees that internal stock pledges between family members or between trusts held by such family members shall not trigger the transfer obligations set forth in this Section 2.8.

F. Franchisee shall promptly notify the City of any proposed change in, transfer of, or acquisition by any other Person of an ownership interest in



1 Franchisee that results in a change in control of Franchisee within the meaning of
2 this Section 2.8.A. However, if the proposed change in control merely results in a
3 transfer from Franchisee to another entity that is one hundred percent (100%)
4 owned by Franchisee's parent, and such parent provides any City mandated
5 guaranty of performance of the Franchisee Affiliate's performance after the transfer,
6 then such transfer shall not require the prior approval of the City, so long as all the
7 conditions on Affiliate transfers set forth in Subtitle 16A, Section 16A.03.060.F are
8 satisfied.

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10 2.9 Continuity of Service. In the event the City has declared a forfeiture for
11 cause or otherwise revoked for cause the Franchise as provided herein, or in the
12 event of expiration of the Franchise without the Franchise being renewed or
13 extended (referred to below collectively as a "termination"), Franchisee shall, at the
14 direction of the City expressed by ordinance, continue its operations for such
15 reasonable period of time as is necessary to permit transition to another provider,
16 which period may be established taking into account any appeal of the termination.
17 During such period, Franchisee shall continue to be bound by all its obligations
18 under the Franchise, Subtitle 16A and the Code. During this period, Franchisee
19 shall not transfer any portion or all of its Cable System to any other Person,
20 including parts of the System rented, leased, or lease-purchased; or significantly
21 alter the Cable System or remove property from the City, or otherwise encumber
22 the Cable System or remove property from the City, or otherwise encumber
23 the Cable System in any manner, without prior written consent of the City.

24 Franchisee's obligations to remove its facilities under Title 10, Section 10.22.190,
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1 Abandonment and Removal of Facilities, shall be deferred for the period for which
2 Franchisee is required to operate pursuant to this section.

3 2.10 Right to Require Removal of Property/Right to Remove Property.

4 A. Franchisee shall be liable for removing the Cable System upon
5 termination of the Franchise, whether by action of the City or by passage of time, as
6 may be required by the City consistent with Title 10, Section 10.22.190,
7 Abandonment and Removal of Facilities, and shall be obligated to restore affected
8 property to the same or better condition as existed just prior to such removal, in
9 accordance with Title 10, Section 10.22.190, subject to any rights Franchisee may
10 have to abandon property in place, as set out in Title 10, Section 10.22.190. In
11 addition to such obligations as may be established by Title 10, Section 10.22.190,
12 Franchisee agrees that if Franchisee fails to remove property that the City requires
13 it to remove, the City may perform the work and collect the cost thereof from
14 Franchisee. The City acknowledges that portions of the Cable System operated by
15 Franchisee may not be directly owned by Franchisee and therefore the applicability
16 of this Section 2.10 may be limited and will only impact facilities owned by
17 Franchisee.

18 B. To the extent any portion of the Cable System in the Public
19 Rights-of-Way or on any other public property is not removed by Franchisee within
20 the time period specified by Title 10, Section 10.22.190 or such other period as the
21 City may establish, the property will be deemed abandoned and shall become the
22 property of the City if the City wishes to own it. Provided, that, in no case shall
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1 Franchisee be provided less than twelve (12) months to remove its facilities,
2 measured from the date Franchisee is ordered to remove its facilities.

3 C. Any order by the City issued pursuant to this Section 2.10 to remove the
4 Cable System, in whole or in part, shall be sent by registered or certified mail to
5 Franchisee not later than twenty-four (24) months following the date of Franchise
6 termination, or, if later, the final resolution of any appeal of the termination.

7 D. Franchisee shall file a written removal plan with the City not later than
8 thirty (30) Days following the date of receipt of any orders directing removal, or any
9 consent to removal, describing the work that will be performed, the manner in which
10 it will be performed, and a schedule for removal by location. The removal plan shall
11 be subject to approval and regulation by the City. The affected property shall be
12 restored to as good or better condition than existed immediately prior to removal.

13 E. Nothing herein shall affect the City's authority to require Franchisee to
14 remove its Cable System upon Franchise termination, as provided in this
15 Section 2.10 and Title 10, Section 10.22.190, nor does it affect the City's right to
16 assume ownership of any portion of the Cable System that is abandoned. Within
17 sixty (60) Days of a request by the City, Franchisee shall execute such documents
18 as may be required to convey such abandoned property to the City free and clear of
19 all encumbrances.
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23 2.11 Subscribers Right to Obtain Service. It shall be the right of all
24 Subscribers to receive all available services insofar as their financial and other
25 obligations to Franchisee are honored during the term of the Franchise or any
26 continuation period. In addition to the obligations established under the other



1 provisions of this Franchise, in the event that Franchisee elects to rebuild, modify,
2 or sell the Cable System, Franchisee shall make its best effort to ensure that all
3 Subscribers receive continuous uninterrupted service, regardless of the
4 circumstance.

5 2.12 Responsibility for Costs. Except as expressly provided otherwise, any
6 act that Franchisee is required to perform under this Franchise shall be performed
7 at its cost. If Franchisee fails to perform work that it is required to perform within
8 the time provided for performance, the City may perform the work and bill
9 Franchisee for documented costs. Franchisee shall pay the amounts billed within
10 thirty (30) Days. The Parties agree that any amounts paid pursuant to this section
11 or Subtitle 16A are not Franchise fees and fall within one (1) or more of the
12 exceptions to the definition of Franchise fee under federal law. Nothing in this
13 section is intended to affect, in any way (by expansion or contraction), Franchisee's
14 rights under Applicable Law governing rates.
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16 2.13 Work of Contractors and Subcontractors. Work by contractors and
17 subcontractors is subject to the same restrictions, limitations, and conditions as if
18 the work were performed by Franchisee. Franchisee shall be responsible for all
19 work performed by its contractors and subcontractors, and others performing work
20 on its behalf as if the work were performed by it and shall ensure that all such work
21 is performed in compliance with this Franchise, Subtitle 16A, Title 10 and other
22 Applicable Law, and shall be jointly and severally liable for all damages and
23 correcting all damage caused by them. It is Franchisee's responsibility to ensure
24 that contractors, subcontractors, or other Persons performing work on Franchisee's
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1 behalf are familiar with the requirements of the Franchise, Subtitle 16A, Title 10 and
2 other Applicable Laws governing the work performed by them.

3 2.14 Survival of Terms. Upon the termination or forfeiture of the Franchise,
4 Franchisee shall no longer have the right to occupy the Public Rights-of-Way for the
5 purpose of providing Cable Service. However, Franchisee's obligations to the City
6 (other than the obligation to provide service to Subscribers) shall survive according
7 to their terms. By way of illustration and not limitation, Sections 2.10, 2.11, 2.12
8 and 2.13 of this Franchise shall continue in effect as to Franchisee notwithstanding
9 any expiration, forfeiture, or revocation of the Franchise, except to the extent that a
10 City-approved transfer of the Cable System is completed, and another entity has
11 assumed full and complete responsibility for the Cable System or for the relevant
12 acts or omissions.

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14 Section 3. Operation in Streets and Rights-of-Way.

15 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of
16 this Franchise and Subtitle 16A and other Applicable Laws, construct, operate, and
17 maintain a Cable System to provide Cable Services in Public Rights-of-Way.
18 Without limiting the foregoing, Franchisee expressly agrees that it will construct,
19 operate, and maintain its System in compliance with, and subject to, the
20 requirements of Subtitle 16A and Title 10 of the Code, including, by way of example
21 and not limitation, those governing the placement of its Cable System, and with
22 other applicable City Codes and will obtain and maintain all bonds and permits
23 required by the same.
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1 3.2 Construction, Operation or Repair. Subject to Section 2.3 herein, in
2 connection with the construction, operation, or repair of the Cable System,
3 Franchisee shall, in all cases, comply with the Code.

4 Section 4. System Design and Capacity.

5 4.1 Availability of Signals and Equipment. Franchisee shall, at a minimum:

6 A. Make available to Subscribers all signals that are required to be
7 made available by the Federal Communications Commission ("FCC") or as federal
8 law provides.

9 B. Make available a minimum of seventy-five (75) activated
10 Channels.

11 C. In addition to satisfying any obligations it may have under federal
12 or state law, make available parental control devices to all Subscribers who request
13 them. These devices should enable the Subscriber to block the video and audio
14 portion of any Channel or Channels.

15 D. Upon written request, Franchisee will provide and install one (1)
16 outlet of all Basic Service and Expanded Basic Service to: (1) any public safety
17 facility in the City except for general prison/jail population use; (2) each School for
18 education purposes in the City; and (3) all other local government buildings. The
19 outlet and service shall be provided to all the buildings without monthly charge, and
20 to all buildings without installation charge, except as provided below. However, in
21 the case of Schools with multiple buildings on a single campus, the obligation to
22 provide a drop to that School is satisfied by providing an outlet to a single building
23 on that campus, designated by the School. In the case of a School with multiple
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campuses, this section requires one (1) outlet to be provided per campus. No free service drop shall be used for public viewing.

E. Notwithstanding anything to the contrary set forth in this section, Franchisee shall not be required to provide an outlet to such buildings unless it is technically feasible. The City and Franchisee agree that the provision of the outlets contemplated hereunder to the locations listed in Exhibit "A" is technically feasible and will not so adversely affect the Cable System, unless some unforeseen and unanticipated event occurs, e.g., such as it becomes illegal or technically infeasible to provide the outlets.

F. If the drop line to such building exceeds a standard residential installation drop of one hundred twenty-five (125) feet, as specified by the FCC at 47 C.F.R. § 76.309, Franchisee will accommodate the drop up to three hundred (300) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided, the City or other agency agrees to pay the incremental cost of such drop in excess of one hundred twenty-five (125) feet or the necessary distribution line extension of the Cable System, including the cost of such excess labor and materials. The recipient of the service will secure any necessary right of entry.

G. In the event Franchisee is legally permitted, in accordance with Applicable Law, to offset the value of the services set forth in this Section 4.1 against Franchise fees payable to the City, Franchisee agrees that it will do so only after providing City with a minimum of one hundred twenty (120) Days' prior written



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notice. Upon written notice from Franchisee, the City shall be given ample time to review the list of outlets receiving such complimentary service and shall have the right to suspend or discontinue receipt of all or a portion of the outlets receiving such complimentary service provided by Franchisee in the event Franchisee elects to offset the value of complimentary services as set forth in the preceding sentence.

4.2 Equal and Uniform Service. Franchisee shall provide access to equal and uniform Cable Service throughout the Franchise Area.

4.3 System Characteristics.

A. To the extent required by Applicable Law, and at all times during the term of this Franchise, Franchisee’s Cable System shall be capable of delivering high quality signals that meet or exceed FCC technical quality standards at 47 C.F.R. § 76 Subpart K. To the extent required by Applicable Law, Franchisee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise.

B. Franchisee shall install or maintain equipment so that all closed captioned programming received by the Cable System shall include the closed caption signal and shall be transmitted to Subscribers so long as the closed caption signal is provided consistent with FCC standards.

C. Franchisee’s construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.



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D. Franchisee acknowledges that the minimum Cable System design and performance requirements set forth in this Franchise are enforceable, to the extent allowed by law.

E. Emergency Alert Capability.

1. Franchisee shall install and maintain for use by the City an Emergency Alert System (“EAS”) meeting all applicable requirements of federal law.

2. Franchisee’s System shall include the capability for the City to access the EAS using non-location-specific technology, without the assistance of Franchisee, in the event of emergency or for reasonable tests, to override at least the audio on all Channels on Franchisee’s System to utilize the federally mandated EAS in accordance with applicable state or local plans or with broadcaster preemption or override of individual signals.

3. Franchisee shall broadcast all EAS messages initiated by the City or Pierce County.

F. Standby Power. Franchisee shall provide standby power generating capacity for the Cable System. Franchisee shall maintain standby power System supplies, rated at least at two (2) hours duration at each of the nodes. Standby power must be in place as the System is upgraded and throughout the term of the Franchise. In addition, Franchisee shall have a plan in place throughout the Franchise term, and all resources necessary for implementation for dealing with power outages of more than two (2) hours.



1 4.4 Technical Standards. Franchisee shall be responsible for insuring that
2 the Cable System is designed, installed, maintained, repaired, and operated in a
3 manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter 1 of
4 Title 47 of the Code of Federal Regulations, as revised or amended from time to
5 time, to the extent required by Applicable Law. The City shall have the right to
6 obtain a copy of tests and records related to the standards upon request, and shall
7 have the authority to enforce compliance with such standards, except as may be
8 prohibited under federal law and regulation.

9 4.5 Performance Testing.

10 A. The following requirements and the requirements of Subtitle 16A shall be
11 met by Franchisee, to the extent that federal law does not prohibit the City from
12 enforcing them.

13 B. To the extent required by Applicable Law, Franchisee shall perform all
14 System tests at the intervals required by Section 76.601 of the FCC Rules and
15 Regulations, Part 76, Subpart K (Technical Standards). Upon request by the City,
16 Franchisee shall provide copies of completed FCC reports within seven (7) working
17 days of the request. These tests shall include, without limitation:
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- 20 1. initial proof of performance for any construction;
- 21 2. semi-annual compliance tests.

22 C. In addition to the rights to inspect provided for in Subtitle 16A, for initial
23 and semi-annual FCC proof-of-performance tests, the City shall be given the
24 opportunity by Franchisee to review test sites. Upon request, the tests shall be
25 witnessed by representatives of the City. Upon request, Franchisee shall notify the
26



1 City of the time and place of the next scheduled test and shall cooperate in
2 facilitating the City's witnessing at the time of the tests. The City may at any time,
3 at its own expense, conduct independent visual inspections of the System, but the
4 City shall not have the right to access the System without Franchisee's express
5 consent.

6 D. Franchisee shall be required to take promptly such corrective measures
7 as are necessary to correct any performance deficiencies fully and to prevent their
8 recurrence as far as possible. Franchisee's failure to correct deficiencies identified
9 through this testing process shall be an independent violation of its obligation to
10 maintain the Cable System. Sites shall be re-tested following correction.

12 E. It shall be the responsibility of the Franchisee to document that the
13 System and its operation are in compliance with FCC technical specifications and
14 performance requirements. If the City has received Subscriber complaints
15 regarding the performance of the Cable System and the City determines that the
16 most efficient or only reasonable way to determine a question of Franchise
17 compliance involves specific electronic testing of the System in addition to tests
18 required by the FCC, Franchisee shall, upon written notice by the City, perform
19 such testing, give the City an opportunity to witness the testing and provide the City
20 with documentation of the testing results. If the test results indicate that Franchisee
21 is not in compliance with this Franchise or other Applicable Law, the City shall have
22 all enforcement remedies available under this Franchise.
23
24

25 4.6 Interconnections. The City shall be permitted to Interconnect the
26 System with any other communications system at the Master Control Center for



1 EG Access. Franchisee agrees that any EG Access programming routed to the
2 Master Control Center via Franchisee's System, or otherwise, may be processed
3 there and distributed to any destination for EG Access.

4 Section 5. Programming Services.

5 5.1 Changes in Video Programming Services. No category of video
6 programming may be deleted by Franchisee without written notification to the City
7 as required by Applicable Law, subject to any rights Franchisee may have to modify
8 the requirements under 47 U.S.C. § 545. The City reserves the right to regulate to
9 the fullest extent permitted by law to insure that the mix, level, and quality of service
10 are maintained or increased, as permitted in 47 U.S.C. §545 (a).

11
12 5.2 Obscenity and Program Control. Subject to Applicable Law, Franchisee
13 shall not transmit over the Cable System programming which is obscene or
14 otherwise unprotected by the Constitution of the United States; provided, however,
15 Franchisee shall in no way be responsible for or exercise control over EG Access
16 programming.
17

18 Section 6. EG Use of the System.

19 6.1 Franchisee Responsibilities.

20 A. Franchisee shall dedicate six (6) Channels for educational and
21 governmental use by the City. Use of the EG Channels shall be determined in
22 City's sole discretion. At such time as Franchisee first provides Cable Service to its
23 first Subscriber in the City, Franchisee shall carry four (4) of the EG Channels in
24 high-definition ("HD") format and two (2) channels in standard-definition ("SD")
25 format. For purposes of this Franchise, HD format shall mean a display resolution
26



1 of at least 1080 lines (progressive) that is supported by Franchisee on the Cable
2 System, including Franchisee's terminal device(s) provided to Subscribers for
3 HDTV use. If Franchisee supports more than one (1) such HD resolution, the City
4 shall have the right to specify which of those formats supported by Franchisee shall
5 be used for the EG Channels.

6 B. Franchisee shall ensure that any EG Channels carried in HD format
7 pursuant to Subsection A can also be viewed in standard definition (non-HD) format
8 by Subscribers who do not receive HD service or do not have HD equipment, with
9 the same quality and functionality as commercial channels of the same format,
10 whether through simulcasting the programming in SD and HD, or by means of
11 another technical solution used by Franchisee for other commercial programmers
12 carried on the channel lineup.

14 C. At any time during the term of this Franchise, the City may, at its sole
15 discretion, upon one-hundred (120) Days' advance written notice to Franchisee,
16 require Franchisee to carry one (1) or both of the two (2) SD EG Channels
17 referenced in Subsection A in HD format subject to the same requirements as set
18 forth in Subsections A and B above.

20 D. Franchisee shall maintain the existing fiber connection, which will in no
21 way degrade the technical quality of the EG Access Channels, from the City's
22 Master Control Center, currently located at the Municipal Services Center,
23 1224 Martin Luther King Jr. Way or, in the alternative, the Tacoma Public Utilities
24 NW Hub (or another mutually agreed upon alternate location) to Franchisee's Cable
25 System on which all EG Access Channels shall be transported for distribution on
26



1 Franchisee's Subscriber Network ("EG Return Path"). To the maximum extent
2 permitted by Applicable Law, Franchisee shall provide the EG Return Path to the
3 City free of charge, with no transport costs or other fees imposed. If the City
4 determines to relocate Master Control Center and constructs its own return line to
5 Franchisee's headend, Franchisee will accept the signal and will cover all costs
6 associated with bringing the signal into Franchisee's headend facility. Franchisee
7 shall not impose any other costs or ongoing fees to the City related to this
8 obligation. If Franchisee determines to relocate Franchisee's existing fiber
9 connection from the Tacoma Public Utilities NW Hub to a new connection point,
10 Franchisee will cover all costs associated with bringing the EG Access Channel
11 signals into Franchisee's headend facility. Franchisee shall not impose any other
12 costs or ongoing fees to the City related to such relocation.
13

14 E. All EG Access Channels may be delivered by City to Franchisee in a
15 digital format. Any and all costs associated with any modification of the EG Access
16 Channels or signals after the EG Access Channels/signals leave the City's Master
17 Control Center shall be provided free of charge to the City and borne by
18 Franchisee.
19

20 F. All EG Channels required under this Franchise shall be carried by
21 Franchisee on the Basic Service tier and in a manner consistent with Applicable
22 Law, without special expense, except by separate agreement between the Parties.
23

24 G. Notwithstanding the foregoing, on or after January 1, 2023, the City shall
25 have the right, so long as sixty (60) Days advance written notice is provided to
26 Franchisee, to mandate that Franchisee provide one (1) additional HD EG Access



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Channel, for a total of seven (7) HD EG Access Channels, on Franchisee's System. On or after January 1, 2026, the City shall have the right, so long as sixty (60) Days advance written notice is provided to Franchisee, to mandate that the Franchisee provide one (1) additional HD EG Access Channel, for a total of eight (8) EG Access Channels on Franchisee's System.

H. Franchisee shall not cause any programming to override EG Access Channels programming on any EG Access Channel, except by oral or written permission from the City, with the exception of EAS signals.

I. Franchisee will maintain TV Tacoma on Channel 12 unless a local broadcast must carry issue requires a change or other channel location as agreed to by the City.

J. Franchisee will place EG Access Channels dedicated for educational and governmental use in a consecutive block of Channel numbers. The EG Access Channels will be located reasonably close in proximity to other local broadcast Channels and/or other commercial video Channels, excluding Pay Service programming offered by Franchisee in the City. Franchisee agrees that EG Access Channels located immediately below Channel #1 are not considered in reasonably close proximity. Franchisee agrees not to encrypt the EG Access Channels any differently than other commercial Channels available on the System. In conjunction with any occurrence of EG Access Channel(s) relocation, Franchisee shall provide a minimum of nine thousand dollars (\$9,000.00) of in-kind air time on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable



Channels) for the purpose of airing the City's pre-produced thirty (30) second
1 announcement explaining the change.

2 K. Franchisee agrees that if it utilizes a visual interface under its control on
3 its Cable System for all Channels, the EG Channels shall be treated in a
4 non-discriminatory fashion consistent with Applicable Law so that Subscribers will
5 have ready access to EG Access Channels. This shall not be construed to require
6 Franchisee to pay any third (3rd) party fees that may result from this obligation. To
7 the extent the configuration of the Cable System allows for detailed program listings
8 to be included on the digital channel guide, Franchisee will make available to City
9 the ability to place EG Access Channel programming information on the interactive
10 Channel guide via the electronic programming guide ("EPG") vendor ("EPG
11 provider") that Franchisee utilizes to provide the guide service. Franchisee will be
12 responsible for providing the designations and instructions necessary for the EG
13 Access Channels to appear on the EPG. All costs and operational requirements for
14 the EPG provider shall be the responsibility of the City. Franchisee is not
15 responsible for operations of the EPG provider. Franchisee shall, to the maximum
16 extent possible, make available to the City any price discounts Franchisee may
17 have in place with third party vendors that offer such programming guide services.
18 The City's cost of this guide service may be funded from the EG capital fee set forth
19 in Section 6.3 of this Franchise unless prohibited by Applicable Law.
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24 L. Franchisee shall provide the City the following "confidence feeds": 1) the
25 City's Master Control Center, currently located at the Municipal Services Center,
26 1224 Martin Luther King Jr. Way; 2) the City Council Chambers; 3) the Study



1 Session location (TMBN 16); and 4) the Tacoma Public Utilities Auditorium Control
2 Room. Each of these confidence feeds shall consist of a convertor box (if
3 necessary) and the video /audio feed of the EG Channels provided by the City
4 under this Franchise. The purpose of each “confidence feed” is to allow the City to
5 verify the video, audio, and technical quality of the EG signals carried on
6 Franchisee’s Cable System. No other Video Programing services need be provided
7 over the confidence feed and the parties believe the costs associated with the
8 provision of such a confidence feed to be de minimis.

9
10 6.2 City Responsibilities.

11 A. The City shall ensure EG Access Channels and signals leaving the
12 Master Control Center(s) are in compliance with applicable FCC technical
13 standards so that they can be processed in Franchisee’s headend and
14 retransmitted onto the Subscriber Network.

15 B. The City shall not allow Commercial Use or lease of EG Access Channels
16 without the express written permission of Franchisee.

17 C. The City may select DAPs execute DAP Agreements with rules for
18 operating EG Access Channels and authorize itself to be a DAP. Franchisee shall
19 operate and maintain its Cable System to insure the uninterrupted operation of
20 EG Access Channels.
21

22
23 6.3 Financial Support for EG Access.

24 A. Franchisee shall pay to the City as capital support for Access Facilities,
25 one percent (1%) of Gross Revenues, payable monthly with Franchise fees. The
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1 City may use EG capital support provided by Franchisee for the capital costs,
2 pursuant to Applicable Law.

3 B. Should Franchisee continue to provide Cable Service after the scheduled
4 expiration of the Franchise, until and unless this Franchise is superseded by a
5 renewed Franchise in accordance with Applicable Law, Franchisee shall continue to
6 make monthly capital support payments for, and in support of EG Access Facilities
7 as specified hereinabove.

8 C. Any EG Access capital support amounts owing pursuant to this Franchise
9 which remain unpaid more than twenty-five (25) Days after the date the payment is
10 due shall be delinquent and shall thereafter accrue interest at twelve percent (12%)
11 per annum or the prime lending rate published by the Wall Street Journal on the
12 day the payment was due, whichever is greater.

13 D. Franchisee agrees that support for EG Access required by the Franchise
14 is not intended to be a Franchise fee within the meaning of 47 U.S.C. § 542(g) and
15 falls within one (1) or more of the exceptions thereto. To the extent consistent with
16 Applicable Law, Franchisee agrees that it will not offset or reduce its payment of
17 past, present, or future Franchise fees required pursuant to Section 12.1 of this
18 Franchise, as a result of its obligation to remit the EG contribution required by
19 Section 6.3 of this Franchise.
20
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22 6.4 Technical Quality.

23 A. Franchisee shall maintain its System so that EG signals, and any
24 Interconnections of EG signals, are at the same level of technical quality and
25 reliability as other commercial signals carried by Franchisee, so long as the signal
26



1 comes to Franchisee at that level of quality. There shall be no significant
2 deterioration in signal from the point of origination Upstream to the point of
3 reception Downstream. All processing equipment used by Franchisee for
4 processing EG signals will be of similar quality to the processing equipment used
5 for other commercial Channels.

6 B. Within twenty-four (24) hours of a written request from the City to
7 Franchisee identifying a technical problem and requesting assistance, Franchisee
8 will provide technical assistance or diagnostic services to determine whether or not
9 a problem with an EG signal is the result of matters for which Franchisee is
10 responsible, and, if so, Franchisee will take prompt corrective action. If the problem
11 persists and there is a dispute about the cause, then the Parties shall meet with
12 engineering representation from Franchisee and the City in order to determine the
13 course of action to remedy the problem.
14

15 6.5 Change in Technology. In the event Franchisee makes any change in
16 the Cable System and related equipment and facilities or in its signal delivery
17 technology, which requires the City to obtain new equipment in order to be
18 compatible with such change, Franchisee shall, at its own expense, purchase such
19 equipment as may be necessary.
20

21 6.6 [Reserved]
22

23 6.7 Pass-through of EG Access Capital Support. The City recognizes that
24 the capital support for EG Access required in Section 6.3.A above and any
25 Interconnections in Section 4.6, represent obligations, created under the terms of
26 the Franchise. To the extent provided for in Applicable Law, such costs and fees



paid by Franchisee may be passed through to Subscribers and itemized on

1 Subscriber bills.

2 Section 7. [Reserved]

3 Section 8. Regulatory Provisions.

4
5 8.1 Intent. The City shall have the right to administer and regulate activities
6 of Franchisee up to the fullest extent of the law. The failure to reserve a particular
7 right to regulate, or reference a particular regulation in this Franchise, shall not be
8 interpreted by negative implication or otherwise to prevent the application of a
9 regulation or any other Applicable Law to Franchisee. Without limiting the
10 foregoing, Franchisee agrees as follows in Section 8.2.

12 8.2 Regulation of Rates and Charges.

13 A. Right to Regulate. The City shall have the right to regulate Franchisee's
14 rates and charges to the maximum extent permitted by Applicable Law.

15 B. Notice of Change in Rates and Charges. Franchisee agrees to provide
16 notices of changes in rates as required by Applicable Law.

18 C. Rate Discrimination Prohibited.

19 1. Franchisee agrees that it will not discriminate among Subscribers
20 with regard to rates and charges made for any service based on considerations of
21 race, color, creed, sex, marital or economic status, national origin, or neighborhood
22 of residence; and shall comply with the non-discrimination requirements of
23 applicable federal, state, and local laws.

24
25 2. Franchisee shall be permitted to establish discounted rates and
26 charges for providing Cable Service to qualified low-income handicapped or



1 low-income elderly Subscribers and other discounts Franchisee is entitled to
2 establish under federal law so long as the discounts are available in a uniform and
3 consistent manner to similarly situated Subscribers.

4 8.3 Franchise Breaches; Termination of Franchise.

5 A. Procedure for Remediating Franchise Violations. If the City believes that
6 Franchisee has failed to comply with any material terms of the Franchise or has
7 failed to perform in a timely manner, City shall notify Franchisee in writing with
8 specific details regarding the exact nature of the alleged noncompliance or default.
9 Upon receipt of such notice, Franchisee shall:
10

11 1. Respond to City within ten (10) Days contesting City's assertion
12 that a default has occurred and requesting a hearing in accordance with
13 paragraph B, below;

14 2. Within thirty (30) Days cure the default; or

15 3. Notify the City, as soon as commercially practicable, that
16 Franchisee cannot cure the default within the thirty (30) Day cure period because of
17 the nature of the default. In the event the default cannot be cured within thirty (30)
18 Days, Franchisee shall promptly take all reasonable and commercially practicable
19 steps to cure the default and notify City in writing and in detail as to the exact steps
20 that will be taken and the projected completion date. Upon five (5) Days' prior
21 written notice, either the City or Franchisee may call an informal meeting to discuss
22 the alleged default. In such case, if matters are not resolved at such meeting, the
23 City may set a hearing in accordance with paragraph B below.
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1 4. If the default relates to any of the following situations, Franchisee shall respond or cure the default as set forth above within ten (10) Days:

2 (a) if Franchisee does not pay an undisputed Franchise fee
3 payment in accordance with Section 12.1.A; or
4

5 (b) if Franchisee does not provide the EG Channels or the EG
6 capital support to the City, in accordance with Section 6.3.A.

7 B. If Franchisee does not cure the alleged default within the cure period
8 stated above, or by the projected completion date under paragraph A.3, or denies
9 the default and requests a hearing in accordance with paragraph A.1, or the City
10 orders a hearing in accordance with paragraph A.3, the City shall set a public
11 hearing at which Franchisee will be provided an opportunity to present evidence to
12 contest the alleged violation. The City shall notify Franchisee of the hearing in
13 writing and such hearing shall take place no less than seven (7) Days after
14 Franchisee's receipt of notice of the hearing. Franchisee may request that the
15 hearing be conducted by a hearing examiner, in accordance with Chapter 1.23 of
16 the Code. At such a hearing, Franchisee shall have all due process rights set forth
17 in Chapter 1.23 of the Code, as specifically determined by the Hearing Examiner.
18 The determination as to whether Franchisee is in default of this Franchise shall be
19 within the City's sole discretion, but any such determination shall be subject to
20 appeal to a court of competent jurisdiction. Such appeal to the appropriate Court
21 shall be taken within thirty (30) Days of the issuance of the determination of the
22 City. The City shall receive notice from Franchisee of any appeal concurrent with
23 any filing to a court of competent jurisdiction.
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C. If, after the hearing, the City determines that a default still exists, the City shall order Franchisee to correct or remedy the default or breach within fourteen (14) Days of City notification or within such other reasonable timeframe as the City shall determine. In the event Franchisee does not cure within such time to the City's reasonable satisfaction, the City may:

1. Assess and collect monetary damages in accordance with this Franchise;
2. Revoke this Franchise in accordance with Section 8.5 herein; or
3. Pursue any other legal or equitable remedy available under this Franchise or Applicable Law.

D. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation, or protection (including complete damage immunity) otherwise available to the City, its officers, officials, boards, commissions, agents, or employees under federal, state, or local law, including, by example, Section 635A of the Cable Act. Franchisee shall not have any monetary recourse against the City, or its officers, officials, boards, commissions, authorized agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof, subject to Applicable Law.

8.4 Assessment of Liquidated Damages and Letter of Credit.

A. Franchisee shall maintain an irrevocable and unconditional letter of credit, in a form and substance acceptable to the City, from a national or state bank



1 subject to reasonable approval by the City, in the amount of fifty thousand dollars
2 (\$50,000.00).

3 B. The letter of credit shall provide that funds will be paid to the City and in
4 an amount for liquidated damages charged pursuant to this section, in payment for
5 any monies owed by Franchisee to the City as a result of defaults by Franchisee
6 pursuant to this Franchise.

7 C. In addition to the recovery of any monies owed by Franchisee to the City,
8 the City, in its sole discretion, may, after notice and opportunity to cure as provided
9 in Section 8.3, charge to and collect from the letter of credit the following liquidated
10 damages.
11

12 1. For failure to provide data, documents, reports or information or to
13 cooperate with the City during an application process or Cable System review or as
14 otherwise provided herein, the liquidated damages shall be two hundred fifty dollars
15 (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.
16

17 2. For failure of Franchisee to comply with construction, operation, or
18 maintenance standards or the provision of the return line as provided in
19 Section 6.1.D, the liquidated damages shall be two hundred dollars (\$200.00) per
20 Day for each Day, or part thereof, such failure occurs or continues.
21

22 3. For failure to provide the EG Channels and/or EG capital support
23 payments required by this Franchise, the liquidated damages shall be two hundred
24 fifty dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or
25 continues.
26



1 4. For failure to comply with any of the material provisions of this
2 Franchise or customer service standards, or other applicable portion of the Code for
3 which a liquidated damages is not otherwise specifically provided pursuant to this
4 paragraph C, the liquidated damages shall be one hundred fifty dollars (\$150.00)
5 per Day for each Day, or part thereof, such failure occurs or continues.

6 D. Each violation of any material provision of this Franchise shall be
7 considered a separate violation for which separate liquidated damages can be
8 imposed. Any liquidated damages for any given violation shall be imposed upon
9 Franchisee for a maximum of one hundred twenty (120) Days. If after that amount
10 of time Franchisee has not cured or commenced to cure the alleged breach to the
11 satisfaction of the City, the City may pursue all other remedies.

13 E. The City may not assess any liquidated damage if Franchisee has cured
14 or commenced to cure, as may be appropriate in accordance with Section 8.3. In
15 the event Franchisee fails to cure or commence to cure, or fails to refute the alleged
16 breach, the City may assess liquidated damages and draw from the letter of credit
17 and shall inform Franchisee in writing of the assessment.

19 F. If any subsequent letter of credit delivered pursuant to this Franchise
20 expires prior to twelve (12) months after the expiration of the term of this Franchise,
21 it shall be renewed or replaced during the term of this Franchise to provide that it
22 will not expire earlier than twelve (12) months after the expiration of this Franchise.
23 The renewed or replaced letter of credit shall be of the same form and with a bank
24 authorized herein and for the full amount stated in paragraph A of this section.
25
26



1 G. The City and Franchisee recognize the delays, expense, and unique
2 difficulties involved in proving in a legal proceeding the actual loss suffered by the
3 City as a result of Franchisee's breach of this Franchise. Accordingly, instead of
4 requiring such proof of actual loss, the City and Franchisee agree that Franchisee
5 shall pay to the City the sums set forth above for each Day that Franchisee shall be
6 in breach of the specific provisions of this Franchise. Such amounts are agreed by
7 both Parties to be a reasonable estimate of the actual damages the City would
8 suffer in the event of Franchisee's breach of such provisions of this Franchise.
9

10 H. The letter of credit, referred to in Section 8.4.A, may be drawn upon by
11 the City for breach of a material provision after notice and opportunity to cure as set
12 forth in Section 8.3.

13 I. The City shall give Franchisee written notice of withdrawal under this
14 subsection. Within seven (7) Days following receipt of such notice, Franchisee
15 shall restore the letter of credit to the amount required under this Franchise.
16 Franchisee's maintenance of the letter of credit shall not be construed to excuse
17 unfaithful performance by Franchisee or to limit the liability of Franchisee to the
18 amount of the letter of credit or otherwise to limit the City's recourse to any other
19 remedy available at law or in equity.
20

21 J. Franchisee shall have the right to appeal to the City Council for
22 reimbursement in the event Franchisee believes that the letter of credit was drawn
23 upon improperly. Franchisee shall also have the right of judicial appeal if
24 Franchisee believes the letter of credit has not been properly drawn upon in
25 accordance with this Franchise. Any funds the City erroneously or wrongfully
26



1 withdraws from the letter of credit shall be returned to Franchisee, with interest from
2 the date of withdrawal.

3 K. The assessment of liquidated damages does not constitute a waiver by
4 the City of any other right or remedy it may have under the Franchise or Applicable
5 Law, including its right to recover from Franchisee any additional damages, losses,
6 costs and expenses that are incurred by City by reason of the breach of this
7 Franchise once the one hundred twenty (120) Day period has expired.

8 L. Franchisee's maintenance of the letter of credit required herein shall not
9 be construed to excuse unfaithful performance by Franchisee of this Franchise, to
10 limit liability of Franchisee to the amount of the security, or to otherwise limit the
11 City's recourse to any other remedy available at law.

12
13 8.5 Revocation.

14 A. This Franchise may be revoked and all rights and privileges rescinded if a
15 material breach of the Franchise is not cured, pursuant to Section 8.3, or in the
16 event that:

17
18 1. Franchisee attempts to evade any material provision of this
19 Franchise or to practice any fraud or deceit upon the City or Subscribers;

20 2. Franchisee makes a material misrepresentation of fact in the
21 negotiation of this Franchise;

22
23 3. Franchisee abandons the Cable System, or terminates the Cable
24 System's operations;

25 4. Franchisee fails to restore service to the Cable System after three
26 (3) consecutive Days of an outage or interruption in service; except in the case of



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an emergency or during a force majeure occurrence, or when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the Cable System); or

5. Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Franchisee's creditors, or all or part of Franchisee's Cable System is sold under an instrument to secure a debt and is not redeemed by Franchisee within thirty (30) Days from said sale.

B. Additionally, this Franchise may be revoked one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of Franchisee (at the option of the City and subject to Applicable Law), whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

C. If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Franchisee, the City may serve notice of revocation on Franchisee and to the purchaser at the sale, and the rights and privileges of Franchisee under this Franchise shall be revoked thirty (30) Days after service of such notice, unless:

1. City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

2. The purchaser has covenanted and agreed with City to assume and be bound by all of the terms and provisions of this Franchise.



1 8.6 Failure to Enforce. Franchisee shall not be relieved of any of its
2 obligations to comply promptly with any provision of this Franchise by reason of any
3 failure of the City to enforce prompt compliance, and the City's failure to enforce
4 shall not constitute a waiver of rights or acquiescence in Franchisee's conduct.

5 8.7 Force Majeure. Franchisee shall not be deemed in default with
6 provisions of its Franchise where performance was rendered impossible by war or
7 riots, civil disturbances, floods, or other natural catastrophes beyond Franchisee's
8 control; the unforeseeable unavailability of labor or materials; labor stoppages or
9 slowdowns or power outages exceeding back-up power supplies. The acts or
10 omissions of Affiliates are not beyond Franchisee's control, and the knowledge of
11 Affiliates shall be imputed to Franchisee. The Franchise shall not be revoked or
12 Franchisee penalized for such noncompliance, provided that Franchisee takes
13 immediate and diligent steps to bring itself back into compliance and to comply as
14 soon as practicable under the circumstances with its Franchise without unduly
15 endangering the health, safety, and integrity of Franchisee's employees or property,
16 or the health, safety, and integrity of the public, Public Rights-of-Way, public
17 property, or private property.
18

19
20 8.8 Alternative Remedies. Where the City elects to pursue liquidated
21 damages pursuant to Section 8.4, that election shall constitute the City's sole and
22 exclusive remedy for one hundred twenty (120) Days. Thereafter, the City shall
23 have available any other remedy under this section. For those violations where the
24 City elects not to pursue liquidated damages, no provision of this Franchise shall be
25 deemed to bar the right of the City to seek or obtain judicial relief from a violation of
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any provision of Title 10 or any rule, regulation, requirement, or directive
1 promulgated thereunder. Neither the existence of other remedies identified in this
2 Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the
3 right of the City to recover monetary damages for such violation by Franchisee,
4 once the one hundred twenty (120) Days has expired where the remedy of
5 liquidated damages has been exercised, or to seek and obtain judicial enforcement
6 of Franchisee's obligations by means of specific performance, injunctive relief or
7 mandate, or any other judicial remedy available at law or in equity.
8

9 Section 9. Reporting Requirements.

10 9.1 Monthly and Annual Reports.

11 A. Along with monthly Franchise fee payments, Franchisee shall submit an
12 annual written report to the City, which shall contain a listing of all categories of
13 Gross Revenues earned by Franchisee and the revenue associated with such
14 categories, in sufficient detail and with sufficient explanation to enable the City to
15 understand the report and to verify the accuracy of the payments. The report shall
16 include an explanation of any deductions made from Gross Revenues in the
17 calculation of payments.
18

19 B. Franchisee shall provide written annual reports no later than one hundred
20 twenty (120) Days after the end of its fiscal year containing such information as may
21 be required from time to time by the City, and at least the following, unless the City
22 waives the requirement:
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1. A summary of the previous year's activities in the development of the Cable System, including descriptions of services begun or discontinued and the number of Subscribers gained or lost for each category of Cable Service;

2. A summary of the number of service calls (calls requiring a truck roll), received by type;

3. A summary of the number and type of outages known by Franchisee affecting more than ten (10) Subscribers specifying the following: the duration; the geographical area; the number of Subscribers affected; and, if known, the cause;

4. A summary of complaints for which records are required under Subtitle 16A, Section 16A.03.030.C.1, identifying both the number and nature of the complaints received and an explanation of their dispositions;

5. A gross revenue report from the previous calendar year for the Cable System;

6. An ownership report, indicating all Persons who, at the time of filing, control or own an interest in Franchisee of ten percent (10%) or more;

7. A list of officers and members of the Board of Directors of Franchisee and any Affiliates directly involved in the operation or the maintenance of the Cable System;

8. An organizational chart showing all corporations or partnerships with more than a ten percent (10%) interest ownership in Franchisee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or



partnership that holds such an interest in the corporations or partnerships so
1 identified, and so on, until the ultimate corporate and partnership interests are
2 identified;

3
4 9. An annual report of each entity identified in Subtitle 16A,
5 Section 16A.03.030.B.2(f), which issues an annual report;

6 10. A complete report on its plant, which shall state the physical miles
7 of plant construction and plant in operation during the prior calendar year
8 categorized as aerial and underground, identify any cases where Subscribers
9 contributed to plant extension, and report the results of appropriate electronic
10 measurements to show conformity with FCC technical standards;

11
12 11. A report showing, for each cable customer service standard in
13 force, Franchisee's performance with respect to that standard for each quarter of
14 the preceding year. In each case where Franchisee concludes it did not comply
15 fully, Franchisee will describe the corrective actions it is taking to assure future
16 compliance; and

17
18 12. Once the information required by this Section 9.1.C.4-5 has been
19 filed, it need be re-filed only if it changes.

20 C. Franchisee shall at all times maintain:

21
22 1. Records of all complaints received with information sufficient to
23 allow Franchisee to prepare the reports required in this Section 9.1. The term
24 "complaints" as used herein and throughout this Franchise refers to complaints
25 about any aspect of the Cable System or Franchisee's operations, including,
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without limitation, complaints requiring service calls, and complaints about
1 employee courtesy, billing, prices, programming, outages and signal quality;

2 2. Records of outages known to Franchisee, with information
3 sufficient to allow Franchisee to prepare the reports required in this Section 9.1.
4

5 3. Records of service calls for repair and maintenance indicating the
6 date and time service was requested; the date of acknowledgment; date and time
7 service was scheduled, if it was scheduled; the date and time service was provided;
8 and, if different, the date and time the problem was solved; and
9

10 4. Records of installation/reconnection and requests for service
11 extension, indicating date of request, date of acknowledgment, and the date and
12 time service was extended.

13 9.2 Other Reports and Records.

14 A. Franchisee shall at all times maintain and upon request of City provide
15 once annually:
16

17 1. Maps of Franchisee's trunk and distribution facilities within the
18 Franchise Area and located in the Rights-of-Way in a standard geographic
19 information system (GIS) format;

20 2. A copy of all FCC filings on behalf of Franchisee, its parent
21 corporations, or Affiliates that directly relate to the operation of the Cable System in
22 the Franchise Area;

23 3. A list of Franchisee's Cable Services, rates, and Channel line-ups,
24 and Franchisee shall notify City of any new rate information and/or Channel line-up
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changes, at least thirty (30) Days prior to such new rates and/or Channel line-ups becoming effective;

4. A compilation of Subscriber complaints, actions taken and resolution, and a log of service calls.

5. Any additional records or information required to verify Franchisee's compliance with the terms and provisions of the Franchise.

B. Upon written request, Franchisee shall submit to the City copies of any pleading, applications, notifications, communications and documents of any kind, submitted by 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 Franchisee's Cable System within the Franchise Area.

Franchisee shall submit such documents to City no later than thirty (30) Days after receipt of City's request. 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 Franchisee's Cable System within the Franchise Area, Franchisee shall make such documents available to City upon City's written request.

9.3 Franchisee's Records.

A. Throughout the term of this Franchise, Franchisee agrees that the City, upon thirty (30) days prior written notice to Franchisee, may review, during normal



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business hours, such of Franchisee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Franchisee's compliance with the provisions of this Franchise. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by Franchisee for a minimum period of six (6) years. Franchisee shall not deny the City access to any of Franchisee's records on the basis that Franchisee's records are under the control of any parent corporation, affiliated entity, or a third party. The City may request, in writing, copies of any such records or books that are reasonably necessary, and 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 Franchisee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then 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 or at one of Franchisee's offices more convenient to City or its duly authorized agent. If any books or records of Franchisee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by Franchisee.



1 B. Throughout the term of this Franchise, Franchisee shall maintain at its
2 business office, in a file available for public inspection during normal business
3 hours, those documents required pursuant to the FCC's rules and regulations.

4 9.4 Preservation of Confidential Information. Franchisee may choose to
5 provide any confidential books and records that it is obligated to make available to
6 the City pursuant to this Franchise, by allowing the City, or its designated
7 representative(s), to view the books and records at a mutually agreeable location
8 and without City obtaining its own copies of such books and records. Alternatively,
9 confidential or proprietary information may be disclosed pursuant to a reasonable
10 non-disclosure agreement, to the extent permitted under Applicable Law, whereby
11 the information required to be disclosed under this Franchise will be provided only
12 to City's representative(s). The intent of the Parties is to work cooperatively to
13 insure that all books and records reasonably necessary for the City's monitoring
14 and enforcement of Franchise obligations are provided to City. To the extent that
15 Franchisee insists that records must be reviewed on site, and the City's designated
16 representative(s) must travel or otherwise incur costs to be able to review such
17 information, Franchisee shall pay all reasonable costs incurred by City's
18 representative(s) in so doing. To the extent that Franchisee does provide books or
19 records directly to the City, the City agrees to keep confidential any proprietary or
20 confidential books or records to the extent permitted by law. Franchisee shall be
21 responsible for clearly and conspicuously identifying the work confidential or
22 proprietary, and shall provide a brief written explanation as to why such information
23 is confidential and how it may be treated as such under Applicable Law. If the City
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1 receives a demand from any Person for disclosure of any information designated by
2 Franchisee as confidential, the City shall, so far as consistent with Applicable Law,
3 advise Franchisee and provide Franchisee with a copy of any written request by the
4 party demanding access to such information within a reasonable time. If

5 Franchisee believes that the disclosure of such documents by the City would
6 interfere with Franchisee's rights under federal or state law, Franchisee may
7 institute an action in the Pierce County Superior Court to prevent the disclosure by
8 the City of such documents. Franchisee shall join the Person requesting the
9 documents to such an action. Franchisee shall defend, indemnify, and hold the City
10 harmless from any claim or judgment as well as any costs and attorneys' fees
11 incurred in participating in such proceeding.

12
13 Section 10. Customer Service Policies.

14 10.1 Customer Service Standards. Franchisee shall, throughout the
15 Franchise term, comply with FCC Customer Service Standards as set forth in
16 47 C.F.R. §76.309(b), the Customer Service Standards set forth in Subtitle 16A;
17 and the customer service policies set forth herein. In the event of a conflict, the
18 stricter standard shall apply unless the City expressly provides otherwise. To the
19 extent consistent with Applicable Law, nothing herein shall prohibit Franchisee from
20 recovering the costs associated with the obligations of this section.
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23 10.2 Response to Customers and Cooperation with City. Without limiting
24 the foregoing, Franchisee shall promptly respond to all requests for service, repair,
25 installation and information from Subscribers. Franchisee acknowledges the City's
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1 interest in the prompt resolution of all cable complaints and shall work in close
2 cooperation with the City to resolve complaints.

3 10.3 Customer Service Agreement and Manual.

4 A. Franchisee shall provide to Subscribers a "Welcome Kit" that includes an
5 accurate, comprehensive service agreement and a customer manual for use in
6 establishing Subscriber service, in accordance with 47 C.F.R. §76.1602.

7 B. Upon request by the City, Franchisee shall provide the City a current
8 copy of the Welcome Kit.

9 C. A copy of the customer service manual shall be provided to each
10 Subscriber at the time of initial hookup and any reconnection hookup (excluding
11 reconnections to the same Subscriber within twelve (12) months), and at any time
12 the manual is requested by the Subscriber. Within sixty (60) Days following
13 material policy changes, information regarding the changes will be provided to
14 Subscribers. No provision of the customer service agreement shall be valid or
15 enforceable to the extent that it is inconsistent with this Franchise or Applicable
16 Law; provision of service may not be conditioned on waiver of rights by any
17 Subscriber. Copies of the customer service manuals and the contract, and any
18 updates, provided to Subscribers shall be provided to the City upon request.

19 Section 11. Line Extension Policy.

20 11.1 Standard Installation.

21 A. Service shall be provided to any potential Subscriber upon request.
22 Franchisee shall make service available at standard installation rates and standard
23 service rates, for every potential Subscriber:
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1. Whose dwelling is one of a minimum of twenty (20) dwelling units per one (1) aerial cable mile or a minimum of forty (40) dwelling units per one (1) underground cable mile, or five (5) dwelling units per one-quarter (1/4) aerial mile, or ten (10) dwelling units per one-quarter (1/4) underground cable mile measured from the nearest existing point on the Cable System from which service could be extended; or

2. Whose dwelling is situated such that cable constructed from the nearest point on the Cable System from which service could be extended would pass or is projected to pass (in the case of a development) an average of twenty (20) dwelling units per one (1) aerial cable mile, or an average of forty (40) dwelling units per one (1) underground cable mile; or Where connection to the potential Subscriber's dwelling from cable plant constructed as required under this Franchise requires no more than a one hundred twenty-five (125) foot aerial drop or a sixty (60) foot underground drop (whichever would be required in order to comply with the applicable City Code) measured from the nearest cable plant or the Public Rights-of-Way, whichever is closer.

B. Upon receiving a request for service where Franchisee proposes to require the potential Subscriber to pay for the cost of extension, Franchisee shall promptly prepare an estimate of the cost of extension, and the amount the potential Subscriber would be required to pay under this section.



11.2 Isolated Areas.

1 A. Potential Subscribers requesting service but requiring service extended
2 beyond the standard installation and service provisions under Section 11.1 shall be
3 provided service under the following provisions:
4

5 1. In any case where the standard in Section 11.1.A.3 is not satisfied,
6 the potential Subscriber may be required to pay the additional cost of constructing a
7 drop beyond one hundred twenty-five (125) feet aerial or sixty (60) feet
8 underground from the nearest point on the Cable System or the nearest point on
9 the Public Rights-of-Way, whichever is closer.
10

11 2. Where a potential Subscriber and Franchisee reach an
12 independent agreement for the provision of service, so long as the agreement does
13 not involve any violation of the requirements and standards of this Franchise, and
14 provided the potential Subscriber is apprised of its rights under the Franchise.
15

16 11.3 Annexed Areas.

17 A. In the event that the City annexes any area which is being provided
18 Cable Service by an operator other than Franchisee, nothing in this Franchise shall
19 obligate Franchisee to provide service to that area, so long as the other operator
20 provides facilities and services comparable to the facilities and services provided for
21 under this Franchise. Provided, however, that:
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23 1. If Franchisee does not provide service throughout such annexed
24 area within six (6) months of annexation (or such longer period as the City may
25 prescribe by regulation, where the City concludes extension is not feasible within
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1 six (6) months), the City may limit the Franchise Area so it does not include the
2 annexed area;

3 2. If Franchisee files to be exempted from rate regulation on the
4 grounds that it faces effective competition in any way related to the operation of the
5 cable operator serving the annexed area, it must extend service into the annexed
6 area upon request from a potential Subscriber; or

7 3. If Persons in such annexed area request service from Franchisee,
8 so that Franchisee has requests for service such that it would have an average of
9 eight (8) Subscribers per mile if it extended service into the annexed area to serve
10 such Persons, Franchisee shall extend its Cable System to serve such Persons.
11

12 Section 12. Compensation and Financial Provisions.

13 12.1 Payments.

14 A. Franchise Fee Amount. In partial consideration for the right to occupy
15 Public Rights-of-Way to provide Cable Service, during the term of the Franchise
16 and any extensions, Franchisee shall pay City five percent (5%) of its Gross
17 Revenues as a Franchise fee. In the event Franchisee bundles or combines Cable
18 Services (which are subject to the Franchise fee) with non-Cable Services (which
19 are not subject to the Franchise fee) so that Subscribers pay a single fee for more
20 than one class of service resulting in a discount on Cable Services, Franchisee
21 agrees that for the purpose of calculation of the Franchise fee, it shall allocate to
22 Cable Service revenue no less than a pro rata share of the revenue received for the
23 bundled or combined services. The pro rata share shall be computed on the basis
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of the published charge for each service in the bundled or combined classes of
1 services when purchased separately.

2 B. Franchise Fee No Limitation. The payment by Franchisee of a Franchise
3 fee, as required under Section 12.1.A, shall not alter Franchisee's obligation to
4 continue to pay the City's business and occupation tax levied pursuant to Tacoma
5 City ordinances. By way of example and not limitation, no deductions, including
6 current nor previously paid Franchise fees, shall be subtracted from the Gross
7 Revenue amount upon which Franchise fees are calculated and due for any period,
8 nor shall copyright fees or other license or Franchise fees paid by Franchisee be
9 subtracted from Gross Revenues for purposes of calculating Franchise fees.
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12 C. Manner of Payment. Franchise fees shall be paid monthly and to the City
13 Treasurer or to such bank account of the City, as may be designated by the City
14 Treasurer. Franchisee shall file with the City a written statement the form of which
15 shall be approved by the City and signed by an officer or authorized representative
16 of Franchisee, which identifies in detail the sources and amounts of each category
17 of Gross Revenues collected by Franchisee during the previous month for which
18 payment is made, and any allowable deductions and showing the manner in which
19 the Franchise fee is calculated. Franchisee agrees that no acceptance of any
20 payment shall be construed as an accord that the amount paid is, in fact the correct
21 amount, nor shall such acceptance of payment be construed as a release of any
22 claim which the City may have for further or additional sums payable under the
23 provisions of this section.
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1 D. Late Payments. Franchise fees shall be due within twenty-five (25) Days
2 of the end of each calendar month. Franchisee shall remit payment no later than
3 forty-five (45) Days from the end of each calendar month before it shall be subject
4 to interest for late payment. If the Franchise fee is paid later than forty-five (45)
5 Days, interest shall thereafter accrue interest at twelve percent (12%) per annum or
6 the prime lending rate published daily in the Wall Street Journal, on the day the
7 payment is due but unpaid, whichever is greater.

8 E. Period of Limitations. The period of limitation for recovery of any
9 Franchise fee payable hereunder shall be six (6) years from the date on which
10 payment by Franchisee is due, subject to tolling as provided as a matter of law or
11 equity. Subject to such tolling or as provided as a matter of law or equity, unless
12 within six (6) years from and after the due date for a particular payment, the City
13 makes written request to review Franchisee's records with respect to such
14 Franchise fee payment (either individually or as part of a broader request), recovery
15 shall be barred with respect to such payment and the City shall be stopped from
16 asserting any claims whatsoever against Franchisee relating to any alleged
17 deficiencies in that particular payment.

20 F. Uses of Funds for EG. In order to utilize EG Access Channels and
21 capital support, and accomplish the provision of EG Access for the City's residents,
22 the City requires services, including, but not limited to, Channel operation, Access
23 center management and staffing, playback and cablecasting, training, promotion
24 and community outreach. It is the City's intention to utilize a portion or all of the
25 Franchise fees paid by Franchisee to provide for such services. However, should
26



1 the City decide not to utilize Franchise fees for EG Access purposes, Franchisee's
2 obligation to pay Franchise fees shall not be altered.

3 12.2 Performance Bond.

4 A. Prior to the Effective Date of the Franchise, Franchisee shall, in addition
5 to any other bond or security fund obligations required under the Franchise and
6 Title 10, furnish to the City a joint performance bond, issued by a bonding company
7 licensed to do business in the state of Washington, in the amount of One Hundred
8 Fifty Thousand and No/100 Dollars (\$150,000.00), for the purpose of guaranteeing
9 the full and faithful performance of each and every requirement of the Franchise
10 and applicable provisions of Subtitle 16A and shall be effective for the term of the
11 Franchise, including any extensions, and thereafter until Franchisee or any
12 successor or assign of Franchisee has liquidated all of its obligations with the City
13 that may have arisen from the acceptance of the Franchise by Franchisee or from
14 its exercise of any privilege herein granted.
15

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17 B. Neither the provisions of this section nor any performance bond accepted
18 by the City pursuant hereto, nor any damages or other amounts recovered by the
19 City under such performance bond shall be construed to excuse faithful
20 performance by Franchisee or to limit liability of Franchisee under this Franchise
21 either to the full amount of the insurance provided or otherwise.
22

23 12.3 Indemnification by Franchisee.

24 A. Franchisee agrees to indemnify and hold harmless the City, its trustees,
25 elected and appointed officers, agents, and employees, from and against any and
26 all claims, demands, or causes of action of whatsoever kind or nature, and the



1 resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages,
2 orders, judgments, or decrees, sustained by the City, its trustees, elected and
3 appointed officers, agents, and employees, arising out of, or by reason of, or
4 resulting from or of the acts, errors, or omissions of Franchisee, or its agents,
5 independent contractors or employees related to or in any way arising out of the
6 construction, operation or repair of the Cable System.

7 B. Franchisee agrees that the covenants and representations relating to the
8 indemnity provided in this Section 12.3, above, shall survive the term of its
9 Franchise and continue in full force and effect as to Franchisee's responsibility to
10 indemnify.
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12 12.4 Franchisee Insurance.

13 A. During the course and performance of the services herein specified,
14 Franchisee shall at all times comply with the insurance requirements in the City
15 Code, as may be amended from time to time.
16

17 B. Failure by the City to identify a deficiency in the insurance documentation
18 provided by Franchisee or failure of the City to demand verification of coverage or
19 compliance by Franchisee with these insurance requirements shall not be
20 construed as a waiver of Franchisee's obligation to maintain such insurance.
21

22 C. The insurance requirements form is available on Risk Management
23 website at <https://www.cityoftacoma.org/cms/one.aspx?portalId=169&pageId=23352>.

24 D. Franchisee shall maintain, throughout the term of the Franchise,
25 adequate insurance insuring Franchisee, its officers, employees, and agents, to
26 protect the City, its trustees, elected and appointed officers, agents, and employees



1 against claims and damages that may arise as a result of the construction,
2 operation or repair of the Cable System.

3 Section 13. Miscellaneous Provisions.

4 13.1 Posting and Publication. Franchisee shall assume the cost of posting
5 and publication of this Franchise, as such posting and publication is required by law
6 and such is payable upon Franchisee's filing of acceptance of the Franchise.

7 13.2 Guarantee of Performance. Franchisee shall agree that it enters into
8 the Franchise voluntarily in order to secure, and in consideration of, the grant from
9 the City of a twenty (20) year Franchise. Performance pursuant to the terms and
10 conditions of this Franchise agreement is guaranteed by Franchisee.
11

12 13.3 Governing Law and Venue. The Franchise shall be governed by and
13 construed in accordance with the laws of the state of Washington, and any action
14 brought relative to any dispute related to a violation of this Franchise shall be
15 initiated in the Superior Court of Pierce County, or in the district court of the United
16 States in which the City is located.
17

18 13.4 No Recourse. Without limiting such immunities as the City or other
19 Persons may have under Applicable Law, Franchisee shall have no monetary
20 recourse whatsoever against the City or its officials, boards, commissions, agents
21 or employees for any loss or damage arising out of the City's exercising its authority
22 to regulate Franchisee pursuant to the Cable Act.
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24 13.5 Notice. Unless expressly otherwise agreed between the parties, every
25 notice or response required by this Franchise to be served upon the City or
26 Franchisee shall be in writing, and shall be deemed to have been duly given to the



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required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by mail, postage prepaid. The notices or responses to the City shall be addressed as follows:

City of Tacoma
Municipal Services Center
1224 MLK JR WAY
Tacoma, WA 98405
Attn.: MCO – Franchise Services Manager

The notices or responses to Franchisee shall be addressed as follows:

Rainier Connect North, LLC
104 Washington Ave. North,
PO Box 639, Eatonville,
WA 98328
Attention: Franchise Department

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than one address, and the address must be within the City, except by mutual agreement.

13.6 Responsibility for Cost of Franchise Requirements. Unless otherwise specified in this Franchise, Franchisee shall bear the cost of meeting the requirements of the Franchise. Franchisee shall be permitted to pass through to Subscribers such costs of meeting Franchise requirements as are among those permitted to be passed through under federal law and regulation, in accordance with applicable federal regulations.

13.7 Third Party Beneficiary. Nothing in this Franchise shall be construed to confer third (3rd) party beneficiary status on any other Person or member of the public to enforce the terms of this Franchise.



1 13.8 FCC Preemption. In the event Franchisee is legally permitted, in
2 accordance with Applicable Law, to offset the value of any non-monetary obligation
3 contained in this Franchise against Franchise Fees payable to the City, Franchisee
4 agrees that it: 1) will do so only after providing City with a minimum of one hundred
5 twenty (120) days prior written notice; and 2) will treat City in the same manner as
6 Franchisee treats all other franchising authorities in areas where Franchisee
7 provides Cable Service. The purpose of the one hundred twenty (120) day notice is
8 to allow the parties to determine if the Franchise obligation in question should be
9 maintained or if the Franchise should be modified to eliminate or reduce the need
10 for any legally permitted offset by Franchisee against Franchise Fees.
11

12 13.9 Form of Service. Franchisee intends to migrate the existing cable TV
13 service to a streaming service. Under Franchisee's intended streaming service,
14 Franchisee anticipates that there will be no head end or channels as those may
15 exist upon the Effective Date of this Franchise. Franchisee agrees to provide and
16 make available the EG programming currently carried on the EG Access Channels
17 as part of the streaming service but anticipates there may not be any particular
18 order of channels or programming on the streaming service. Neither the City nor
19 Franchisee waive any rights each may have under Applicable Law regarding the
20 enforceability of this Franchise to any future streaming service offered by
21 Franchisee. The City and Franchisee agree to meet and discuss the requirements
22 of this Franchise at an appropriate time in the future to determine if the Parties can
23 reach mutual written agreement regarding any changes that may be required to
24 accommodate any streaming service made available by Franchisee.
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13.10 Effective Date. This Ordinance shall be effective March 31, 2020,
unless such date is modified by mutual written agreement between the City and
Franchisee. Provided, however, that if Franchisee does not accept this Franchise
pursuant to Section 2.2 and comply with all conditions for such acceptance set forth
therein within thirty (30) Days after passage of this Franchise, the grant of the
Franchise to Franchisee shall be null and void.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



**RAINIER CONNECT NORTH, LLC
D/B/A RAINIER CONNECT**

AGREEMENT AND ACCEPTANCE

1 This confirms that as of this date, _____, 2019 we accept the Franchise
2 granted to us by Ordinance _____, adopted _____, 2019. We have
3 carefully read the terms and conditions of this Franchise and unconditionally accept
4 all of the terms and conditions of the Franchise including the limitations established
5 thereunder, and agree to abide by the same. In accepting the Franchise, we have
6 relied upon our own investigation of all relevant facts, and have had the assistance
7 of counsel. We were not induced to accept this Franchise against our will, and
8 voluntarily and knowingly accept it. We understand that and agree that this
9 Franchise represents the entire agreement between Franchisee and the City, and
10 we accept all risks related to the interpretation of this Franchise.
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16 RAINIER CONNECT NORTH, LLC
17 D/B/A RAINIER CONNECT

18 BY: _____

19 ITS: _____

20
21 RAINIER CONNECT NORTH, LLC
22 D/B/A RAINIER CONNECT

23 BY: _____

24 ITS: _____
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EXHIBIT "A"

SITES TO WHICH COMPLIMENTARY SUBSCRIBER NETWORK CABLE DROPS ARE TO BE PROVIDED

Complimentary cable drops are to be provided to each of the buildings listed on this exhibit upon written request. The drops are to be brought into the building and the outlet located at a point designated by the user.

School/Library/Government Building

Table with 4 columns: Building, Address, Zip, Phone. Lists various locations like Main Library, Fire Communications Center, Police Headquarters, etc.



	School/Library/Government Building	Address	Zip	Phone
1	Birney School Elementary School	1202 South 76th Street	98408	(253) 571-4600
2	Edison Elementary School	5830 South Pine Street	98409	(253) 571-1700
	Fern Hill Elementary School	8442 South Park Avenue	98444	(253) 571-3888
3	Jefferson Elementary School	4302 North 13th Street	98406	(253) 571-2261
	Lister Elementary School	2106 East 44th Street	98443	(253) 571-2900
4	Mann Elementary School	5211 South "K" Street	98408	(253) 571-6300
	McKinley Elementary School	3702 McKinley Avenue	98404	(253) 571-2070
5	Point Defiance Elementary School	4330 North Visscher St.	98407	(253) 571-2265
6	Roosevelt Elementary School	3550 East Roosevelt Avenue	98404	(253) 571-4400
	Sheridan Elementary School	5317 McKinley Avenue	98404	(253) 571-2076
7	Sherman Elementary School	North 38th & Cheyenne	98407	(253) 571-2255
	Stafford Elementary School	1615 South 92nd Street	98444	(253) 571-4300
8	Whitman Elementary School	1120 South 39th Street	98408	(253) 571-2077
	Central Administration Building Annex	708 South G Street	98405	(253) 571-4270
9	Madison/Transportation	3110 South 43rd Street	98409	(253) 571-1000
10	Pearl Street Center	815 South Pearl Street	98465	(253) 396-5800
	Union Street Site (B&G, Purchasing, Food Service, P&C)	3321 South Union Avenue	98409	
11	Bates Technical College	1101 South Yakima	98405	(253) 680-7000
12	(Downtown Campus)			
	Bates Technical College	2201 South 78th Street	98409	(253) 680-7400
13	(South Campus)			
	Bates Technical College (Mohler Campus)	2320 South 19th Street	98405	(253) 680-7700
14	Evergreen State College	South 12th Street and MLKing Jr. Way	98405	(253) 680-3000
15	(Tacoma Campus)			
	Tacoma Community College	6510 South 19th Street	98466	(253) 566-5000
16	(Main Campus)			
	Tacoma School of the Arts	1950 Pacific Avenue	98402	(253) 571-7900
17	(SOTA)			
	University of Washington	1900 Pacific Avenue	98402	
18	(Tacoma Campus)			
	University of Puget Sound	1500 North Warner Street	98416	
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