

ORDINANCE NO. 4140

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING VERIZON NORTHWEST INC. A NON-EXCLUSIVE CABLE FRANCHISE.

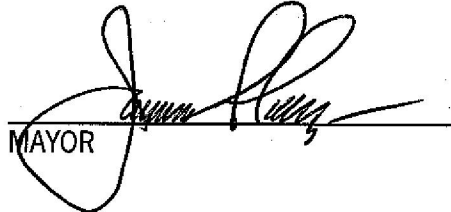
The City Council of the City of Kirkland do ordain as follows:

Section 1. The City Manager is authorized and directed to execute the cable franchise agreement attached hereto as Exhibit A between the City of Kirkland and Verizon Northwest Inc., the terms of which are incorporated herein by reference as if fully set forth.

Section 2. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 21st day of October, 2008.

Signed in authentication thereof this 21st day of October, 2008.



MAYOR

Attest:

Acting

City Clerk

Approved as to Form:


City Attorney

CABLE FRANCHISE AGREEMENT

between

CITY OF KIRKLAND

and

VERIZON NORTHWEST INC.

2008

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between Kirkland, a duly organized city under the applicable laws of the State of Washington (the "City") and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (the "Franchisee").

WHEREAS, the City wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Washington state law;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Washington;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the City, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the City has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate, in a full public proceeding affording due process to all parties;

WHEREAS, the City has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

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.

NOW, THEREFORE, in consideration of the City's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the City pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged.

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel, which Franchisee shall make available to the City without charge for non-commercial Public, Educational, or Governmental use for the transmission of video programming as directed by the City. For purposes of this definition, non-commercial shall not preclude the City, or any entity managing its Access Channel, from entering into underwriting or sponsorship arrangements with third party entities that conform with sponsorship guidelines used by the Public Broadcasting Service.

1.1.1. *Public Access Channel*: An Access Channel where the public is the primary user.

1.1.2. *Educational Access Channel*: An Access Channel where Schools are the primary users or exercise primary editorial control over programming and services.

1.1.3. *Government Access Channel*: An Access Channel means an Access Channel where governmental institutions or their designees are the primary users or exercise primary editorial control over programming and services.

1.1.4. *PEG*: Public, Educational, and Governmental.

1.2. *Additional Service Area*: Shall mean any such portion of the Service Area added pursuant to Section 3.1.3 of this Agreement.

1.3. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

1.4. *Basic Service*: Any service tier which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.5. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), as may be amended from time to time.

1.6. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.7. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), as may be amended from time to time.

1.8. *City*: The City of Kirkland, Washington.

1.9. *Communications Act*: The Communications Act of 1934, as amended.

1.10. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchisee's affairs.

1.11. *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.

1.12. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God.

1.13. *Franchise Area*: The incorporated area (entire existing territorial limits) of the City and such additional areas as may be included in the corporate (territorial) limits of the City during the term of this Franchise.

1.14. *Franchisee*: Verizon Northwest Inc., and its lawful and permitted successors, assigns and transferees.

1.15. *Gross Revenue*: All revenues derived directly by the Franchisee or its Affiliates from the operation of the Cable System to provide Cable Services within the Service Area, including Franchise fees. Subject to Section 1.15.10 below, fees, payments, or other consideration received by the Franchisee from programmers for carriage of programming on the Cable System and advertising sales commissions shall be included as part of Gross Revenues if they are recognized as revenues under generally accepted accounting principles ("GAAP"). Gross Revenue shall not include:

1.15.1. Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System, provided that the purpose of the payments is not to reduce the amount of the Franchise fee;

1.15.2. Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.15.3. Refunds, rebates or discounts made to Subscribers or other third parties to the extent the revenues refunded would otherwise be included in Gross Revenue;

1.15.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from

Telecommunications Services; revenue received from Information Services, and any other revenues attributed to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. Nothing in this Subsection 1.15.4 shall have the effect of excluding from Gross Revenue any revenues derived from Cable Service over the Cable System;

1.15.5. Any revenue paid directly by Subscribers for the sale of merchandise through any home shopping channel, infomercial, or advertisement, provided that, commissions or other compensation related to such sales paid to the Franchisee shall be included in Gross Revenue;

1.15.6. Any revenues paid by subscribers and received by third-party channel lessees, except for the portion paid to Franchisee for services and facilities Franchisee provides to the third party channel lessee;

1.15.7. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees);

1.15.8. Any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.15.9. Sales of capital assets or sales of surplus equipment;

1.15.10. Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction of new programming pursuant to a written marketing agreement;

1.15.11. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing. Nothing in this Subsection 1.15.11 shall have the effect of excluding from Gross Revenue any revenues derived from Cable Service over the Cable System;

1.15.12. Any fees or charges collected from Subscribers or other third parties for PEG Grants.

1.16. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(20).

1.17. *Initial Service Area*: The portion of the Franchise Area as outlined in Exhibit A.

1.18. *Internet Access*: A service that enables Subscribers to access the Internet.

1.19. *Non-Cable Services*: Any services that are not Cable Services.

1.20. *Normal Operating Conditions*: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages beyond the control of Franchisee or an Affiliate, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 76.309(c)(4)(ii).

1.21. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.22. *Public Rights-of-Way*: The surface of and space above and below any real property in the City in which the city has a regulatory interest, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the City, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for public utility purposes; provided, however, this shall not include public parks for which a separate authorization and agreement to utilize any part of same shall be required from the City. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.23. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area, and any Additional Service areas.

1.24. *Service Date*: The date that the Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area. The Franchisee shall memorialize the Service Date by notifying the City in writing of the same, which notification shall become a part of this Franchise.

1.25. *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.26. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.27. *Telecommunications Facilities*: Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.28. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.29. *Title II*: Title II of the Communications Act.

1.30. *Title VI*: Title VI of the Communications Act.

1.31. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), as may be amended from time to time.

2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Act, the City hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. This Franchise is for the provision of Cable Services only. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *City's Regulatory Authority Over Telecommunications Facilities*: The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. The jurisdiction of the City over Franchisee's Telecommunications Facilities is restricted by federal and state law, and the City will not assert jurisdiction over Franchisee's FTTP Network in contravention of those laws. This Agreement shall not be construed to limit the regulatory authority, if any, the City has under federal and state law with respect to the FTTP Network facilities as Telecommunications Facilities. Nothing in this Section 2.2 is intended to expand or contract any rights the City may have to regulate Non-Cable Services. Both the City and the Franchisee reserve all rights with respect to the issue of the provision of Non-Cable Services.

2.3. *Term*: This Franchise shall become effective on _____, 20__ (the "Effective Date"). The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

2.4. *Grant Not Exclusive*: The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and City reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise.

2.5. *Franchise Subject to Federal Law*: Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.6. No Waiver:

2.6.1. The failure of City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse City from performance, unless such right or performance has been specifically waived in writing.

2.7. Construction of Agreement:

2.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives

2.7.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.8. *Police Powers:* Nothing in the Franchise shall be construed to prohibit the lawful exercise of the City's police powers. However, if the lawful exercise of the City's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then the Franchisee may terminate this Agreement without further obligation to the City or, upon mutual consent of the parties, the parties shall submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. PROVISION OF CABLE SERVICE

3.1. Service Area:

3.1.1. *Initial Service Area:* Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area and may make Cable Service available to businesses in the Initial Service Area, within eighteen (18) months of the Effective Date of this Agreement, and shall offer Cable Service to all residential areas in the Initial Service Area within five (5) years of the Effective Date of this Agreement, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the City; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) actions or inactions of any government instrumentality or public utility including condemnation; (E) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (F) in areas, developments or buildings where Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; (G) in developments or buildings that Franchisee is unable to

provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; (H) work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, or caused by unavailability of materials and/or qualified labor to perform the work necessary; and (I) in areas where the occupied residential household density does not meet the density requirements set forth in sub-section 3.1.2.

3.1.2. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in subsection 3.1.1, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the City that the density requirements have been met.

3.1.3. *Additional Service Areas:* Except for the Initial Service Area Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Franchisee desires to add Additional Service Areas within the Franchise Area, Franchisee shall notify the City in writing of such Additional Service Area at least ten (10) days prior to providing Cable Services in such areas.

3.1.4. *Annexation:* To the extent that the City annexes any areas of unincorporated King County served by the Kirkland and Juanita wire centers, as shown in Exhibit A, such annexed areas shall be subject to Section 3.1.1 above. Any other annexed areas shall be subject to Section 3.1.3 above. The City shall give Franchisee at least 30 days notice of the effective date of any annexation.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred twenty five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Municipal Buildings:*

3.3.1. Subject to Section 3.1, upon request by the City Grantee shall provide the following, without charge, to those buildings set forth in Exhibit B; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than three hundred (300) feet solely to provide service to any such building, the City shall have the option

of paying Franchisee's direct costs for such extension in excess of three hundred (300) feet, or of releasing or postponing Franchisee's obligation to provide service to such building:

3.3.1.1. One service drop to each building;

3.3.1.2. One Subscriber digital converter activated for the lowest service tier which includes the retransmission of local television broadcast signals and the PEG Channels required by this Franchise (except as otherwise agreed by the parties in writing); and

3.3.1.3. One service outlet activated for the lowest service tier which includes the retransmission of local television broadcast signals and the PEG Channels required by this Franchise (except as otherwise agreed by the parties in writing).

3.3.2. The Franchisee shall be permitted to recover, from any building owner entitled to free service under this Section 3.3, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than three hundred (300) feet of drop cable; provided however that Franchisee shall not charge for the provision of the lowest service tier which includes the retransmission of local television broadcast signals and the PEG Channels required by this Franchise to the additional outlets once installed.

3.3.3. The cost of inside wiring, additional drops or outlets and additional converters requested by the City within these specified facilities are the responsibility of the City. The City shall be responsible for the cost of any "terminal equipment," including TV monitors, VCRs, and/or computers.

3.3.4. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee shall be replaced at retail rates if lost, stolen or damaged.

4. SYSTEM FACILITIES

4.1. *System Characteristics:* Franchisee's Cable System shall be designed to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.

4.2. *Technical Requirement:* The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, and the National Electric Code.

4.3. *Subscriber Network:* Franchisee shall comply with the closed captioning requirements of the FCC.

4.4. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems contiguous to or in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.5. *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

4.6. *Cable System Performance Testing:*

4.6.1. Franchisee shall perform all tests required by the FCC on its Cable System. Upon written request, all FCC required tests may be witnessed by an employee of the City.

4.6.2. Franchisee shall maintain written records of all Cable System test results performed by or for Franchisee. Copies of such test results will be available as part of its public file available for inspection as provided by applicable rules and regulations.

4.6.3. Franchisee shall promptly take such corrective measures as are necessary to correct fully any performance deficiencies and to prevent their recurrence as far as possible.

4.7. *Additional Tests:* Franchisee shall conduct special proof of performance tests of the Cable System or a segment thereof when Subscriber complaints received by the City indicate tests are warranted. Upon request from the City, the results of any such testing shall be provided to the City within a reasonable time.

5. **PEG SERVICES**

5.1. *PEG Access Channels:*

5.1.1. All PEG Access Channels provided for herein shall be administered by the City or its designee. The City or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. §531.

5.1.2. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide on the Basic Service tier two (2) Government Access Channels and one (1) Educational Access Channel, and shall reserve three (3) additional dedicated Access Channels for City's future use ("Reserve Access Channels"). On the Educational Access Channel, Franchisee shall transmit within the Service Area, at the request of the City, the Video Programming which originates on the campus of Bellevue Community College, 3000 Landerholm Circle SE, Bellevue, WA to the extent Franchisee has the legal and technical ability to access and obtain that Video Programming signal in a commercially reasonable manner. If Franchisee is not so able to access and obtain that Video Programming signal from the Video Programming origination location, the City will make arrangements to provide the signal to Franchisee at the PEG Origination Site in accordance with the conditions set forth in Subsection 5.2.1. In addition to the foregoing Government Access Channels, Educational Access Channel and Reserve Access Channels, Franchisee shall transmit within the Service Area, to the extent Franchisee has the legal and technical ability to access, obtain, and provision that Video Programming signal in a commercially reasonable manner, the King County Government Channel (CTV), within a reasonable time of obtaining such Video

Programming and providing such channel to King County pursuant to a franchise agreement with King County.

5.1.3. The City hereby authorizes Franchisee to transmit PEG programming within and without the City's jurisdictional boundaries. Franchisee specifically reserves its right to make or change channel assignments in its sole discretion. In the event Franchisee changes any PEG Channel assignment, Franchisee shall use best efforts to provide ninety (90) days and at least forty-five (45) days advance written notice to the City prior to any such re-assignment. In connection with the movement of any of the City's Government Access Channels to other Channel numbers, Franchisee shall provide notice as provided in Sections 10.H and 10.I of Exhibit C. If a PEG Channel provided under this Article is not being utilized by the City, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the City elects to utilize the PEG Channel for its intended purpose. Franchisee shall neither have nor attempt to exercise any editorial control over the Access Channel programming.

5.1.4. Reserved PEG Access Channels: The City may activate the Reserve Access Channel(s) subject to the following conditions:

5.1.4.1. The City must provide Franchisee written documentation of its need to activate the reserved capacity that cannot be fulfilled by the existing PEG Access Channel(s). Such need may be demonstrated by the use of the existing PEG Access Channel(s) for original programming (excluding character generated and filler programming, e.g., AM/FM radio programming) during fifty percent (50%) of the hours between 10:00 am and 10:00 pm, five days per week, during any consecutive eight (8) week period. The programming on the new channel shall be distinct and non-repetitive of the existing PEG Channels;

5.1.4.2. The City shall require other cable providers to provide similar additional Access Channel(s) (except to the extent the City cannot legally require such additional Access Channel(s) from those cable providers which, as of the Effective Date of this Agreement, are subject to a franchise agreement with King County which does not require such Channel(s)); and

5.1.4.3. In the event the origination point of the Reserve Access Channel(s) is the PEG Origination Site as defined below, Franchisee will provide the Reserve Access Channel within one hundred eighty (180) days following the City's written request and verification of compliance with each of the foregoing conditions and those specified in Section 5.2. If the origination point is not the PEG Origination Site, the timing of the availability and other conditions will be by mutual agreement of the parties. Unless the parties agree otherwise, the origination point shall not be located outside of the Service Area.

5.1.5. The City shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the City from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal

authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel.

5.2. PEG Connections:

5.2.1. The City shall provide and ensure suitable video signals for the Government Access Channels to Franchisee at Kirkland City Hall, 123 5th Avenue, Kirkland, Washington 98033 (the "PEG Origination Site"). The Franchisee's obligations under this Subsection 5.2.1, including its obligation to provide upstream equipment and facilities necessary to transmit signals, shall be subject to the provision by the City, without charge to the Franchisee, of: (1) access to the PEG Origination Site facility; (2) access to any required PEG equipment within the PEG Origination Site facility and suitable required space, environmental conditions, electrical power supply, access, and pathways within the PEG Origination Site facility; (3) video signals in NTSC format, with any future format to be a mutually agreed upon format suitable for PEG Access Channel programming; (4) any third-party consent that may be necessary to transmit PEG signals (including, without limitation, any consent that may be required with respect to third-party facilities, including the facilities of the incumbent cable provider, used to transmit PEG content to the PEG Origination Site from auxiliary locations); and (5) any other cooperation by the City and access to facilities as are reasonably necessary for the Franchisee to fulfill the obligations stated herein. To the extent a suitable video signal is provided to Franchisee and the foregoing conditions are met, Franchisee shall, within one hundred twenty (120) days of the Service Date or provision of a suitable video signal, whichever is later, provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to Subscribers. Franchisee shall attempt in good faith to install such equipment earlier, if commercially reasonable. The transmission of PEG Channels shall be simulcast in a manner in which the signals originally provided to Franchisee experience no greater degradation during such transmission than do any other signals on the Basic Service tier broadcast by the Franchisee to Subscribers.

5.2.2. The City shall have the right to relocate the PEG Origination Site one time during the term of this Franchise as follows: The new location shall be located within one hundred twenty-five (125) feet of one of Franchisee's active, video-enabled FTTP trunk or feeder lines in the Service Area; Franchisee's obligation shall be subject to the same conditions that apply to the PEG Origination Site in Section 5.2.1; the City shall provide access to such space at least ninety (90) days prior to anticipated use of the new PEG Origination Site; and the City shall reimburse fifty percent of Franchisee's costs associated with the relocation of equipment necessary for transmitting the PEG signal, not to exceed Ten Thousand Dollars (\$10,000).

5.3. PEG Grant:

5.3.1. Franchisee shall provide an annual grant to the City to be used in support of the production of local PEG programming (the "PEG Grant"). Such grant shall be used by the City for capital costs for PEG access equipment, including, but not limited to,

studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

5.3.2. The PEG Grant provided by Franchisee hereunder shall be the sum of twenty-five cents (\$0.25), per month, per Subscriber in the Franchise Area to Franchisee's Basic Service tier. Payment of the PEG Grant shall be contingent upon the City imposing a PEG Grant requirement of at least twenty-five cents (\$0.25) per subscriber, per month on all Cable Operators in the Service Area (except to the extent the City cannot legally require such PEG Grant from those Cable Operators which, as of the Effective Date of this Agreement, are subject to a franchise agreement with King County which does not require a PEG Grant of at least twenty-five cents (\$0.25) per subscriber, per month). The per subscriber, per month amount of the PEG Grant can be modified as determined by the City Council no more than once each year, shall be no greater than \$1.00, per Subscriber, per month, and shall be the same amount required of all other Cable Operators in the Service Area (except to the extent the City cannot legally require such PEG Grant from those Cable Operators which, as of the Effective Date of this Agreement, are subject to a franchise agreement with King County which does not require a PEG Grant of at least twenty-five cents (\$0.25) per subscriber, per month). The City shall provide Franchisee with at least sixty (60) days written notice of any change in the amount of the PEG Grant pursuant to this subsection. Franchisee shall deliver the PEG Grant payment, along with a brief summary of the Subscriber information upon which it is based, to the City concurrent with the Franchise fee payment. Calculation of the PEG Grant will commence with the first calendar quarter during which Franchisee obtains its first Subscriber in the Service Area. The City shall give Franchisee sixty (60) days prior written notice if it ceases to require financial support from any new or existing providers within the Franchise Area.

5.3.3. Upon request by Franchisee, the City shall provide Franchisee a summary report concerning the actual use of funds granted pursuant to this Section.

5.3.4. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the PEG Grant and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through these costs to Subscribers.

6. FRANCHISE FEES

6.1. *Payment to City:* Franchisee shall pay to the City a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Payments shall be due and payable in May (for the first quarter), August (for the second quarter), November (for the third quarter), and February (for the fourth quarter). Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were

incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable.

6.2. *Acceptance of Payment:* No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

6.3. *Late Payments:* In the event any payment due the City is not timely made, Franchisee shall pay, in addition to the amount due, interest at the maximum allowed rate for judgments as provided under Washington law until the date the City receives the payment.

6.4. *Underpayments:* If franchise fee underpayments are discovered as a result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate for judgments as provided under Washington law, calculated from the date the underpayment was originally due until the date the City receives the payment.

6.5. *Supporting Information:* Each franchise fee payment shall be accompanied by a brief report that provides line items of revenue sources and is verified by a financial manager of Franchisee showing the basis for the computation.

6.6. *Limitation on Fee Actions:* The parties agree that the period of limitation for recovery of any fee payable hereunder shall be four (4) years from the date on which payment by Franchisee is due.

6.7. *No Limitation on Taxing Authority:* Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee, or assessment of general applicability. Nothing in this Franchise is intended to preclude Franchisee from exercising any right it may have to challenge the lawfulness of any tax, fee, or assessment imposed by the City or any state or federal agency or authority, or intended to waive any rights the Franchisee may have under 47 U.S.C. § 542.

6.8. *Bundled Services:* Bundled Services: In the event that Grantee offers Cable Services and Non-Cable Services to its Subscribers in the City, and those services are included in one monthly bill to each Subscriber, then Grantee shall clearly itemize each of the respective services on the bill. The rates for cable service shall accurately reflect the rate card rates less discounts, if any exist.

7. CUSTOMER SERVICE

7.1. Customer Service Requirements are set forth in Exhibit C, which shall be binding unless amended by written consent of the parties. Exhibit C is hereby incorporated into and subject to this Agreement.

8. REPORTS AND RECORDS

8.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the

City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than four (4) years.

Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. To the extent permitted under State law, the City shall treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. If the City receives a request from any Person for disclosure of any confidential information, the City shall, so far as consistent with applicable law, advise Franchisee and provide a copy of such request to Franchisee within six (6) business days of its receipt so that Franchisee has an opportunity to seek an appropriate protective order prior to disclosure. Franchisee may disclose Subscriber information to the extent consistent with Section 631 of the Communications Act, 47 U.S.C. § 551.

8.2. *Records Required:* Franchisee shall at all times maintain:

8.2.1. Records of all written complaints for a period of four (4) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

8.2.2. Records of outages for a period of four (4) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.2.3. Records of service calls for repair and maintenance for a period of four (4) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.2.4. Records of installation/reconnection and requests for service extension for a period of four (4) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

9. INSURANCE AND INDEMNIFICATION

9.1. *Insurance:*

9.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

9.1.1.1. Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the City.

9.1.1.2. Automobile Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for bodily injury and property damage coverage.

9.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Washington.

9.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

9.1.2. The City shall be designated as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

9.1.3. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

9.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Washington, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

9.1.5. Upon written request, Franchisee shall deliver to City Certificates of Insurance showing evidence of the required coverage.

9.2. Indemnification:

9.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend the City, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that the City shall give Franchisee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the City, for any damages, liability or claims resulting from the willful misconduct or negligence of the City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access, or EAS, or the distribution of any Cable Service over the Cable System.

9.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the City by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the

City, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the City from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the City, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the City and the City does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the City shall in no event exceed the amount of such settlement.

9.2.3. The City shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the City.

9.2.4. The City shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the City for which the City is legally responsible, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the City for acts of the City which constitute willful misconduct or negligence, on the part of the City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

10. TRANSFER OF FRANCHISE

10.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no "Transfer of the Franchise" shall occur without the prior consent of the City, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, provided that any such pledge of assets which results in Franchisee's inability to satisfy its obligations under this Franchise shall constitute a violation of this Franchise.

10.2. A "Transfer of the Franchise" shall mean any transaction in which:

10.2.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or

10.2.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

Notwithstanding Subsections 10.2.1 and 10.2.2, a Transfer of the Franchise shall not include (a) transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; (b) transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; (c) any action which is the result of a merger of the parent of Franchisee; or (d) any action which is the result of a merger of another Affiliate of Franchisee. Franchisee shall provide written notice to the City prior to a transfer of any interest described in (a) or (b) of this paragraph. Also

with respect to transfers to Affiliates described in (a) or (b) of this paragraph, Franchisee shall guaranty the performance of this Agreement by such Affiliate; provided, however, that Franchisee may request the City to release said guaranty and the City shall act upon such request as promptly as reasonably possible. In considering such request, the City shall make its decision as to whether or not to release said guaranty by and upon evaluating the financial qualifications of the assignee or transferee. Franchisee shall provide the City with such information as may be reasonably required for the City to make such evaluation. Subject to Franchisee's compliance with such obligation, the City shall conduct such evaluation and reach its decision as promptly as practicable and shall not unreasonably withhold, delay or deny its consent to the release of said guaranty. Upon making its decision, the City shall promptly deliver to Franchisee written notice thereof. If the City shall agree to release said guaranty, it shall promptly deliver to Franchisee a written document evidencing such release of said guaranty.

10.3. Franchisee shall make a written request ("Request") to the City for approval of any Transfer of the Franchise and furnish all information required by law and/or reasonably required by the City in respect to its consideration of a proposed Transfer of the Franchise. In reviewing a Request related to a Transfer of the Franchise, the City may inquire into any matter reasonably related to the ability and willingness of the prospective transferee to perform, including the legal, technical and financial qualifications of the prospective transferee. Franchisee shall assist the City in so inquiring.

10.4. The City shall render a final written decision on the Request within one hundred twenty (120) days of the Request, provided it has received all information which the City may lawfully require, such as a complete FCC Form 394. Subject to the foregoing, if the City fails to render a written decision on the Request within one hundred twenty (120) days, the Request shall be deemed granted unless Franchisee and the City agree to an extension of time. The City may condition said Transfer of the Franchise upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective transferee or to the resolution of outstanding and unresolved issues of Franchisee's noncompliance with the terms and conditions of this Agreement.

10.5. Franchisee shall ensure that any transferee or assignee shall, prior to consummation of any transaction resulting in a transfer or assignment of this Franchise, agree in writing to be bound by the terms of this Franchise and to assume the obligations and liabilities to the City of its predecessor under this Franchise.

10.6. The consent or approval of the City to any Request by the Franchisee shall not constitute a waiver or release of any rights of the City.

11. RENEWAL OF FRANCHISE

11.1. The City and Franchisee agree that any proceedings undertaken by the City that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

11.2. Notwithstanding anything to the contrary set forth herein, Franchisee and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof.

11.3. Franchisee and the City consider the terms set forth in this Article 11 to be consistent with the express provisions of 47 U.S.C. 546.

12. ENFORCEMENT AND TERMINATION OF FRANCHISE

12.1. *Notice of Violation:* If at any time the City believes that Franchisee has not complied with the terms of the Franchise, the City shall notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

12.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to the City, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance and notify the City of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, City shall provide written confirmation that such cure has been effected, provided that, it shall be the Franchisee's burden to demonstrate, that the noncompliance has been cured.

12.3. *Enforcement:* Subject to applicable federal and state law, in the event the City, determines that Franchisee is in default of any provision of this Franchise, the City may:

12.3.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

12.3.2. Seek liquidated damages pursuant to Section 12.4 below; or

12.3.3. Commence an action at law for monetary damages or seek other equitable relief; or

12.3.4. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.6

12.4. *Liquidated Damages:* In the event that the City finds that a violation continues to exist and that Franchisee has not corrected the same in a satisfactory manner or has not diligently pursued correction of such violation, Franchisee agrees that the City may recover liquidated damages from Franchisee in the amounts set forth below following the notice and opportunity to cure provisions set forth in Section 12.2 above. The City shall provide Franchisee with written notice that it intends to elect the liquidated damage remedies set forth herein. If City elects to recover liquidated damages, City agrees that such recovery shall be its exclusive remedy for the time period in which liquidated damages are assessed;

provided, however, once City has ceased to assess its liquidated damages remedy as set forth in Section 12.4.1, it may pursue other available remedies.

12.4.1. The following liquidated damages shall apply:

- For failure to maintain the FCC technical standards as set forth in Section 4 – \$100 per day for each day the violation continues;
- For failure to provide PEG Services to the community specified in Section 5 – \$100 per day for each day the violation continues;
- For failure to provide City with any reports or records required by the Agreement within the time period required – \$50 per day for each day the violation continues;
- For failure to meet customer service requirements in Sections 2, 3 and 4 of the Customer Service Standards set forth in Exhibit C – \$100 per day for each day the violation continues; and
- For any other material breach not previously listed - \$100 per day for each day the violation continues.

The total amount of all liquidated damages per annum shall not exceed twenty-five thousand dollars (\$25,000) in the aggregate. All similar violations or failures arising from the same factual events affecting multiple subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any one of the above-referenced categories. The City's right to collect liquidated damages shall not commence until the Franchisee has failed to cure as provided in Section 12.2.

12.5. *Public Hearing:* If Franchisee disputes the assessment of any liquidated damages hereunder, Franchisee may request and City agrees to schedule a public hearing with regard to such dispute. The City shall provide Franchisee at least thirty (30) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

12.6. *Revocation:* Should the City seek to revoke this Franchise after following the procedures set forth above in this Article, the City shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have sixty (60) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

12.6.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

12.6.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the City shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The City shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to affect any cure. If the City determines that the Franchise shall be revoked, the City shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the City to an appropriate court. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within thirty (30) days of Franchisee's receipt of the determination of the franchising authority.

12.6.3. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

12.7. *Letter of Credit:* If there is an uncured breach by Franchisee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Franchisee shall, upon written request, establish and provide to the City, as security for the faithful performance by Franchisee of all of the provisions of this Franchise, a letter of credit in the amount of twenty-five thousand dollars (\$25,000).

12.7.1. If a letter of credit is furnished pursuant to subsection 12.7, the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.

12.7.2. After written notice has been provided to Franchisee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

12.7.2.1. Failure of Franchisee to pay the City sums due under this Franchise;

12.7.2.2. Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by Franchisee;

12.7.2.3. Monetary remedies or damages assessed against Franchisee as provided in this Franchise.

12.7.3. Within thirty (30) days following notice that a withdrawal has occurred, Franchisee shall restore the letter of credit to the full amount required by subsection

12.7. Franchisee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

12.7.4. Franchisee shall have the right to appeal to the City Council for reimbursement in the event Franchisee believes that the letter of credit was drawn upon improperly. Franchisee shall also have the right of judicial appeal if Franchisee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Franchisee with interest, from the date of withdrawal at the prevailing interest rate for local government borrowing as provided under State law.

12.8. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Service Date of this Franchise, if at the end of such three (3) year period Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System. Franchisee may consider subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.6 shall be given to the City in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

13. MISCELLANEOUS PROVISIONS

13.1. *Actions of Parties:* In any action by the City or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

13.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

13.3. *City Hearing:* The parties acknowledge that the City may hold a hearing at any time to review Subscriber satisfaction with Cable Services in the City.

13.4. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

13.5. *Force Majeure*: Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

13.5.1. Furthermore, the parties hereby agree that it is not the City's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the City and/or Subscribers.

13.6. *Notices*: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

13.6.1. Notices to Franchisee shall be mailed to:

Verizon Northwest Inc.
Attn: Tim McCallion, President
112 Lakeview Canyon Road, CA501GA
Thousand Oaks, CA 91362

13.6.2. with a copy to:

Mr. Jack H. White
Senior Vice President & General Counsel - Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

13.6.3. Notices to the City shall be mailed to:

Janice Perry
Multimedia Communications Manager
City Hall
123 - 5th Avenue
Kirkland, WA 98033-6189

13.6.4. with a copy to:

Brenda Cooper
Chief Information Officer
IT Department
City Hall
123 5th Avenue
Kirkland, WA 98033-6189

13.7. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the City, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

13.8. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

13.9. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

13.10. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

13.11. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

13.12. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

13.13. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for cable service or otherwise, to the City or any third party. Franchisee shall not be required to remove or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

13.14. *Independent Review:* The City and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

SIGNATURE PAGE FOLLOWS

AGREED TO THIS _____ DAY OF _____, 2008.

CITY OF KIRKLAND

By: _____
David Ramsay, City Manager

Verizon Northwest Inc.

By: _____
Tim McCallion, President

EXHIBITS

Exhibit A: Service Area Map

Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: Customer Service Standards

EXHIBIT A SERVICE AREA MAP

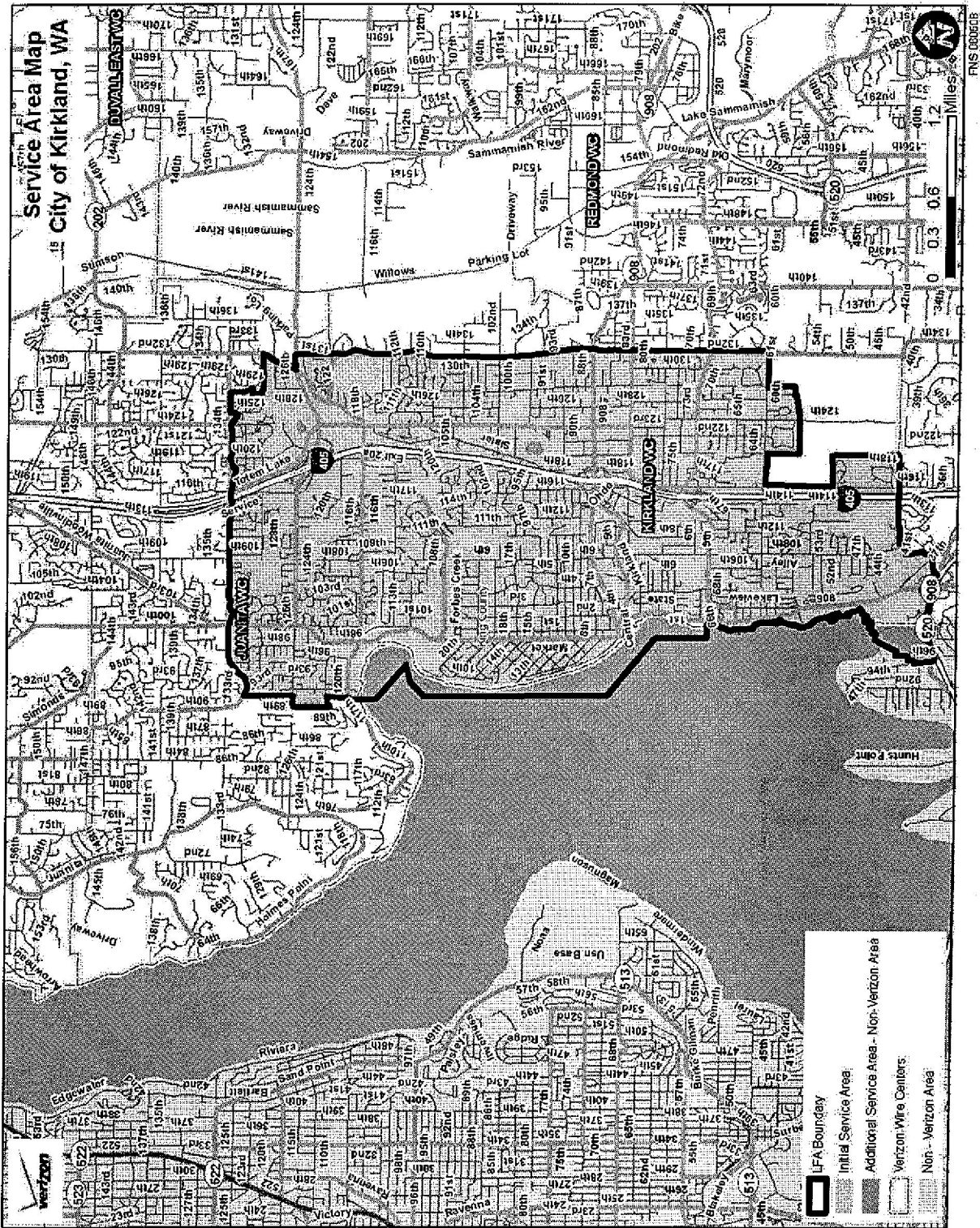


EXHIBIT B
MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

City Hall
 123 Fifth Avenue
 Kirkland, WA 98033

Fire Station 24
 8411 NE 141st Street
 Kirkland, WA 98033

City Hall Annex 2
 505 Market Street
 Kirkland, WA 98033

Fire Station 25
 12033 76th Place NE
 Kirkland, WA 98033

North Kirkland Community Center
 12421 103rd Avenue NE
 Kirkland, WA 98033

Fire Station 26
 9930 124th Avenue NE
 Kirkland, WA 98033

Peter Kirk Community Center
 352 Kirkland Avenue
 Kirkland, WA 98033

Fire Station 27
 11210 NE 132nd
 Kirkland, WA 98033

Maintenance Center
 915 8th Street
 Kirkland, WA 98033

Kirkland Municipal Court
 11515 NE 118th Street
 Kirkland, WA 98033

Fire Station 21
 9816 Forbes Creek Drive
 Kirkland, WA 98033

Kirkland Library
 308 Kirkland Avenue
 Kirkland, WA 98033

Fire Station 22
 6602 108th Avenue NE
 Kirkland, WA 98033

EXHIBIT C CUSTOMER SERVICE STANDARDS

These standards shall, starting six months after the Service Date, apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

SECTION 1: DEFINITIONS

- A. Respond: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.
- B. Service Call: The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- C. Service Interruption: The loss of picture or sound on one or more cable channels.
- D. Standard Installation: Installations where the subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.
- E. System Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

SECTION 2: TELEPHONE AVAILABILITY

- A. The Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Franchise Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.
- B. Franchisee employees or agents who are capable of responding to Service Interruptions must be available twenty-four (24) hours a day, seven (7) days a week.
- C. The Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by the Franchisee.
- D. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue

for a live representative. The Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

E. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

F. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

G. Upon request from the City, but in no event more than once a quarter thirty (30) days following the end of each quarter, the Franchisee shall report to the City the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.

(2) Percentage of time customers received busy signal when calling the Verizon service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request.

H. At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the City of such a change at least thirty (30) days in advance of any implementation.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after an order is placed if the Optical Network Terminal ("ONT") is already installed on the customer's premises or within fourteen (14) business days after an order is placed if the ONT is not already installed on the customer's premises.

The Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than seven (7) business days after an order is placed if the ONT is already installed on the customer's premises or fourteen (14) business days after an order is placed if the ONT is not already installed on the customer's premises.

C. If the Franchisee determines that a residential installation that is not a standard installation is required, the Franchisee shall provide the customer in advance with a cost estimate and an estimated date of completion.

D. All underground cable drops from the curb to the home shall be buried within a reasonable period of time from the initial installation, or at a time mutually agreed upon between the Franchisee and the Subscriber. In all instances, the Franchisee must comply with the State of Washington's "one call" requirements.

E. The Franchisee shall provide the City with a report upon request from the City, but in no event more than once a quarter thirty (30) days following the end of each quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request.

At the Franchisee's option, the measurements and reporting of above may be changed not more than one time during the Term of this Agreement from calendar quarters to billing or accounting quarters. The Franchisee shall notify the City of such a change not less than thirty (30) days in advance.

F. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block between 8:00 AM and 6:00 PM or another block of time mutually agreed upon by the Subscriber and the Franchisee. These options shall be clearly explained to the Subscriber at the time of scheduling. These hour restrictions do not apply to weekends.

G. The Franchisee may not cancel an appointment with a Subscriber after 5:00 PM on the day before the scheduled appointment, except for appointments scheduled within twelve hours after the initial call.

H. If Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled as necessary at a time that is convenient for the Subscriber. If the Subscriber is absent when the technician arrives, the technician shall leave written notification of timely arrival.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. The Franchisee shall notify the City of any System Outage.

B. The Franchisee shall exercise reasonable efforts to limit any System Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule an outage of service between 6 a.m. and 12:01 a.m. which affects at least 250 Subscribers for a period of more than two (2) hours during any twenty-four (24) hour period only after the City and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice. Notwithstanding the forgoing, Franchisee may perform

modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.

C. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) In the event of a System Outage resulting from Franchisee equipment failure, the Franchisee shall remedy the problem as quickly as reasonably possible.

(2) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.

(3) The Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the City of a Cable Service problem.

D. Under Normal Operating Conditions, the Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

E. The Franchisee shall meet the standard in subsection D of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

F. The Franchisee shall provide the City with a report upon request from the City, but in no event more than once a quarter within thirty (30) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request. At the Franchisee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the City of such a change at least thirty (30) days in advance.

G. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

H. Under Normal Operating Conditions, if a System Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected

Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5: CUSTOMER COMPLAINTS

A. Franchisee shall establish written procedures for receiving, acting upon, and resolving complaints without intervention by the City (except where necessary) and shall publicize such procedures clearly as set forth in Section 10.K of these standards. Said written procedures shall describe a simple process by which any Subscriber may submit a complaint to the Franchisee.

B. The Franchisee shall also notify the Subscriber of the Subscriber's right to file a complaint with the City in the event the Subscriber is dissatisfied with the Franchisee's decision.

C. Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by the City within five (5) business days. The Franchisee shall notify the City of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The City may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- (1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.

G. The Franchisee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the City upon request.

H. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its' discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Franchisee, the payment alternative may be limited.

I. The City hereby requests that Franchisee omit the City's name, address and telephone number from Franchise bill as permitted by 47 CFR 76.952.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. The Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, or 3) who rent Subscriber equipment from the Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment which the Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by the Franchisee or its' authorized agent. Appropriate time considerations shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. The Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Franchisee's equipment (for example, a dog chew).

B. The Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

A. Charges for Cable Service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Franchisee. No charge shall be imposed upon the Subscriber for or related to downgrading of Cable Service, unless there is a delay in returning Grantee equipment or downgrade charges apply pursuant to the terms and conditions in the Subscriber's service contract.

B. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

C. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

D. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee employees who routinely come into contact with members of the public at their places of residence shall wear a uniform provided by the Franchisee, except to the extent such requirement is affected by or subject to any contractual agreement(s) between the Franchisee and any Person other than the City. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

B. All Customer Service Representatives ("CSRs") shall identify themselves to callers immediately following the greeting during each telephone contact with the public. Each CSR, technician or employee of the Franchisee, in each contact with a Subscriber, shall state the standard cost of the service, repair, or installation prior to delivery of the service or before any work is performed.

C. All contact with a Subscriber or potential Subscriber by a Person representing the Franchisee shall be conducted in a courteous manner.

D. Franchisee shall maintain an Internet web presence. Except for normal and regularly scheduled maintenance, the web site shall be available twenty-four hours and seven days a week under Normal Operating Conditions.

E. A customer service representative may have the authority to provide credits, waive fees, schedule service appointments and change billing cycles, where appropriate in Franchisee's judgment. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall attempt to resolve the problem within seventy-two (72) hours or within such other time frame as is acceptable to the Subscriber and the Franchisee.

F. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the City.

G. The Franchisee must take appropriate steps to ensure that all written Franchisee promotional materials, announcements and advertising of Cable Service to Subscribers and the

general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, the Franchisee will take appropriate steps to ensure that prices and terms are clearly and accurately disclosed to potential Subscribers in advance of taking the order.

H. All notices identified in this Section shall be by either:

- (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
- (2) A separate electronic notification.

I. The Franchisee shall provide reasonable notice to Subscribers of any changes in rates, programming services or channel positions to the Subscribers' service or other changes affecting Cable Service of the Subscriber (excluding sales discounts). Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee, and the Franchisee shall provide a copy of the notice to the City including how and where the notice was given to Subscribers.

J. In addition to the requirements regarding advance notification to Subscribers of any changes in rates, programming services or channel positions or other changes affecting Cable Service (excluding sales discounts), the Franchisee shall give fifteen (15) days' written notice to the City before implementing any rate or service change.

K. The Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.L, at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address and telephone number of the City, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;

- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of the Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.K. will be given to the City at least fifteen (15) days prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not within the control of Franchisee.

L. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

M. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

N. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and
- (4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

O. Subscriber Contract. The Franchisee's terms of service and any Subscriber contract shall be consistent with the terms of this Franchise.

P. Franchisee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Franchisee representative going to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a local business office within the Franchise Area.

SECTION 11: MISCELLANEOUS

A. Services for Mobility-Impaired Subscribers. For any Subscriber that is mobility impaired, the Franchisee shall, at no charge, deliver and pick up converters and other Franchisee equipment at the Subscriber's home. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, hook it up

and ensure that it is working properly, and shall return the defective converter or such other equipment to the Franchisee.

B. The Franchisee shall provide customer service via TDD/TTY calls as requested by any hearing-impaired Subscriber at no charge.

C. Franchisee Representative: Within thirty (30) days of the Effective Date, Franchisee shall assign a representative to be available to the City to address Franchise implementation issues. Within such time period, Franchisee shall notify the City in writing of the name and contact information for such representative. If Franchisee changes the representative assigned to the City, Franchisee shall notify the City in writing of such change.

D. Late Fees: Franchisee's late fee and disconnection policies shall be in accordance with applicable federal and state law, including all laws relating to nondiscrimination.

PUBLICATION SUMMARY
OF ORDINANCE NO. 4140

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING VERIZON NORTHWEST INC. A NON-EXCLUSIVE CABLE FRANCHISE.

SECTION 1. Authorizes the City Manager to sign a cable franchise agreement with Verizon Northwest Inc.

SECTION 2. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 21st day of October, 2008.

I certify that the foregoing is a summary of Ordinance 4140 approved by the Kirkland City Council for summary publication.

Acting Karen R. Jewell
City Clerk

CABLE FRANCHISE AGREEMENT

between

CITY OF KIRKLAND

and

VERIZON NORTHWEST INC.

2008

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between Kirkland, a duly organized city under the applicable laws of the State of Washington (the "City") and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (the "Franchisee").

WHEREAS, the City wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Washington state law;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Washington;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the City, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the City has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate, in a full public proceeding affording due process to all parties;

WHEREAS, the City has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

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.

NOW, THEREFORE, in consideration of the City's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the City pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged.

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel, which Franchisee shall make available to the City without charge for non-commercial Public, Educational, or Governmental use for the transmission of video programming as directed by the City. For purposes of this definition, non-commercial shall not preclude the City, or any entity managing its Access Channel, from entering into underwriting or sponsorship arrangements with third party entities that conform with sponsorship guidelines used by the Public Broadcasting Service.

1.1.1. *Public Access Channel*: An Access Channel where the public is the primary user.

1.1.2. *Educational Access Channel*: An Access Channel where Schools are the primary users or exercise primary editorial control over programming and services.

1.1.3. *Government Access Channel*: An Access Channel means an Access Channel where governmental institutions or their designees are the primary users or exercise primary editorial control over programming and services.

1.1.4. *PEG*: Public, Educational, and Governmental.

1.2. *Additional Service Area*: Shall mean any such portion of the Service Area added pursuant to Section 3.1.3 of this Agreement.

1.3. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

1.4. *Basic Service*: Any service tier which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.5. *Cable Service* or *Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), as may be amended from time to time.

1.6. *Cable System* or *System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.7. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), as may be amended from time to time.

1.8. *City*: The City of Kirkland, Washington.

1.9. *Communications Act*: The Communications Act of 1934, as amended.

1.10. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchisee's affairs.

1.11. *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.

1.12. *Force Majeure* An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God.

1.13. *Franchise Area*: The incorporated area (entire existing territorial limits) of the City and such additional areas as may be included in the corporate (territorial) limits of the City during the term of this Franchise.

1.14. *Franchisee*: Verizon Northwest Inc., and its lawful and permitted successors, assigns and transferees.

1.15. *Gross Revenue*: All revenues derived directly by the Franchisee or its Affiliates from the operation of the Cable System to provide Cable Services within the Service Area, including Franchise fees. Subject to Section 1.15.10 below, fees, payments, or other consideration received by the Franchisee from programmers for carriage of programming on the Cable System and advertising sales commissions shall be included as part of Gross Revenues if they are recognized as revenues under generally accepted accounting principles ("GAAP").
Gross Revenue shall not include:

1.15.1. Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System, provided that the purpose of the payments is not to reduce the amount of the Franchise fee;

1.15.2. Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.15.3. Refunds, rebates or discounts made to Subscribers or other third parties to the extent the revenues refunded would otherwise be included in Gross Revenue;

1.15.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from

Telecommunications Services; revenue received from Information Services, and any other revenues attributed to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. Nothing in this Subsection 1.15.4 shall have the effect of excluding from Gross Revenue any revenues derived from Cable Service over the Cable System;

1.15.5. Any revenue paid directly by Subscribers for the sale of merchandise through any home shopping channel, infomercial, or advertisement, provided that, commissions or other compensation related to such sales paid to the Franchisee shall be included in Gross Revenue;

1.15.6. Any revenues paid by subscribers and received by third-party channel lessees, except for the portion paid to Franchisee for services and facilities Franchisee provides to the third party channel lessee;

1.15.7. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees);

1.15.8. Any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.15.9. Sales of capital assets or sales of surplus equipment;

1.15.10. Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction of new programming pursuant to a written marketing agreement;

1.15.11. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing. Nothing in this Subsection 1.15.11 shall have the effect of excluding from Gross Revenue any revenues derived from Cable Service over the Cable System;

1.15.12. Any fees or charges collected from Subscribers or other third parties for PEG Grants.

1.16. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(20).

1.17. *Initial Service Area*: The portion of the Franchise Area as outlined in Exhibit A.

1.18. *Internet Access*: A service that enables Subscribers to access the Internet.

1.19. *Non-Cable Services*: Any services that are not Cable Services.

1.20. *Normal Operating Conditions*: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages beyond the control of Franchisee or an Affiliate, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. *See* 47 C.F.R. § 76.309(c)(4)(ii).

1.21. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.22. *Public Rights-of-Way*: The surface of and space above and below any real property in the City in which the city has a regulatory interest, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the City, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for public utility purposes; provided, however, this shall not include public parks for which a separate authorization and agreement to utilize any part of same shall be required from the City. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.23. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area, and any Additional Service areas.

1.24. *Service Date*: The date that the Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area. The Franchisee shall memorialize the Service Date by notifying the City in writing of the same, which notification shall become a part of this Franchise.

1.25. *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.26. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.27. *Telecommunications Facilities*: Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.28. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.29. *Title II*: Title II of the Communications Act.

1.30. *Title VI*: Title VI of the Communications Act.

1.31. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), as may be amended from time to time.

2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Act, the City hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. This Franchise is for the provision of Cable Services only. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *City's Regulatory Authority Over Telecommunications Facilities*: The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. The jurisdiction of the City over Franchisee's Telecommunications Facilities is restricted by federal and state law, and the City will not assert jurisdiction over Franchisee's FTTP Network in contravention of those laws. This Agreement shall not be construed to limit the regulatory authority, if any, the City has under federal and state law with respect to the FTTP Network facilities as Telecommunications Facilities. Nothing in this Section 2.2 is intended to expand or contract any rights the City may have to regulate Non-Cable Services. Both the City and the Franchisee reserve all rights with respect to the issue of the provision of Non-Cable Services.

2.3. *Term*: This Franchise shall become effective on _____, 20__ (the "Effective Date"). The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

2.4. *Grant Not Exclusive*: The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and City reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise.

2.5. *Franchise Subject to Federal Law*: Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.6. No Waiver:

2.6.1. The failure of City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse City from performance, unless such right or performance has been specifically waived in writing.

2.7. Construction of Agreement:

2.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives

2.7.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.8. *Police Powers*: Nothing in the Franchise shall be construed to prohibit the lawful exercise of the City's police powers. However, if the lawful exercise of the City's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then the Franchisee may terminate this Agreement without further obligation to the City or, upon mutual consent of the parties, the parties shall submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. **PROVISION OF CABLE SERVICE**

3.1. Service Area:

3.1.1. *Initial Service Area*: Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area and may make Cable Service available to businesses in the Initial Service Area, within eighteen (18) months of the Effective Date of this Agreement, and shall offer Cable Service to all residential areas in the Initial Service Area within five (5) years of the Effective Date of this Agreement, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the City; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) actions or inactions of any government instrumentality or public utility including condemnation; (E) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (F) in areas, developments or buildings where Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; (G) in developments or buildings that Franchisee is unable to

provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; (H) work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, or caused by unavailability of materials and/or qualified labor to perform the work necessary; and (I) in areas where the occupied residential household density does not meet the density requirements set forth in sub-section 3.1.2.

3.1.2. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in subsection 3.1.1, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the City that the density requirements have been met.

3.1.3. *Additional Service Areas:* Except for the Initial Service Area Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Franchisee desires to add Additional Service Areas within the Franchise Area, Franchisee shall notify the City in writing of such Additional Service Area at least ten (10) days prior to providing Cable Services in such areas.

3.1.4. *Annexation:* To the extent that the City annexes any areas of unincorporated King County served by the Kirkland and Juanita wire centers, as shown in Exhibit A, such annexed areas shall be subject to Section 3.1.1 above. Any other annexed areas shall be subject to Section 3.1.3 above. The City shall give Franchisee at least 30 days notice of the effective date of any annexation.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred twenty five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Municipal Buildings:*

3.3.1. Subject to Section 3.1, upon request by the City Grantee shall provide the following, without charge, to those buildings set forth in Exhibit B; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than three hundred (300) feet solely to provide service to any such building, the City shall have the option

of paying Franchisee's direct costs for such extension in excess of three hundred (300) feet, or of releasing or postponing Franchisee's obligation to provide service to such building:

3.3.1.1. One service drop to each building;

3.3.1.2. One Subscriber digital converter activated for the lowest service tier which includes the retransmission of local television broadcast signals and the PEG Channels required by this Franchise (except as otherwise agreed by the parties in writing); and

3.3.1.3. One service outlet activated for the lowest service tier which includes the retransmission of local television broadcast signals and the PEG Channels required by this Franchise (except as otherwise agreed by the parties in writing).

3.3.2. The Franchisee shall be permitted to recover, from any building owner entitled to free service under this Section 3.3, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than three hundred (300) feet of drop cable; provided however that Franchisee shall not charge for the provision of the lowest service tier which includes the retransmission of local television broadcast signals and the PEG Channels required by this Franchise to the additional outlets once installed.

3.3.3. The cost of inside wiring, additional drops or outlets and additional converters requested by the City within these specified facilities are the responsibility of the City. The City shall be responsible for the cost of any "terminal equipment," including TV monitors, VCRs, and/or computers.

3.3.4. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee shall be replaced at retail rates if lost, stolen or damaged.

4. **SYSTEM FACILITIES**

4.1. *System Characteristics:* Franchisee's Cable System shall be designed to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.

4.2. *Technical Requirement:* The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, and the National Electric Code.

4.3. *Subscriber Network:* Franchisee shall comply with the closed captioning requirements of the FCC.

4.4. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems contiguous to or in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.5. *Emergency Alert System*: Franchisee shall comply with the Emergency Alert System (“EAS”) requirements of the FCC in order that emergency messages may be distributed over the System.

4.6. *Cable System Performance Testing*:

4.6.1. Franchisee shall perform all tests required by the FCC on its Cable System. Upon written request, all FCC required tests may be witnessed by an employee of the City.

4.6.2. Franchisee shall maintain written records of all Cable System test results performed by or for Franchisee. Copies of such test results will be available as part of its public file available for inspection as provided by applicable rules and regulations.

4.6.3. Franchisee shall promptly take such corrective measures as are necessary to correct fully any performance deficiencies and to prevent their recurrence as far as possible.

4.7. *Additional Tests*: Franchisee shall conduct special proof of performance tests of the Cable System or a segment thereof when Subscriber complaints received by the City indicate tests are warranted. Upon request from the City, the results of any such testing shall be provided to the City within a reasonable time.

5. **PEG SERVICES**

5.1. *PEG Access Channels*:

5.1.1. All PEG Access Channels provided for herein shall be administered by the City or its designee. The City or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. §531.

5.1.2. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide on the Basic Service tier two (2) Government Access Channels and one (1) Educational Access Channel, and shall reserve three (3) additional dedicated Access Channels for City’s future use (“Reserve Access Channels”). On the Educational Access Channel, Franchisee shall transmit within the Service Area, at the request of the City, the Video Programming which originates on the campus of Bellevue Community College, 3000 Landerholm Circle SE, Bellevue, WA to the extent Franchisee has the legal and technical ability to access and obtain that Video Programming signal in a commercially reasonable manner. If Franchisee is not so able to access and obtain that Video Programming signal from the Video Programming origination location, the City will make arrangements to provide the signal to Franchisee at the PEG Origination Site in accordance with the conditions set forth in Subsection 5.2.1. In addition to the foregoing Government Access Channels, Educational Access Channel and Reserve Access Channels, Franchisee shall transmit within the Service Area, to the extent Franchisee has the legal and technical ability to access, obtain, and provision that Video Programming signal in a commercially reasonable manner, the King County Government Channel (CTV), within a reasonable time of obtaining such Video

Programming and providing such channel to King County pursuant to a franchise agreement with King County.

5.1.3. The City hereby authorizes Franchisee to transmit PEG programming within and without the City's jurisdictional boundaries. Franchisee specifically reserves its right to make or change channel assignments in its sole discretion. In the event Franchisee changes any PEG Channel assignment, Franchisee shall use best efforts to provide ninety (90) days and at least forty-five (45) days advance written notice to the City prior to any such re-assignment. In connection with the movement of any of the City's Government Access Channels to other Channel numbers, Franchisee shall provide notice as provided in Sections 10.H and 10.I of Exhibit C. If a PEG Channel provided under this Article is not being utilized by the City, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the City elects to utilize the PEG Channel for its intended purpose. Franchisee shall neither have nor attempt to exercise any editorial control over the Access Channel programming.

5.1.4. Reserved PEG Access Channels: The City may activate the Reserve Access Channel(s) subject to the following conditions:

5.1.4.1. The City must provide Franchisee written documentation of its need to activate the reserved capacity that cannot be fulfilled by the existing PEG Access Channel(s). Such need may be demonstrated by the use of the existing PEG Access Channel(s) for original programming (excluding character generated and filler programming, e.g., AM/FM radio programming) during fifty percent (50%) of the hours between 10:00 am and 10:00 pm, five days per week, during any consecutive eight (8) week period. The programming on the new channel shall be distinct and non-repetitive of the existing PEG Channels;

5.1.4.2. The City shall require other cable providers to provide similar additional Access Channel(s) (except to the extent the City cannot legally require such additional Access Channel(s) from those cable providers which, as of the Effective Date of this Agreement, are subject to a franchise agreement with King County which does not require such Channel(s)); and

5.1.4.3. In the event the origination point of the Reserve Access Channel(s) is the PEG Origination Site as defined below, Franchisee will provide the Reserve Access Channel within one hundred eighty (180) days following the City's written request and verification of compliance with each of the foregoing conditions and those specified in Section 5.2. If the origination point is not the PEG Origination Site, the timing of the availability and other conditions will be by mutual agreement of the parties. Unless the parties agree otherwise, the origination point shall not be located outside of the Service Area.

5.1.5. The City shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the City from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal

authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel.

5.2. PEG Connections:

5.2.1. The City shall provide and ensure suitable video signals for the Government Access Channels to Franchisee at Kirkland City Hall, 123 5th Avenue, Kirkland, Washington 98033 (the "PEG Origination Site"). The Franchisee's obligations under this Subsection 5.2.1, including its obligation to provide upstream equipment and facilities necessary to transmit signals, shall be subject to the provision by the City, without charge to the Franchisee, of: (1) access to the PEG Origination Site facility; (2) access to any required PEG equipment within the PEG Origination Site facility and suitable required space, environmental conditions, electrical power supply, access, and pathways within the PEG Origination Site facility; (3) video signals in NTSC format, with any future format to be a mutually agreed upon format suitable for PEG Access Channel programming ; (4) any third-party consent that may be necessary to transmit PEG signals (including, without limitation, any consent that may be required with respect to third-party facilities, including the facilities of the incumbent cable provider, used to transmit PEG content to the PEG Origination Site from auxiliary locations); and (5) any other cooperation by the City and access to facilities as are reasonably necessary for the Franchisee to fulfill the obligations stated herein. To the extent a suitable video signal is provided to Franchisee and the foregoing conditions are met, Franchisee shall, within one hundred twenty (120) days of the Service Date or provision of a suitable video signal, whichever is later, provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to Subscribers. Franchisee shall attempt in good faith to install such equipment earlier, if commercially reasonable. The transmission of PEG Channels shall be simulcast in a manner in which the signals originally provided to Franchisee experience no greater degradation during such transmission than do any other signals on the Basic Service tier broadcast by the Franchisee to Subscribers.

5.2.2. The City shall have the right to relocate the PEG Origination Site one time during the term of this Franchise as follows: The new location shall be located within one hundred twenty-five (125) feet of one of Franchisee's active, video-enabled FTTP trunk or feeder lines in the Service Area; Franchisee's obligation shall be subject to the same conditions that apply to the PEG Origination Site in Section 5.2.1; the City shall provide access to such space at least ninety (90) days prior to anticipated use of the new PEG Origination Site; and the City shall reimburse fifty percent of Franchisee's costs associated with the relocation of equipment necessary for transmitting the PEG signal, not to exceed Ten Thousand Dollars (\$10,000).

5.3. PEG Grant:

5.3.1. Franchisee shall provide an annual grant to the City to be used in support of the production of local PEG programming (the "PEG Grant"). Such grant shall be used by the City for capital costs for PEG access equipment, including, but not limited to,

studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

5.3.2. The PEG Grant provided by Franchisee hereunder shall be the sum of twenty-five cents (\$0.25), per month, per Subscriber in the Franchise Area to Franchisee's Basic Service tier. Payment of the PEG Grant shall be contingent upon the City imposing a PEG Grant requirement of at least twenty-five cents (\$0.25) per subscriber, per month on all Cable Operators in the Service Area (except to the extent the City cannot legally require such PEG Grant from those Cable Operators which, as of the Effective Date of this Agreement, are subject to a franchise agreement with King County which does not require a PEG Grant of at least twenty-five cents (\$0.25) per subscriber, per month). The per subscriber, per month amount of the PEG Grant can be modified as determined by the City Council no more than once each year, shall be no greater than \$1.00, per Subscriber, per month, and shall be the same amount required of all other Cable Operators in the Service Area (except to the extent the City cannot legally require such PEG Grant from those Cable Operators which, as of the Effective Date of this Agreement, are subject to a franchise agreement with King County which does not require a PEG Grant of at least twenty-five cents (\$0.25) per subscriber, per month). The City shall provide Franchisee with at least sixty (60) days written notice of any change in the amount of the PEG Grant pursuant to this subsection. Franchisee shall deliver the PEG Grant payment, along with a brief summary of the Subscriber information upon which it is based, to the City concurrent with the Franchise fee payment. Calculation of the PEG Grant will commence with the first calendar quarter during which Franchisee obtains its first Subscriber in the Service Area. The City shall give Franchisee sixty (60) days prior written notice if it ceases to require financial support from any new or existing providers within the Franchise Area.

5.3.3. Upon request by Franchisee, the City shall provide Franchisee a summary report concerning the actual use of funds granted pursuant to this Section.

5.3.4. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the PEG Grant and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through these costs to Subscribers.

6. **FRANCHISE FEES**

6.1. *Payment to City:* Franchisee shall pay to the City a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Payments shall be due and payable in May (for the first quarter), August (for the second quarter), November (for the third quarter), and February (for the fourth quarter). Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were

incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable.

6.2. *Acceptance of Payment:* No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

6.3. *Late Payments:* In the event any payment due the City is not timely made, Franchisee shall pay, in addition to the amount due, interest at the maximum allowed rate for judgments as provided under Washington law until the date the City receives the payment.

6.4. *Underpayments:* If franchise fee underpayments are discovered as a result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate for judgments as provided under Washington law, calculated from the date the underpayment was originally due until the date the City receives the payment.

6.5. *Supporting Information:* Each franchise fee payment shall be accompanied by a brief report that provides line items of revenue sources and is verified by a financial manager of Franchisee showing the basis for the computation.

6.6. *Limitation on Fee Actions:* The parties agree that the period of limitation for recovery of any fee payable hereunder shall be four (4) years from the date on which payment by Franchisee is due.

6.7. *No Limitation on Taxing Authority:* Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee, or assessment of general applicability. Nothing in this Franchise is intended to preclude Franchisee from exercising any right it may have to challenge the lawfulness of any tax, fee, or assessment imposed by the City or any state or federal agency or authority, or intended to waive any rights the Franchisee may have under 47 U.S.C. § 542.

6.8. *Bundled Services:* Bundled Services: In the event that Grantee offers Cable Services and Non-Cable Services to its Subscribers in the City, and those services are included in one monthly bill to each Subscriber, then Grantee shall clearly itemize each of the respective services on the bill. The rates for cable service shall accurately reflect the rate card rates less discounts, if any exist.

7. **CUSTOMER SERVICE**

7.1. Customer Service Requirements are set forth in Exhibit C, which shall be binding unless amended by written consent of the parties. Exhibit C is hereby incorporated into and subject to this Agreement.

8. **REPORTS AND RECORDS**

8.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the

City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than four (4) years.

Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. To the extent permitted under State law, the City shall treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. If the City receives a request from any Person for disclosure of any confidential information, the City shall, so far as consistent with applicable law, advise Franchisee and provide a copy of such request to Franchisee within six (6) business days of its receipt so that Franchisee has an opportunity to seek an appropriate protective order prior to disclosure. Franchisee may disclose Subscriber information to the extent consistent with Section 631 of the Communications Act, 47 U.S.C. § 551.

8.2. Records Required: Franchisee shall at all times maintain:

8.2.1. Records of all written complaints for a period of four (4) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

8.2.2. Records of outages for a period of four (4) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.2.3. Records of service calls for repair and maintenance for a period of four (4) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.2.4. Records of installation/reconnection and requests for service extension for a period of four (4) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

9. **INSURANCE AND INDEMNIFICATION**

9.1. *Insurance:*

9.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

9.1.1.1. Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the City.

9.1.1.2. Automobile Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for bodily injury and property damage coverage.

9.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Washington.

9.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

9.1.2. The City shall be designated as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

9.1.3. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

9.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Washington, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

9.1.5. Upon written request, Franchisee shall deliver to City Certificates of Insurance showing evidence of the required coverage.

9.2. Indemnification:

9.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend the City, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that the City shall give Franchisee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the City, for any damages, liability or claims resulting from the willful misconduct or negligence of the City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access, or EAS, or the distribution of any Cable Service over the Cable System.

9.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the City by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the

City, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the City from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the City, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the City and the City does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the City shall in no event exceed the amount of such settlement.

9.2.3. The City shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the City.

9.2.4. The City shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the City for which the City is legally responsible, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the City for acts of the City which constitute willful misconduct or negligence, on the part of the City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

10. **TRANSFER OF FRANCHISE**

10.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no "Transfer of the Franchise" shall occur without the prior consent of the City, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, provided that any such pledge of assets which results in Franchisee's inability to satisfy its obligations under this Franchise shall constitute a violation of this Franchise.

10.2. A "Transfer of the Franchise" shall mean any transaction in which:

10.2.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or

10.2.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

Notwithstanding Subsections 10.2.1 and 10.2.2, a Transfer of the Franchise shall not include (a) transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; (b) transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; (c) any action which is the result of a merger of the parent of Franchisee; or (d) any action which is the result of a merger of another Affiliate of Franchisee. Franchisee shall provide written notice to the City prior to a transfer of any interest described in (a) or (b) of this paragraph. Also

with respect to transfers to Affiliates described in (a) or (b) of this paragraph, Franchisee shall guaranty the performance of this Agreement by such Affiliate; provided, however, that Franchisee may request the City to release said guaranty and the City shall act upon such request as promptly as reasonably possible. In considering such request, the City shall make its decision as to whether or not to release said guaranty by and upon evaluating the financial qualifications of the assignee or transferee. Franchisee shall provide the City with such information as may be reasonably required for the City to make such evaluation. Subject to Franchisee's compliance with such obligation, the City shall conduct such evaluation and reach its decision as promptly as practicable and shall not unreasonably withhold, delay or deny its consent to the release of said guaranty. Upon making its decision, the City shall promptly deliver to Franchisee written notice thereof. If the City shall agree to release said guaranty, it shall promptly deliver to Franchisee a written document evidencing such release of said guaranty.

10.3. Franchisee shall make a written request ("Request") to the City for approval of any Transfer of the Franchise and furnish all information required by law and/or reasonably required by the City in respect to its consideration of a proposed Transfer of the Franchise. In reviewing a Request related to a Transfer of the Franchise, the City may inquire into any matter reasonably related to the ability and willingness of the prospective transferee to perform, including the legal, technical and financial qualifications of the prospective transferee. Franchisee shall assist the City in so inquiring.

10.4. The City shall render a final written decision on the Request within one hundred twenty (120) days of the Request, provided it has received all information which the City may lawfully require, such as a complete FCC Form 394. Subject to the foregoing, if the City fails to render a written decision on the Request within one hundred twenty (120) days, the Request shall be deemed granted unless Franchisee and the City agree to an extension of time. The City may condition said Transfer of the Franchise upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective transferee or to the resolution of outstanding and unresolved issues of Franchisee's noncompliance with the terms and conditions of this Agreement.

10.5. Franchisee shall ensure that any transferee or assignee shall, prior to consummation of any transaction resulting in a transfer or assignment of this Franchise, agree in writing to be bound by the terms of this Franchise and to assume the obligations and liabilities to the City of its predecessor under this Franchise.

10.6. The consent or approval of the City to any Request by the Franchisee shall not constitute a waiver or release of any rights of the City.

11. **RENEWAL OF FRANCHISE**

11.1. The City and Franchisee agree that any proceedings undertaken by the City that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

11.2. Notwithstanding anything to the contrary set forth herein, Franchisee and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof.

11.3. Franchisee and the City consider the terms set forth in this Article 11 to be consistent with the express provisions of 47 U.S.C. 546.

12. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

12.1. *Notice of Violation:* If at any time the City believes that Franchisee has not complied with the terms of the Franchise, the City shall notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

12.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to the City, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance and notify the City of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, City shall provide written confirmation that such cure has been effected, provided that, it shall be the Franchisee's burden to demonstrate, that the noncompliance has been cured.

12.3. *Enforcement:* Subject to applicable federal and state law, in the event the City, determines that Franchisee is in default of any provision of this Franchise, the City may:

12.3.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

12.3.2. Seek liquidated damages pursuant to Section 12.4 below; or

12.3.3. Commence an action at law for monetary damages or seek other equitable relief; or

12.3.4. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.6

12.4. *Liquidated Damages:* In the event that the City finds that a violation continues to exist and that Franchisee has not corrected the same in a satisfactory manner or has not diligently pursued correction of such violation, Franchisee agrees that the City may recover liquidated damages from Franchisee in the amounts set forth below following the notice and opportunity to cure provisions set forth in Section 12.2 above. The City shall provide Franchisee with written notice that it intends to elect the liquidated damage remedies set forth herein. If City elects to recover liquidated damages, City agrees that such recovery shall be its exclusive remedy for the time period in which liquidated damages are assessed;

provided, however, once City has ceased to assess its liquidated damages remedy as set forth in Section 12.4.1, it may pursue other available remedies.

12.4.1. The following liquidated damages shall apply:

- For failure to maintain the FCC technical standards as set forth in Section 4 – \$100 per day for each day the violation continues;
- For failure to provide PEG Services to the community specified in Section 5 – \$100 per day for each day the violation continues;
- For failure to provide City with any reports or records required by the Agreement within the time period required – \$50 per day for each day the violation continues;
- For failure to meet customer service requirements in Sections 2, 3 and 4 of the Customer Service Standards set forth in Exhibit C – \$100 per day for each day the violation continues; and
- For any other material breach not previously listed - \$100 per day for each day the violation continues.

The total amount of all liquidated damages per annum shall not exceed twenty-five thousand dollars (\$25,000) in the aggregate. All similar violations or failures arising from the same factual events affecting multiple subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any one of the above-referenced categories. The City's right to collect liquidated damages shall not commence until the Franchisee has failed to cure as provided in Section 12.2.

12.5. *Public Hearing:* If Franchisee disputes the assessment of any liquidated damages hereunder, Franchisee may request and City agrees to schedule a public hearing with regard to such dispute. The City shall provide Franchisee at least thirty (30) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

12.6. *Revocation:* Should the City seek to revoke this Franchise after following the procedures set forth above in this Article, the City shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have sixty (60) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

12.6.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

12.6.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the City shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The City shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to affect any cure. If the City determines that the Franchise shall be revoked, the City shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the City to an appropriate court. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within thirty (30) days of Franchisee's receipt of the determination of the franchising authority.

12.6.3. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

12.7. *Letter of Credit:* If there is an uncured breach by Franchisee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Franchisee shall, upon written request, establish and provide to the City, as security for the faithful performance by Franchisee of all of the provisions of this Franchise, a letter of credit in the amount of twenty-five thousand dollars (\$25,000).

12.7.1. If a letter of credit is furnished pursuant to subsection 12.7, the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.

12.7.2. After written notice has been provided to Franchisee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

12.7.2.1. Failure of Franchisee to pay the City sums due under this Franchise;

12.7.2.2. Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by Franchisee;

12.7.2.3. Monetary remedies or damages assessed against Franchisee as provided in this Franchise.

12.7.3. Within thirty (30) days following notice that a withdrawal has occurred, Franchisee shall restore the letter of credit to the full amount required by subsection

12.7. Franchisee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

12.7.4. Franchisee shall have the right to appeal to the City Council for reimbursement in the event Franchisee believes that the letter of credit was drawn upon improperly. Franchisee shall also have the right of judicial appeal if Franchisee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Franchisee with interest, from the date of withdrawal at the prevailing interest rate for local government borrowing as provided under State law.

12.8. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Service Date of this Franchise, if at the end of such three (3) year period Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System. Franchisee may consider subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.6 shall be given to the City in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

13. **MISCELLANEOUS PROVISIONS**

13.1. *Actions of Parties:* In any action by the City or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

13.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

13.3. *City Hearing:* The parties acknowledge that the City may hold a hearing at any time to review Subscriber satisfaction with Cable Services in the City.

13.4. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

13.5. *Force Majeure*: Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

13.5.1. Furthermore, the parties hereby agree that it is not the City's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the City and/or Subscribers.

13.6. *Notices*: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

13.6.1. Notices to Franchisee shall be mailed to:

Verizon Northwest Inc.
Attn: Tim McCallion, President
112 Lakeview Canyon Road, CA501GA
Thousand Oaks, CA 91362

13.6.2. with a copy to:

Mr. Jack H. White
Senior Vice President & General Counsel - Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

13.6.3. Notices to the City shall be mailed to:

Janice Perry
Multimedia Communications Manager
City Hall
123 5th Avenue
Kirkland, WA 98033-6189

13.6.4. with a copy to:

Brenda Cooper
Chief Information Officer
IT Department
City Hall
123 5th Avenue
Kirkland, WA 98033-6189

13.7. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the City, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

13.8. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

13.9. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

13.10. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

13.11. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

13.12. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

13.13. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for cable service or otherwise, to the City or any third party. Franchisee shall not be required to remove or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

13.14. *Independent Review:* The City and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

SIGNATURE PAGE FOLLOWS

AGREED TO THIS ____ DAY OF _____, 2008.

CITY OF KIRKLAND

By: _____
David Ramsay, City Manager

Verizon Northwest Inc.

By: _____
Tim McCallion, President

EXHIBITS

Exhibit A: Service Area Map

Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: Customer Service Standards

EXHIBIT A SERVICE AREA MAP

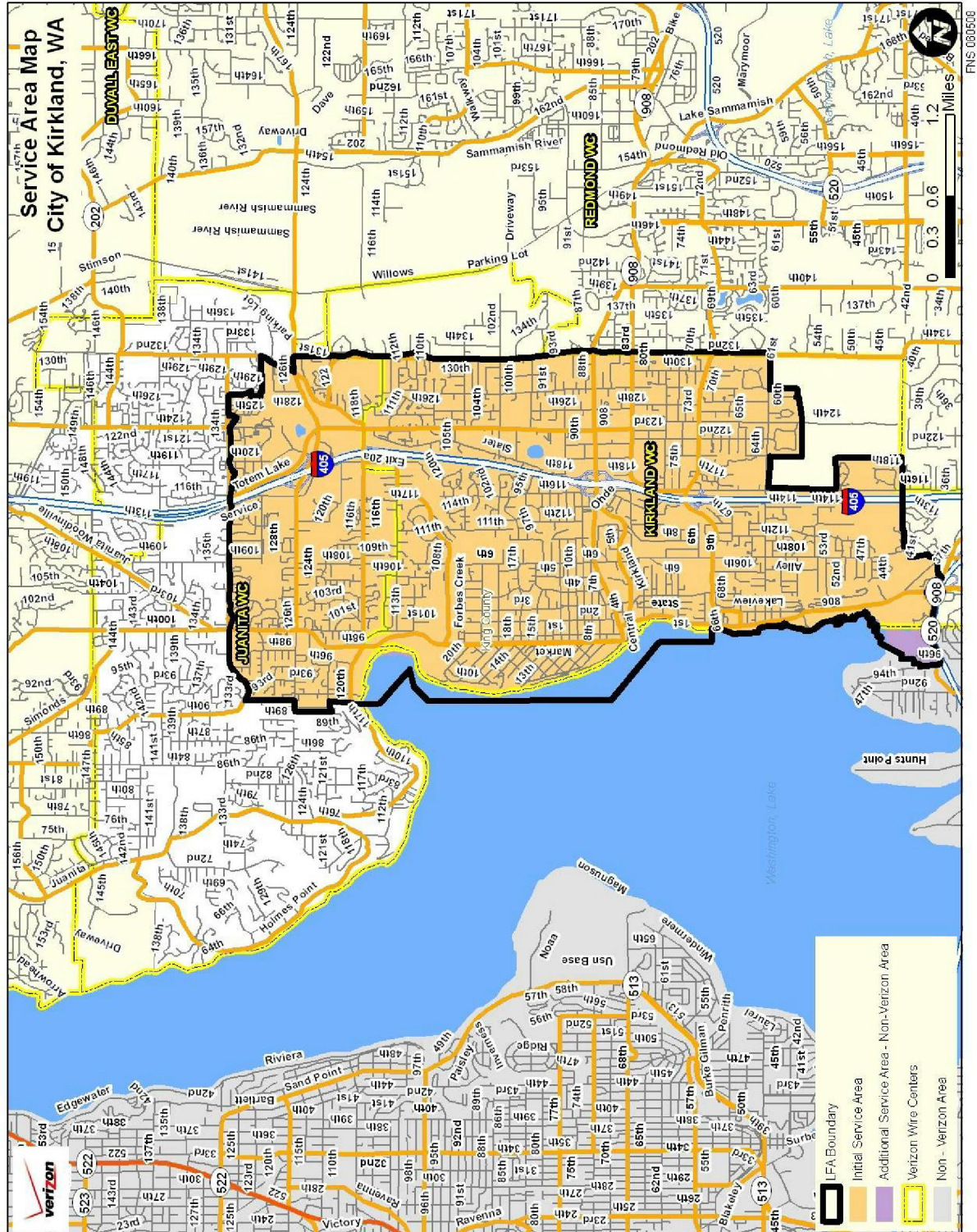


EXHIBIT B
MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

City Hall
 123 Fifth Avenue
 Kirkland, WA 98033

Fire Station 24
 8411 NE 141st Street
 Kirkland, WA 98033

City Hall Annex 2
 505 Market Street
 Kirkland, WA 98033

Fire Station 25
 12033 76th Place NE
 Kirkland, WA 98033

North Kirkland Community Center
 12421 103rd Avenue NE
 Kirkland, WA 98033

Fire Station 26
 9930 124th Avenue NE
 Kirkland, WA 98033

Peter Kirk Community Center
 352 Kirkland Avenue
 Kirkland, WA 98033

Fire Station 27
 11210 NE 132nd
 Kirkland, WA 98033

Maintenance Center
 915 8th Street
 Kirkland, WA 98033

Kirkland Municipal Court
 11515 NE 118th Street
 Kirkland, WA 98033

Fire Station 21
 9816 Forbes Creek Drive
 Kirkland, WA 98033

Kirkland Library
 308 Kirkland Avenue
 Kirkland, WA 98033

Fire Station 22
 6602 108th Avenue NE
 Kirkland, WA 98033

EXHIBIT C CUSTOMER SERVICE STANDARDS

These standards shall, starting six months after the Service Date, apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

SECTION 1: DEFINITIONS

- A. Respond: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.
- B. Service Call: The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- C. Service Interruption: The loss of picture or sound on one or more cable channels.
- D. Standard Installation: Installations where the subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.
- E. System Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

SECTION 2: TELEPHONE AVAILABILITY

- A. The Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Franchise Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.
- B. Franchisee employees or agents who are capable of responding to Service Interruptions must be available twenty-four (24) hours a day, seven (7) days a week.
- C. The Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by the Franchisee.
- D. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue

for a live representative. The Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

E. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

F. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

G. Upon request from the City, but in no event more than once a quarter thirty (30) days following the end of each quarter, the Franchisee shall report to the City the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.

(2) Percentage of time customers received busy signal when calling the Verizon service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request.

H. At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the City of such a change at least thirty (30) days in advance of any implementation.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after an order is placed if the Optical Network Terminal ("ONT") is already installed on the customer's premises or within fourteen (14) business days after an order is placed if the ONT is not already installed on the customer's premises.

The Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than seven (7) business days after an order is placed if the ONT is already installed on the customer's premises or fourteen (14) business days after an order is placed if the ONT is not already installed on the customer's premises.

C. If the Franchisee determines that a residential installation that is not a standard installation is required, the Franchisee shall provide the customer in advance with a cost estimate and an estimated date of completion.

D. All underground cable drops from the curb to the home shall be buried within a reasonable period of time from the initial installation, or at a time mutually agreed upon between the Franchisee and the Subscriber. In all instances, the Franchisee must comply with the State of Washington's "one call" requirements.

E. The Franchisee shall provide the City with a report upon request from the City, but in no event more than once a quarter thirty (30) days following the end of each quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request.

At the Franchisee's option, the measurements and reporting of above may be changed not more than one time during the Term of this Agreement from calendar quarters to billing or accounting quarters. The Franchisee shall notify the City of such a change not less than thirty (30) days in advance.

F. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block between 8:00 AM and 6:00 PM or another block of time mutually agreed upon by the Subscriber and the Franchisee. These options shall be clearly explained to the Subscriber at the time of scheduling. These hour restrictions do not apply to weekends.

G. The Franchisee may not cancel an appointment with a Subscriber after 5:00 PM on the day before the scheduled appointment, except for appointments scheduled within twelve hours after the initial call.

H. If Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled as necessary at a time that is convenient for the Subscriber. If the Subscriber is absent when the technician arrives, the technician shall leave written notification of timely arrival.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. The Franchisee shall notify the City of any System Outage.

B. The Franchisee shall exercise reasonable efforts to limit any System Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule an outage of service between 6 a.m. and 12:01 a.m. which affects at least 250 Subscribers for a period of more than two (2) hours during any twenty-four (24) hour period only after the City and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice. Notwithstanding the forgoing, Franchisee may perform

modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.

C. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) In the event of a System Outage resulting from Franchisee equipment failure, the Franchisee shall remedy the problem as quickly as reasonably possible.

(2) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.

(3) The Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the City of a Cable Service problem.

D. Under Normal Operating Conditions, the Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

E. The Franchisee shall meet the standard in subsection D of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

F. The Franchisee shall provide the City with a report upon request from the City, but in no event more than once a quarter within thirty (30) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request. At the Franchisee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the City of such a change at least thirty (30) days in advance.

G. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

H. Under Normal Operating Conditions, if a System Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected

Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5: CUSTOMER COMPLAINTS

A. Franchisee shall establish written procedures for receiving, acting upon, and resolving complaints without intervention by the City (except where necessary) and shall publicize such procedures clearly as set forth in Section 10.K of these standards. Said written procedures shall describe a simple process by which any Subscriber may submit a complaint to the Franchisee.

B. The Franchisee shall also notify the Subscriber of the Subscriber's right to file a complaint with the City in the event the Subscriber is dissatisfied with the Franchisee's decision.

C. Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by the City within five (5) business days. The Franchisee shall notify the City of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The City may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- (1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.

G. The Franchisee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the City upon request.

H. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Franchisee, the payment alternative may be limited.

I. The City hereby requests that Franchisee omit the City's name, address and telephone number from Franchise bill as permitted by 47 CFR 76.952.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. The Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, or 3) who rent Subscriber equipment from the Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment which the Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by the Franchisee or its authorized agent. Appropriate time considerations shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. The Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Franchisee's equipment (for example, a dog chew).

B. The Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

A. Charges for Cable Service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Franchisee. No charge shall be imposed upon the Subscriber for or related to downgrading of Cable Service, unless there is a delay in returning Grantee equipment or downgrade charges apply pursuant to the terms and conditions in the Subscriber's service contract.

B. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

C. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

D. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee employees who routinely come into contact with members of the public at their places of residence shall wear a uniform provided by the Franchisee, except to the extent such requirement is affected by or subject to any contractual agreement(s) between the Franchisee and any Person other than the City. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

B. All Customer Service Representatives ("CSRs") shall identify themselves to callers immediately following the greeting during each telephone contact with the public. Each CSR, technician or employee of the Franchisee, in each contact with a Subscriber, shall state the standard cost of the service, repair, or installation prior to delivery of the service or before any work is performed.

C. All contact with a Subscriber or potential Subscriber by a Person representing the Franchisee shall be conducted in a courteous manner.

D. Franchisee shall maintain an Internet web presence. Except for normal and regularly scheduled maintenance, the web site shall be available twenty-four hours and seven days a week under Normal Operating Conditions.

E. A customer service representative may have the authority to provide credits, waive fees, schedule service appointments and change billing cycles, where appropriate in Franchisee's judgment. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall attempt to resolve the problem within seventy-two (72) hours or within such other time frame as is acceptable to the Subscriber and the Franchisee.

F. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the City.

G. The Franchisee must take appropriate steps to ensure that all written Franchisee promotional materials, announcements and advertising of Cable Service to Subscribers and the

general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, the Franchisee will take appropriate steps to ensure that prices and terms are clearly and accurately disclosed to potential Subscribers in advance of taking the order.

H. All notices identified in this Section shall be by either:

- (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
- (2) A separate electronic notification.

I. The Franchisee shall provide reasonable notice to Subscribers of any changes in rates, programming services or channel positions to the Subscribers' service or other changes affecting Cable Service of the Subscriber (excluding sales discounts). Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee, and the Franchisee shall provide a copy of the notice to the City including how and where the notice was given to Subscribers.

J. In addition to the requirements regarding advance notification to Subscribers of any changes in rates, programming services or channel positions or other changes affecting Cable Service (excluding sales discounts), the Franchisee shall give fifteen (15) days' written notice to the City before implementing any rate or service change.

K. The Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.I., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address and telephone number of the City, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;

- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of the Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.K. will be given to the City at least fifteen (15) days prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not within the control of Franchisee.

L. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

M. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

N. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and
- (4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

O. Subscriber Contract. The Franchisee's terms of service and any Subscriber contract shall be consistent with the terms of this Franchise.

P. Franchisee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Franchisee representative going to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a local business office within the Franchise Area.

SECTION 11: MISCELLANEOUS

A. Services for Mobility-Impaired Subscribers. For any Subscriber that is mobility impaired, the Franchisee shall, at no charge, deliver and pick up converters and other Franchisee equipment at the Subscriber's home. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, hook it up

and ensure that it is working properly, and shall return the defective converter or such other equipment to the Franchisee.

B. The Franchisee shall provide customer service via TDD/TTY calls as requested by any hearing-impaired Subscriber at no charge.

C. Franchisee Representative: Within thirty (30) days of the Effective Date, Franchisee shall assign a representative to be available to the City to address Franchise implementation issues. Within such time period, Franchisee shall notify the City in writing of the name and contact information for such representative. If Franchisee changes the representative assigned to the City, Franchisee shall notify the City in writing of such change.

D. Late Fees: Franchisee's late fee and disconnection policies shall be in accordance with applicable federal and state law, including all laws relating to nondiscrimination.

PUBLICATION SUMMARY
OF ORDINANCE NO. 4140

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING VERIZON NORTHWEST INC. A NON-EXCLUSIVE CABLE FRANCHISE.

SECTION 1. Authorizes the City Manager to sign a cable franchise agreement with Verizon Northwest Inc.

SECTION 2. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 21st day of October, 2008.

I certify that the foregoing is a summary of Ordinance 4140 approved by the Kirkland City Council for summary publication.

Acting Karen R. Jewell
City Clerk