

ORDINANCE NO. 03-2018

AN ORDINANCE OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON AUTHORIZING THE CITY COUNCIL TO EXTEND A CABLE TV FRANCHISE AGREEMENT WITH COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC.

WHEREAS, the City of Covington (“the City”) entered into a Cable TV Franchise Agreement with Comcast Cable Communications Management, LLC as authorized by Ordinance No. 05-06 on June 13, 2006; and

WHEREAS, pursuant to Section 3 of the above referred to agreement, the agreement is five (5) years in duration and contains a provision that it may be extended by mutual agreement; and

WHEREAS, the City and Comcast Cable Communications Management, LLC have reached a mutual agreement for a five (5) year extension;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. The Franchise Agreement with Comcast Cable Communications Management, LLC referred to in Ordinance No. 05-06 shall be extended for a period of five (5) years from the effective date of this ordinance number 03-2018, and the new expiration date shall be June 20, 2023.

Section 2. The Franchise Agreement, which is being extended for a period of five (5) years, is attached hereto and incorporated by reference as Exhibit “1.”

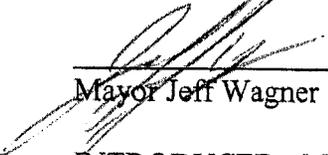
Section 3. If any provision of this ordinance and/or the attached Exhibit “1” is determined to be invalid or unenforceable for any reason by federal, state, or local law, the remaining provisions of this ordinance and/or the provisions set forth in the attached Exhibit “1” will remain in force and affect.

Section 4. Upon the approval of the City Attorney, the City Clerk is authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerk errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 5. Neither party waives any rights which it enjoys under law as a result of agreeing to this extension.

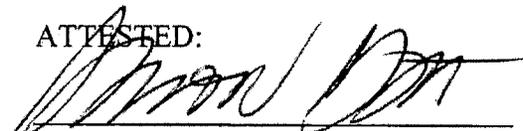
Section 6. This ordinance shall be in full effect on June 20, 2018, which is five (5) days after publication in the City's newspaper of record. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON,
WASHINGTON, at a regular meeting thereof this 12th day of June 2018.

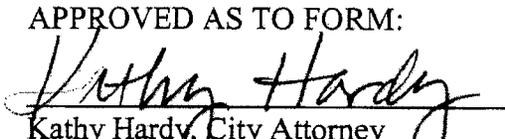


Mayor Jeff Wagner

INTRODUCED: May 22, 2018
PASSED: June 12, 2018
PUBLISHED: June 15, 2018
EFFECTIVE: June 20, 2018

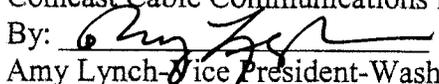
ATTESTED:


Sharon Scott, City Clerk

APPROVED AS TO FORM:


Kathy Hardy, City Attorney

ACCEPTED this 13 day of July, 2018 subject to applicable federal, state and local law.

Comcast Cable Communications Management, LLC
By: 

Amy Lynch, Vice President-Washington Region

Franchise Agreement

Between

The City of Covington

&

Comcast of Washington IV, Inc.

City of Covington / Comcast Franchise Ordinance

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ORDINANCE NO. 05-06

AN ORDINANCE OF THE CITY OF COVINGTON, WASHINGTON GRANTING A FIVE (5) YEAR FRANCHISE TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY OF COVINGTON TO COMCAST OF WASHINGTON IV, INC. (FORMERLY TCI CABLEVISION OF WASHINGTON, INC); SETTING FORTH THE TERMS AND CONDITIONS OF SAID SERVICE, ESTABLISHING DAMAGES, AND FIXING AN EFFECTIVE DATE.

WHEREAS, Comcast of Washington IV, Inc. has been operating a Cable Television System within the City pursuant to an existing cable television Franchise; and

WHEREAS, the Comcast of Washington IV, Inc. has requested that its current cable Franchise be renewed following the expiration of its current Franchise; and

WHEREAS, the City has analyzed and considered the technical ability, financial condition, legal qualification, and general character of Comcast of Washington IV, Inc. and has determined that it is in the best interest of the City and its residents to renew the cable Franchise; and

WHEREAS, Comcast of Washington IV, Inc. and the City have agreed to be bound by the conditions hereinafter set forth; now therefore:

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Section 1: Definitions.

A. "Abandonment" means the disconnection by the Operator of specific Facilities from the Cable System.

B. "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further Installation of Cable System equipment other than Subscriber premises equipment, whether hardware or software.

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

D. "Applicant" means any Person who files an application for an initial franchise to provide Cable Services within the City.

E. "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of the Operator, but not collected after reasonable efforts have been made by the Operator to collect the charges.

F. "Basic Service" means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.

G. "Bi-Directional" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

H. "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

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

J. "Cable Operator" means any Person or groups of Persons, including the Operator, who provide(s) Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System in the City.

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

L. "Cable System" has the meaning specified in Section 602 of the Cable Act. When used herein, the term "Cable System" shall refer to the Operator's Cable System in the Franchise Area.

M. "Channel" means a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.

N. "City" is the City of Covington, a city of the State of Washington, existing pursuant to the Washington State Constitution, and the laws of the State of Washington.

O. "Council" means the Council of the City of Covington or any future board constituting the legislative body of the City of Covington.

P. "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

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Q. "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or Persons located within the City including, without limitation, damage to Persons or property from natural consequences, such as storms, earthquakes, riots or wars.

R. "Expanded Basic Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

S. "Facilities" means the component parts of the Cable System, including but not limited to coaxial cable, fiber-optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics located in the Rights-of-Way.

T. "FCC" means the Federal Communications Commission.

U. "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying Cable Service by means of electric light-wave impulses.

V. "Franchise" means the document in which this definition appears, i.e., the contractual agreement, executed between the City and the Operator, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

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

X. "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City or other government entity on the Operator or Subscriber, or both, solely because of their status as such. Franchise Fees shall not include any tax, fee or assessment of general applicability, capital costs required by this Franchise to be incurred by the Operator for public, educational or

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governmental access and equipment, or requirements or charges incidental to the awarding or enforcing of the Franchise including payments for bonds, insurance, indemnification, penalties or liquidated damages.

Y. "Gross Revenues" means any and all revenues derived by the Operator or an Affiliate from the operation of the Cable System to provide Cable Services in the City, other than revenue from transactions related to real property, the Capital Contribution in support of PEG Access Channels, Bad Debt and any taxes on services furnished by the Operator, imposed on the Operator or any Subscriber or used by any governmental unit, agency or instrumentality and collected by the Operator for such entity. However, Gross Revenues shall include Franchise Fee revenue and revenues received by the Operator or an Affiliate from local and national advertising sales, home shopping channels, and similar sources. When the revenue of the Operator includes Gross Revenues from sources outside of the City, the Operator shall allocate the appropriate percentage of Gross Revenues by multiplying the revenues received by a fraction the numerator of which is the number of Operator's Subscribers in the City and the denominator of which is the total number of all Subscribers. The City acknowledges that Grantee shall maintain its books and records in accordance with Generally Accepted Accounting Principles and subject to applicable laws.

Z. "Headend" means the Operator's primary facility for signal reception and dissemination on its Cable System, including cables, antennas, wires, satellite dishes, monitors, lasers, switchers, modulators, processors for Broadcast Signals, and all other related equipment and Facilities.

AA. "Installation" means the connection of the Cable System by means of a cable drop from feeder cable to Subscribers' terminals.

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AB. "Institutional Network" or "I-Net" means that part of a Cable System's Facilities or capacity designated for non-commercial communications to, from and among the City, fire districts, government agencies, Schools and libraries via fiber-optic cable owned by the Operator.

AC. "Leased Access Channel" means any Channel commercially available for programming for a fee or charge by the Operator to members of the general public in accordance with 47 U.S.C. §522.

AD. "Node" means that portion of the Cable System where Fiber Optic cables and coaxial cables meet. The Node consists of an enclosure housing optronics and electronics that convert light into radio frequency ("RF") signals and RF signals into light necessary for the delivery of Bi-Directional Cable Services to Subscribers over a hybrid fiber-coaxial cable ("HFC") Cable System.

AE. "Operator" means Comcast of Washington IV, Inc., or its lawful successor, transferee or assignee.

AF. "Person" means any individual, sole proprietorship, partnership, association, government or corporation, or any other form of entity or organization.

AG. "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

AH. "Public, Education and Government (PEG) Access Channels" means Channel capacity designated by the Operator for the transmission of public, educational, or government access use in accordance with this Franchise and 47 U.S.C. §521.

AI. "Right of Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane,

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public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area which the City and the Operator may use for the purpose of installing, operating, repairing, and maintaining the Cable System. Right of way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning authorize the City and the Operator to the use thereof for the purposes of installing and operating the Operator's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

AJ. "Route Map" means a geographic representation of the Operator's Cable System as it exists within the public Rights-of-Way and within private easements in the Franchise Area.

AK. "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by the Operator by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from the Operator's Cable System.

AL. "Tier" means a group of Channels for which a single periodic subscription fee is charged.

AM. "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

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Section 2: Franchise Granted.

A. Grant. The City of Covington (hereinafter known as the "City") hereby grants to Comcast of Washington IV, Inc. (hereinafter known as the "Operator") renewal of its Franchise, in accordance with the provisions of federal, state and local law, authorizing the Operator to construct, reconstruct, upgrade, maintain and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with the streets and public rights-of-way within the Franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any street or public right-of-way such Facilities and equipment as may be necessary or appurtenant to the Cable System.

B. Other Ordinances. This Franchise and all rights and privileges granted hereunder are subject to, and the Operator must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the City, this Franchise shall govern. This Franchise does not confer rights or immunities upon the Operator other than as expressly provided herein. Notwithstanding the forgoing, the Operator does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

C. Police Powers. In accepting the Franchise, the Operator acknowledges that its rights hereunder are subject to the legitimate rights of the police powers of the City to enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power. Additionally

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the Council expressly reserves unto itself all its police powers to adopt additional ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this Franchise. The City reserves the right to use, occupy and enjoy any Public Rights-of-Way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, Installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The Council reserves the right to delegate its authority for Franchise administration to a designated agent.

Section 3: Length of Franchise.

The length of this Franchise shall be for a term of five (5) years with a possible five (5) year extension, commencing on the effective date of this Franchise, unless extended by mutual agreement, or terminated sooner as hereinafter provided.

Section 4: Franchise Area.

The Operator's service area shall be the entire incorporated area of the City, in its present incorporated form or in any later reorganized, consolidated, enlarged through annexation, or re-incorporated form ("Franchise Area").

Section 5: Franchise Fee.

The Operator shall pay to the City quarterly, on or before the thirtieth (30th) day after the end of each quarter (March, June, September, December), a Franchise Fee in a sum equal to five percent (5%) of Gross Revenues as is defined in this Franchise, for the preceding three calendar months. Revenues that are derived as a portion of a national or regional service shall be computed on a per Subscriber basis if such determination cannot be achieved by other means.

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The City may modify the Franchise fee if so permitted by federal and state law. Prior to implementation of any modification in Franchise fees the Operator may request a public hearing by the City Council to discuss said modification. Following such a hearing the City Council may require the implementation of such modification in accordance with the provisions of this Franchise, subject to applicable law.

A. Late Payment. Any quarterly Franchise fee not paid by the Operator within thirty (30) days of the end of a quarter shall bear interest at the maximum rate allowed under State law, from the date due until paid.

B. Financial Reports. Each Franchise fee payment shall be accompanied by a financial report in a form approved by the City and compatible with the Operator's computer system, showing the basis for the Operator's computation, including, revenues received by the Operator within the City from such items as Basic Service, Expanded Basic Service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the Operator's Gross Revenues as may be reasonably required by the City.

C. Audit by City. The City may, upon seven (7) business days advance notice, inspect the books and records of the Operator during normal business hours, for the purpose of confirming the actual Gross Revenues collected by the Operator for the previous year. In the event that such audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by the Operator with a quarterly payment and the actual quarterly Gross Revenues collected by the Operator, the Operator agrees to pay to the City for the actual cost of the audit. In the event that such audit results in a determination that additional Franchise fees are due the City, the Operator further agrees to pay interest as required for late payments on

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such additional Franchise fees computed from the date on which such additional Franchise fees were due and payable.

D. **Non-Waiver.** Acceptance of any Franchise fee payment by the City shall not be construed as an agreement by the City that the Franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Ordinance.

E. **Taxes.** Nothing in this Section shall limit the Operator's obligation to pay applicable local, state, or federal taxes.

Section 6: Technical Standards.

A. Subject to federal, state and local law, the Operator shall comply with FCC rules, Part 76, Subpart K, Section 76.601 through 76.610 and as may be hereafter amended by the FCC, and, at the minimum, the following:

1. Applicable City, state and national/federal codes and ordinances;
2. Applicable Utility Joint Attachment Practices;
3. The National Electric Safety Code; ANSI C2;
4. City Utility Code Requirements;
5. City rights-of-way procedures.

If the City makes a written request to monitor the semi-annual FCC Proof of Performance Test, the City, as is its right under the pertinent FCC regulations, may, at its option, monitor the taking of such tests. The Operator shall provide a copy of the results of the system evaluation to the City upon request.

B. The Cable System must have back-up power supplies capable of providing power to the system for two hours in the event of an electrical outage.

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C. The Operator shall comply with FCC closed captioning rules and regulations.

D. The Operator must have TDD/TTY (or equivalent) equipment at the company office, and a telephone number listed on Subscriber bills, in local telephone directories and with directory assistance for such equipment, that will allow hearing impaired customers to contact the company.

Section 7: Technical Evaluation.

A. If deemed necessary by the City, the City may review the Cable System's technical performance. During such evaluations, the Operator shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may reasonably require to determine the Operator's compliance with this Franchise.

B. If the City experiences reoccurring problems with the Operator's Cable System, the City may retain an independent consultant to conduct an analysis of the Cable System and its performance and the City's consultant shall submit a report of such analysis to the City. The City or its consultant shall provide thirty (30) days prior written notice to the Operator of any requested testing of the Cable System, in accordance with federal law. The Operator shall be required to conduct testing on the thirtieth day, counted from the date of Operator's receipt of the request unless another date is chosen by mutual agreement, and the City has the right to be present during the test. The City shall take into consideration efforts taken by the Operator to correct deficiencies, if any. The report prepared by the consultant in response to the City's request for a System evaluation shall include:

1. A description of the technical problem in Cable System performance that precipitated the special tests;
2. Which Cable System components were tested;

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3. The equipment used and procedures employed in testing;
4. The results of the testing and system evaluation, including a description of any problem(s) found;
5. The method, if any, by which specific performance problems may be resolved;
6. Any other information pertinent to said tests and analyses that may be required by the City.

C. If the tests indicate that the Cable System is not in compliance with FCC Technical Standards or the requirements of the Franchise or applicable law, the Operator shall reimburse the City for its costs involved in conducting such tests.

D. The City may inspect any of the Operator's Cable System located in the Rights-of-Way at any reasonable time during business hours upon at least forty-eight (48) hours notice, or in case of Emergency, upon demand without prior notice.

Section 8: Cable System Architecture.

Prior to the effective date of this Franchise, the Operator completed a Franchise-required upgrade of its Cable System. Concurrently, the Operator modified its Cable System from a traditional "Christmas tree architecture" to a Hybrid Fiber Coaxial, fiber-to-the-Node system architecture, with fiber-optic cable deployed from the Headend to the Node and coaxial cable deployed from the Node to Subscribers' homes. Active and passive devices are capable of passing a minimum of 750 MHz and capable of delivering high quality analog or digital video signals meeting, or exceeding, FCC technical quality standards. Cable system Nodes are designed for future segmentation as necessary to maximize shared bandwidth. During the term of this Franchise, the Operator agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications.

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Section 9: Franchise Review and Extension.

A. Upon thirty (30) days written request of City, but no more than annually, a franchise review may be held. The City will conduct all such reviews. The purpose of the review is to ensure, with the benefit of full opportunity for public comment, that; the Operator continues to effectively serve the public in light of new developments in cable technology together with related developments in cable law and regulation; and community needs and interests, with consideration of all financial, technological and operation impacts that may affect the Operator. During evaluations under this section, Operator will fully cooperate with City and provide information and documents in accordance with this Franchise as required by City to perform the evaluation.

B. If, after completion of the review, the City and the Operator agree that the public interest will be served by modifying certain Franchise obligations and/or extending the term of the Franchise, the City, with the express agreement of the Operator, may modify the obligations and extend the term of the Franchise accordingly for a maximum of five (5) years.

C. Both the City and the Operator agree to make a full and good faith effort to participate in the review.

Section 10: Construction Standards.

The Operator shall not commence construction within the City without a valid permit issued in accordance with City codes and regulations, except as provided in this Franchise.

Section 11: Construction in Right-of-Way.

A. Right-of-Way permit. The Operator shall submit an application for, pay the permit fee, and obtain a Right-of-Way permit to perform construction work in any Public Rights-of-Way in accordance with applicable local regulations. No work, other than Emergency repairs, routine aerial maintenance and non-invasive, or standard aerial Installation, shall commence

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without such a permit. Emergency repairs may be made immediately as provided for in Section 20 of this Agreement.

B. Issuance of Right-of-Way permit. Construction permits shall be approved by the City within forty-five (45) days of receipt of a completed permit application, so long as the permit request complies with the requirements of this Franchise, subject to further conditions, restrictions or regulations affecting the time, place and manner of performing the work. A permit application shall be considered complete when accompanied by all required information, plans and fees.

C. Display of Right-of-Way permit. The Operator shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

D. Construction Schedule. The Operator shall comply fully with construction timelines outlined in an approved construction permit issued by the City.

E. Locator service compliance. The Operator, before commencing any construction in the Public Right-of-Ways, shall call for location in accordance with RCW 19.122.

F. Placement. All transmission lines, equipment, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All Facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Operator shall be placed in such manner as not to interfere with the usual travel on such Public Right-of-Way.

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Exact placement within the Right-of-Way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

G. Interference with use of streets. When installing, locating, constructing or maintaining Facilities, the Operator shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by the Operator of such work.

H. Completion of construction. The Operator shall promptly complete all construction activities so as to minimize disruption of the Right of ways and other public and private property. All construction work authorized by a permit within Right of ways, including restoration, must be completed within 90 days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

I. Non-complying Work. Upon order of the City Manager or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

Section 12: Temporary Relocation or Removal.

A. Temporary Aerial Relocation or Removal at the Request of the City. Upon receipt of thirty (30) days' prior written notice from the City, the Operator, at its own expense, and within the time period prescribed by the City, shall protect, support, temporarily disconnect, relocate, or remove any of its Facilities or property within the public Rights-of-Way when, in the judgment of the City, the same is required for reason of traffic conditions, public safety or improvements of that portion of the Rights-of-Way. In the event such relocation is required due to Emergency repairs, as deemed necessary by the City, such relocation or moving shall be

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accomplished within twenty-four (24) hours. Nothing herein shall be deemed a taking of the property of the Operator, and the Operator shall be entitled to no surcharge by reason of this provision. This Section does not apply to overhead to underground conversions, see Section 16 for terms and conditions.

B. **Temporary Relocation at Request of Third Party.** The Operator shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lower its Cable System to permit the moving of such building, provided:

1. the expense of such temporary raising or lowering of the Cable System is paid by said Person, including if required by the Operator, making such payment in advance; and
2. the Operator is given not less than thirty (30) days advance written notice to arrange for such temporary wire changes.

Section 13: Documentation of Location of Facilities.

A. **Route Map.** Upon request, the Operator shall submit a Route Map to the City Manager or designee that complies with the following provisions:

1. Certification by an engineer employed by the Operator that the Route Map accurately depicts, based upon information available, the location of all Cable System Facilities including pedestals.
2. Depiction of drop service lines to individual Subscribers is not required.
3. Identification of Facilities as aerial or underground.
4. A list of any known existing surveys and other existing information that provide more-detailed information regarding the location of underground Facilities.

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5. Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

B. Report of Underground Facilities. In order to efficiently and safely design or construct Right-of-Way improvements in a specific area, the City Manager or designee may require the Operator to submit a report of existing System Facilities for a specific area of the City that will be impacted as a result of a planned Right-of-Way improvement. Within sixty (60) days after receipt by the Operator of a request from the City Manager or designee, the Operator shall submit a report of underground System Facilities that shall comply with the following provisions:

1. Certification by an engineer employed by the Operator that the report accurately depicts the location of all underground Cable System Facilities, including drop service lines to individual Subscribers. The accuracy of this report shall be noted based upon the capability of the locating equipment used.

2. The accurate depth of the underground Facility, as may be available based upon the capability of the locating device used. The accuracy of this information shall be noted.

Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

3. The City and Operator recognize the importance of making best efforts to communicate during the planning and construction phases of Right-of-Way improvement projects. To that end, the City and Operator agree to work cooperatively and to be reasonable and timely in requesting and providing necessary information. In the event the City reasonably determines that more precise information is needed for a specific aspect of a Right-of-Way project, the Operator agrees to take the necessary steps to provide such

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precise information within sixty (60) days of receipt of request. If it is necessary for the Operator to pot-hole or excavate and restore portions of the Right-of-Way to respond to the City's information request, the Operator agrees to take such steps at its expense, and the City agrees to waive all permitting and inspection fees therefore.

Section 14: Restoration of Improvements.

Upon completion of any construction work, the Operator shall promptly repair, but in no event longer than such time as may be established by the City during permit review, any and all public and private property, improvements, fixtures, structures and Facilities which are damaged during the course of construction, restoring the same to their like condition before construction commenced.

Section 15: Landscape Restoration.

All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, Installation, maintenance, operation, repair or replacement of the Cable System, which is done pursuant to a Franchise, shall be replaced or restored to the condition existing prior to performance of the work.

Section 16: Aerial and Underground Construction.

A. Facilities Placement. If all of the transmission and distribution facilities of all of the respective wireline service providers in any given area within the Franchise Area are or will be moved underground, the Operator shall place its Cable Systems' distribution cables underground; provided that such underground locations are actually capable of accommodating the Operator's cable and other equipment without significant technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of any of the respective wireline service providers are both aerial and underground, the Operator shall have the discretion to construct, operate, and maintain all of its

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distribution cables, or any part thereof, aerially or underground. In areas where a wireline service providers wiring is aerial, the Operator may install aerial cable, except when a property owner or resident requests underground Installation and agrees to bear the additional cost in excess of aerial Installation. The Operator shall utilize existing poles and conduit wherever possible. Nothing in this Section shall be construed to require the Operator to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, Nodes, pedestals, or other related equipment.

B. City Driven Relocation Projects. In the case of a City project requiring utility relocation where the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City capital improvement project, then the Operator shall participate in the joint trenching portion of the project and Operator shall pay, to the City, Operator's portion of the traffic control and trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with Operator's proportionate share of trench usage. However, notwithstanding anything to the contrary set forth herein, if bids from the City's contractor for placement of Operator's conduits and vaults/pedestals in the supplied joint trench, in the reasonable estimation of the Operator, are not acceptable, the Operator shall have the option to utilize contractor(s) of its choice to complete the required work. The City's contractor shall coordinate with the Operator's contractor(s) to provide reasonable notice and time to complete the placement of the Operator's Facilities in the supplied joint trench.

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C. Request for Relocation By Third Party. The Operator shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided (i) the Operator may impose a charge for all time and material costs associated with the project on any Person for the relocation of its Facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables, and (ii) Operator is granted a permit for such work by the City.

D. Relocation Due To Development. In the event an underground conversion of cable Facilities is required as part of the street improvement condition(s) of a new subdivision, site development permit and/or planned development, the developer shall be responsible for all time and material costs associated with the conditioned underground conversion of cable Facilities. The Operator and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.

E. Damage to Cable System. This Franchise shall in no way limit the Operator's right to recoup all time and material costs associated with any damage to its Cable System from the Person responsible for such damage. The City shall be liable for any damage caused to Operator's Cable System as a result of any public works, public improvements, construction, excavation, grading, filling, or work of any kind by or on behalf of the City. This provision is not applicable in instances wherein City must cut or remove Cable System Facilities due to an Emergency or work required by the City, but not performed by the City or one of its authorized contractors.

Section 17: Additional ducts and conduits and their occupants.

A. If the Operator is constructing underground conduit for its own use, the City may require the Operator to construct excess conduit capacity in the public ways, provided that the City enters into a contract with the Operator consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Operator, (calculated as the difference

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between what the Operator would have paid for the construction of its conduit and the additional cost only of construction of the excess conduit).

B. The City shall not require that the additional conduit space be connected to the access structure and vaults of the Operator.

Section 18: Operator Occupancy of City Owned Conduit.

If the City owns or leases conduit in the path of the Operator's proposed Facilities, provided it is technologically feasible for the Operator to occupy the conduit owned or leased by City, and further that the City shall provide the Operator with access structure and vaults connecting the additional conduit to the Operator's Cable System to be accessed solely by the Operator, the Operator shall be required to occupy the conduit owned or leased by City in order to reduce the necessity to excavate the Public Way. The Operator shall pay to City a fee for such occupancy which shall be the cost the Operator would have expended to construct its own conduit from the outset, as certified by the Operator's engineer and approved by the City engineer. City and Operator may agree to amortize the fee through annual payments to City over the term of the Franchise, including the time value of money.

Section 19: Notice of Work.

The City and the Operator agree that it is beneficial for both parties to be aware of any potential impacts due to future construction projects in the City. Therefore, both the City and the Operator agree to make a good faith effort to notify one another of planned construction projects that are of significant size and located in the Rights-of-Way, as soon as possible. It is hoped that by doing this, both parties may be afforded ample time to prepare and/or participate to any degree necessary.

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Section 20: Repair and Emergency Work.

In the event of an unexpected repair or Emergency, the Operator may commence such repair and Emergency response work as required under the circumstances, provided the Operator shall notify the City Manager as promptly as possible, before such repair or Emergency work or as soon thereafter as possible if advance notice is not practicable.

Section 21: Annual Reports.

Upon request of the City, the Operator shall furnish a report including the following:

1. Most recent corporate annual report;
2. A copy of the 10-K Report, if required;
3. The number of homes for which cable is available;
4. The number of Subscribers with Basic Service;
5. The number of residents subscribing to each additional Tier of Service;
6. The number of Subscribers with Premium Services;
7. The number of Pay-per-View purchases;
8. The number of Installations in the period;
9. The number of disconnects in the period;
10. Total number of miles of cable in the City;
11. A statement of its current billing practices and a sample copy of the bill format;
12. A current copy of its Subscriber work order;
13. A current copy of its Installation packet;

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14. Report on operations – Upon reasonable notice, such other reports with respect to its local operation, affairs, transactions or property as necessary to verify compliance with this Franchise and are permitted by law.

15. Total number and summary of all written complaints received by category, length of time taken to resolve and action taken to provide resolution;

16. A list of the current programming;

17. A copy of the most current Proof of Performance Report.

Section 22: Customer Service.

The Operator shall at all times be in compliance with FCC Customer Service Standards 76.309, Subpart II (Appendix "A"), as may be amended, which standards are incorporated into this Franchise by reference ("FCC Customer Service Standards"). The City reserves the right to enact and enforce any customer protection law, in accordance with federal law.

Section 23: Telephone Response.

In order that the City may be informed of the Operator's success in achieving satisfactory customer service in its telephone answering functions, the Operator shall, within thirty (30) days of the end of each calendar quarter, provide a summary report of calls handled at the Customer Sales and Service Center facility taking calls from City customers. This report will provide the following:

1. Percentage of calls answered within 30 seconds;
2. Number of calls received;
3. Average handle time;
4. Number of calls abandoned by the caller;
5. Average speed of answer;

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6. Percentage of time all lines busy.

This data will be compared to minimum customer service standards of the FCC then in effect.

Section 24: Failure to Improve Customer Service.

The City or its designee shall review telephone response and customer service information with the Operator. Failure to comply with customer service standards may result in imposition of damages in accordance with Section 42 of this Franchise.

Section 25: Periodic Meetings.

Upon request, and with thirty (30) days prior written notice from the City, the Operator shall meet with designated City officials and/or designated representative(s) to review the performance of the Operator under this Franchise for the preceding reporting period. The subjects may include, but are not limited to those items covered in the periodic reports and performance tests.

Section 26: Refunds for Outages.

After notification from a Subscriber of an outage, the Operator will credit the Subscriber's account, provided request by the Subscriber for such refund is made within thirty (30) days of the reported outage and the length of the outage was in excess of six (6) hours.

Section 27: Discounts.

The Operator shall offer a discount of thirty (30) percent from the normal charge for Basic Service to those individuals age sixty-five (65) or older or handicapped who are the legal owner or lessee/tenant of their residence provided that their combined disposable income from all sources does not exceed income levels used by the City for other utility discounts. The City or its designee shall be responsible for certifying to the Operator that such applicants conform to the specific criteria. Nothing in this section is intended to affect or change the tax benefit, if any, to the Operator of offering said discounts.

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Section 28: Future PEG Access Channel.

A. For the purpose of meeting the community's need for PEG access programming, the Operator shall make available one (1) PEG Access Channel throughout the term of this Franchise. As of the effective date of this Franchise, the City is not controlling and operating said PEG Access Channel. Nothing in this Franchise prevents the City from collaborating with another neighboring community(s), serviced by the Operator, to facilitate the City's needs for PEG access programming. If such partnership is developed, the City shall request in writing, that the Operator add the partnering community's PEG Access Channel as the City's designated PEG Access Channel. However, if the City opts to control and operate their own PEG Access Channel, upon receipt of forty-five (45) days written notice, the City and Operator shall meet to discuss and mutually agree upon an implementation plan to activate said Channel.

B. The City acknowledges that the Operator's Cable System provides additional benefits to access programming needs beyond the requirement listed above. This is accomplished through the inclusion of other regional access programming within the regional Channel line-up that services the Franchise Area. The Operator will endeavor to provide the Subscribers in the Franchise Area with the other regional access Channels so long as the programmers offer them for use on the Cable System.

Section 29: Future Capital Fee.

In the event the City and Operator decide that City specific PEG access programming and/or an I-Net is required and can be accommodated, and that a capital fee for capital expenditures is also required, then upon sixty (60) days prior notice to Subscribers, the Operator shall collect from Subscribers and pay to the City a capital fee not to exceed thirty cents (\$.30) per Subscriber per month. Payment of said PEG access capital fee to the City shall follow the

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Franchise's required Franchise Fee payment schedule. If the remaining term of this Franchise does not accommodate the full capital needs of the City, both parties may review the possibilities of extending the term of the Franchise, to potentially increase the capital contribution collected and paid to the City. These funds may be used by the City for capital expenditures related to PEG access programming and/or I-Net matters including, without limitation, for equipment purchases, construction and relocation costs. The City and Operator agree that as permitted in 47 CFR 76.985, all amounts paid as the capital fee may be treated as external costs and separately stated on Subscriber's bills.

Section 30: Management and Control of Access Channels.

In the event of implementation for a City controlled PEG Access Channel, the City may authorize a designated access provider to control, operate, and manage the use of any and all City specific PEG access facilities, including without limitation, the operation of the City's specific PEG Access Channel. The City or its designee may formulate rules for the operation of the City's specific PEG Access Channel, consistent with the Franchise. Nothing herein shall prohibit the City from authorizing itself to be a designated access provider. The Operator shall cooperate with the City and designated access provider in the use of the Cable System and City's specific access facilities for the provision of the PEG Access Channel.

Section 31: Access Reporting.

Upon the Operator's written request, the City shall submit a report annually on the use of the City specific PEG Access Channel and capital fee. The City shall submit a report to the Operator within one hundred twenty (120) days of a written request. The Operator may review the records of the City regarding the use of the capital fee.

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Section 32: Change In Technology.

In the event that after the City's specific PEG Access Channel is activated, if the Operator makes any change in the Cable System and related equipment and Facilities or in Operator's signal delivery technology, which directly or indirectly affects the signal quality or transmission of the City's PEG access programming, the Operator shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's access personnel to ensure that the capabilities of access programming are not diminished or adversely affected by such change. For example, this provision shall apply if Basic Services on the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

Section 33: Access Channels On Lowest Level of Service.

The City's PEG Access Channel provided to Subscribers under this Franchise shall be included by Operator, without limitation, as a part of the lowest level of service.

Section 34: Return Line.

Within sixty (60) days of request, the Operator shall provide an estimate of costs associated with the construction and activation of one return line capable of transmitting video programming to enable the distribution of the City's specific PEG access programming to Subscribers on the City's specific PEG Access Channel. The return line shall run from a location to be determined by the City to the Operator's Facilities. Within one-hundred-eighty (180) days of the City's directive, the Operator shall construct and activate a return line in accordance with the cost estimate previously provided. The City agrees to pay the costs of the return line within sixty (60) days of construction / activation and receipt of an invoice from the Operator.

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Section 35: Technical Quality.

The Operator shall maintain the City's specific PEG Access Channel at the same level of technical quality and reliability as other Channels carried on the Cable System. The Operator shall conduct routine maintenance and shall repair and replace, if necessary, all Operator's transmission equipment, including fiber transmitters and receivers, Channel modulators, associated cable and equipment, required to carry a quality signal from the City's designated access providers' facilities to the Operator's Facilities for the City's specific PEG Access Channel.

Section 36: Complimentary Cable Service For Public Buildings.

The Operator, upon request, shall provide without charge, a standard Installation and one outlet of Basic Cable Service to those administrative buildings owned, leased, or built by the City during the contract term, and which are occupied by the City, as well as fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System; Provided, however, that the City shall have first obtained a written right of entry agreement with said fire department, police department and/or K-12 public school district. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Operator. The Cable Service provided shall not be used for commercial purposes. The City shall hold the Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Operator shall not be required to provide an outlet to such buildings where a non-standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-standard Installations. A list of current locations is attached in Appendix "B".

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Section 37: Institutional Network (I-Net).

At any time during this Franchise agreement, upon receipt of the notice, the City and the Operator shall meet to discuss the Institutional Network communications needs of the City and the ability of the Operator to accommodate them. I-Net design shall be based upon the Cable System architecture, taking into account the needs of the City and current available technology.

Section 38: Internet alternative.

In the event that the City elects to obtain access to the internet to accomplish its communications, objectives in accordance with this section, the Operator shall provide, without charge, one cable modem per City site listed in Appendix B, and one Ethernet card, and any software necessary or access to such service. There shall be no charge for unrestricted usage in accordance with the City's internet usage policies. The using facility shall be responsible for the provisions, maintenance, updating and replacement as necessary any other hardware such as a personal computers and related equipment required for access to such service, as well as the cost of installing additional outlets if so requested. Further, the Operator shall not be obligated to provide such service to any using facility unless the using facility agrees, on a form as approved by the City, to take reasonable precautions to prevent any inappropriate or illegal use of such service, and agrees to hold the Operator harmless against and from all claims, demands, costs or liabilities of every kind of nature whatsoever arising out of use of such service within the using facility, including, but not limited to, reasonable attorneys' fees and costs.

Section 39: Coverage.

Subject to the density considerations in Section 40, the City shall be provided with Cable Service in the entire Franchise area. If such a condition does not now exist in its present Franchise Area, the Operator shall complete such wiring and be in a position to offer Cable Service to all residents within six (6) months of the effective date of the Franchise. Areas

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subsequently annexed by the City shall be provided with Cable Service within six (6) months; provided, however, that said annexed areas are located within the Urban Growth Area and immediately adjacent to the City limits, as both exist on the effective date of this Franchise.

Section 40: Distribution Line Extension Charges.

The Operator shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per strand mile in areas served by underground facilities. The Operator may elect to provide Cable Service to areas not meeting the above density standard and charge the requesting resident(s) for the line extension on a time and material cost basis.

Section 41: New Developments.

The City shall provide the Operator with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within the Franchise Area requiring underground Installation and/or conversion of cable Facilities as part of the approval condition(s).

Section 42: Extraordinary Installation Charges.

A. All residents requesting Cable Service and living within one hundred twenty-five (125) feet of existing cable distribution or trunk lines shall have the cable installed at the prevailing published Installation rate.

B. In the event a request is made for service and the residence is more than one hundred twenty-five (125) feet from an existing cable distribution or trunk line, such Installation shall be completed on a time and material cost basis for that portion of the service line extending beyond one-hundred twenty-five (125) feet.

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Section 43: Non-Discrimination.

A. In connection with rates, charges, Facilities, rules, regulations and in all Operator's services, programs or activities, and all Operator's hiring and employment made possible by or resulting from this Franchise, there shall be no discrimination by the Operator or by Operator's employees, agents, subcontractors or representatives against any Person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Operator shall not violate any applicable federal, state or local law or regulation regarding non-discrimination.

B. Any material violation of this provision shall be grounds for termination of a Franchise by the City and, in the case of the Operator's breach, may result in ineligibility for further City agreements; provided, that nothing in this ordinance shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any Subscriber coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of an Operator. The Operator will not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which the group resides.

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Section 44: Parental Control Devices.

Upon request by a Subscriber, the Operator shall make available and may charge the Subscriber a fee not to exceed the Operator's actual cost including applicable handling fees, a device by which the Subscriber can prohibit viewing and audio reception of a particular Cable Service or video programming service.

Section 45: Devices for the Hearing Impaired.

The Operator shall comply with FCC closed captioning requirements, 47 CFR 76.606, or any successor rules and regulations thereto.

Section 46: Rates.

At least annually, in accordance with applicable law, or at any time upon written request from the City, the Operator shall file with the City a complete schedule of rates and charges. During the term of this Franchise, and in accordance with applicable law, the Operator shall provide thirty (30) days prior written notice to the City and Subscribers of any change in its published rates and charges.

Section 47: Continuity of Service.

A. It shall be the right of all Subscribers to continue receiving Cable Service so long as their financial and other obligations to the Operator are fulfilled. In this regard the Operator shall act, so far as it is within its control, to ensure that all Subscribers receive continuous uninterrupted service during the term of the Franchise.

B. In the event the Operator fails to operate a Cable System for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the Council or without just cause such as an impossibility to operate the Cable System because of the occurrence of an Emergency or other circumstances reasonably beyond the Operator's control, the City may, after notice and an opportunity for the Operator to commence operations at its

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option, operate the Cable System or designate someone to operate the Cable System until such time as the Operator restores Cable Service or a replacement operator is selected. If the City is required to fulfill this obligation for the Operator, the Operator shall reimburse the City for all reasonable costs in excess of revenues from the Cable System received by the City that are the result of the Operator's failure to perform.

Section 48: Non-Compliance.

A. In the event the City believes that the Operator has not complied with the terms of the Franchise, the City shall notify the Operator in writing by certified mail. The notice shall state the specific nature of the perceived deficiency in the operation of the Cable System, or the Operator's failure to comply with material conditions of the Franchise, and set forth a cure period of no less than thirty (30) days. During the cure period, the Operator will be allowed to rectify the alleged improper condition, to respond to the City contesting the assertion of noncompliance, or, in the event that by the nature of default such default cannot be cured within the period set by the City, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

B. If the Operator fails to respond to the notice of non-compliance from the City in accordance with the procedures set forth above, or in the event that the alleged default is not remedied within the cure period, or the City believes the remedy proposed by the Operator is unreasonable and the City intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Operator at least ten (10) days prior written notice of the hearing, which specifies the time, place and purpose of the hearing, and provide the Operator the opportunity to be heard.

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Section 49: Remedies.

If the City determines that the Operator is not in compliance with any material provision of the Franchise, the City may elect to:

1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
2. Impose damages of One Hundred Dollars (\$100.00) per day for every day in which the Operator is not in compliance with the Franchise, for a maximum of one hundred twenty (120) days.
3. Nothing in this Franchise shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise.

Section 50: Revocation Notice and Duty to Cure.

This Franchise may be revoked for a substantial default of a material provision by the Operator. In the event that the City believes that grounds exist for revocation of a Franchise, the City shall informally discuss the matter with the Operator. If these discussions do not lead to resolution of the problem, the Operator shall be given written notice of the apparent violation or noncompliance, including a short and concise statement of the nature and general facts of the violation or noncompliance, and be given thirty (30) days to furnish evidence:

1. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
2. That rebuts the alleged violation or noncompliance.
3. That it would be in the public interest to impose some damages or sanction less than revocation.

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Section 51: Hearing.

A. In the event that the Operator fails to provide evidence reasonably satisfactory to the City as provided hereunder, the City Council may seek revocation of the Franchise at a legislative hearing. The City shall give written notice of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance and specify the time and place of the hearing. The Operator shall be afforded at least forty-five (45) days prior written notice of the hearing.

B. At the legislative hearing, the Operator shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of the legislative hearing and the cost shall be shared equally between the parties. The City Council shall hear any Person interested in the revocation, and shall allow the Operator, in particular, an opportunity to state its position on the matter.

Section 52: Standards for Revocation or Lesser Sanctions.

A. Within ninety (90) days after the legislative hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or establish damages consistent with Section 49, or a lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation, based upon the record of the legislative hearing.

B. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Operator. The Operator shall be bound by the City's decision to revoke the Franchise unless it appeals the

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decision to a court of competent jurisdiction within thirty (30) days. The Operator shall be entitled to such relief as the Court may deem appropriate.

Section 53: Removal and Abandonment of Facilities.

In the event that the use of any part of the Cable System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such Cable System equipment or Facilities have been installed in any Right of ways or Rights-of-Way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated in accordance with this Franchise, upon receiving ten (10) business days prior written demand from the City, the Operator shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the Right of ways or Rights-of-Way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Operator shall promptly restore the Right of ways or Rights-of-Way from which such property has been removed to a condition satisfactory to the City. Any affected equipment or Facilities of the Operator remaining in place one-hundred eighty-one (181) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Operator, such request shall not be unreasonably withheld. Any equipment or Facilities of the Operator that the City allows to be abandoned in place shall be abandoned in such a manner as the City shall prescribe. Upon permanent Adandonment of the equipment or Facilities of the Operator in place, the equipment or Facilities shall become that of the City, and the Operator shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such

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equipment or Facilities. None of the foregoing affects or limits the Operator's rights to compensation for an involuntary Adandonment of its equipment or Facilities under state or federal law.

Section 54: Grant of Other Franchises and PEG Access Channel Interconnection.

A. In the event the City enters into a franchise with any other Person or entity other than the Operator to use the Rights-of-Way for the purpose of constructing or operating a cable system or providing Cable Service to any part of the Franchise Area in which the Operator is providing Cable Service under the terms and conditions of this Franchise, the terms and conditions thereof, taken as a whole, shall be substantially similar and neither more favorable nor less burdensome to such Person than those contained herein in order that one cable provider not be granted an unfair competitive advantage over another.

B. In furtherance of the foregoing, the City and Operator recognize and acknowledge that other cable franchises granted by the City might contain provisions and conditions that are different than the provisions and conditions that the Operator has negotiated and accepted in this Franchise. Nothing in this Franchise shall be construed so as to require identical provisions and conditions in other cable franchises granted by the City.

C. Additionally, the Operator shall not be required by the City to interconnect PEG Access Channels with a newly authorized cable operator or a facilities based entity, legally authorized by state or federal law, who makes available for purchase by Subscribers or customers, Cable Services within the Franchise Area, without a franchise or other similar lawful authorization granted by the City.

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Section 55: Franchise Non-Transferable.

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

B. The Operator shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Operator. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Operator, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Operator. Every change, transfer or acquisition of control of the Operator shall make this Franchise subject to cancellation unless and until the City shall have consented thereto.

C. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

D. 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 requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

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E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Operator shall file with the City evidence of completion of such sale or transfer of ownership or control, certified and sworn to as correct by Operator and transferee.

F. In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Operator shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Operator.

G. The consent or approval of the City to any transfer by the Operator shall not constitute a waiver or release of any rights of the City, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

H. Notwithstanding anything to the contrary in this Section, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Operator provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all provisions of the Franchise.

Section 56: Insurance.

The Operator shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General and Auto Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for bodily injury, and property damage.

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The Operator shall provide a Certificate of Insurance designating the City as an additional insured and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Operator before issuance of the Franchise. Such insurance shall be non cancelable except upon thirty (30) days' prior written notice to the City. The Operator's insurance coverage shall be primary insurance as respects the City. Any Insurance, self-insurance or insurance pool coverage maintained by the City shall be excess of the Operator's insurance and shall not contribute with it.

Section 57: Indemnification.

A. The Operator shall, at its sole cost and expense, indemnify, defend, and hold harmless the City, its officials, boards, commissions, duly authorized agents and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation and construction of the cable television system under this Franchise, except that no such requirement shall apply where such claims, suits, causes of actions, proceedings, and judgments for damage are occasioned solely by the negligence, gross negligence or intentional acts of the City or its officials, boards, commissions, agents and employees while acting on behalf of the City. These damages shall include, but not be limited to, claims made against the City by the Operator's employees from which the Operator would otherwise be immune under Title 51 RCW, penalties arising out of patent and copyright infringements, and damages arising out of any failure by the Operator to secure consent or license from the owners, authorized distributors or licensees of programs to be delivered by the Operators Cable System whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

B. The City shall give the Operator written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section

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within fourteen (14) days of receipt. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Operator and the Operator shall have the obligation and duty to defend, through services of competent counsel, settle or compromise any claims arising thereunder. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

Section 58: Independent Contractors.

This Franchise shall not be construed to provide that the Operator is the agent or legal representative of the City for any purpose whatsoever. The Operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner whatsoever.

Section 59: Performance Bond.

A. Within sixty (60) days of the Effective Date of this Franchise, Operator will provide a performance bond to the City, in the total sum of \$250,000.00 which will remain in effect for the term of this Franchise in a form acceptable to the City. The performance bond is to ensure the faithful performance of Operator's obligations under the Franchise including the payment by the Operator of any penalties, claims, liens, fees, or taxes due the City which arise by reason of the operation, maintenance, or construction of the Cable System within the Franchise Area, except as otherwise provided herein. In the event Operator undertakes construction, the cost of which exceeds \$100,000, the City shall have the option of requesting the Operator provide and maintain, at its sole cost and expense, an additional performance bond. The amount of the bond shall not exceed one-hundred twenty percent (120%) of the cost of the work or improvements covered by the bond based on estimated costs immediately following the expiration of the bond. Operator will pay all premiums or other costs associated with

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maintaining the bond. The City may reduce the amount of the performance bond consistent with Operator's performance of its responsibilities under this Franchise and applicable law.

B. The performance bond will be from a major financial institution or surety. The performance bond will not require the consent of the Operator prior to the collection by the City of any amounts covered by the performance bond. The City will provide to Operator reasonable written notice and opportunity to cure any alleged non-compliance of any provision of the Franchise or any penalties, claims, liens, fees or taxes due the City.

C. If the Franchise is terminated, or upon expiration or transfer of the Franchise, the City will return the original bond or sign the necessary documentation to release the bond promptly if Operator does not have any unexpired obligations with respect to right of way work and does not owe funds to the City or is not in default of a material provision of the Franchise.

Section 60: General Provisions.

A. Entire Agreement. This Franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this Franchise and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

B. Modification. The provisions of this Franchise may be amended or added to by the mutual agreement of both of the parties. Provided, however, that such modifications shall not be effective until approved by the City Council via ordinance and such modification is accepted by the Operator.

C. Full Force and Effect. Any provision of this Franchise which is declared invalid, void or illegal by a court of competent jurisdiction shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

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D. **Attorney Fees.** If any suit or other action is instituted in connection with any controversy arising under this Franchise, the court shall determine which party shall be entitled to recover all or part of its reasonable attorneys fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

E. **No Waiver.** Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

F. **Governing Law.** This Franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue over any dispute arising hereunder shall be in the King County Superior Court or the United States District Court for the Western District of Washington at Seattle.

G. **Notices.** Any notices required to be given or permitted hereunder shall be delivered to the parties at the following addresses:

OPERATOR:
Comcast of Washington IV, Inc.
4020 Auburn Way North
Auburn, WA 98002
Attn: Franchise Director

CITY:
City of Covington
16720 SE 271st Street Ste. 100
Covington, WA 98042
Attn: City Manager

With a copy to:

Comcast of Washington IV, Inc.
PO Box 3042
Bothell, WA 98041-3042
Attn: Franchise Department

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Notices may be delivered personally, or deposited in the United States mail, first-class postage prepaid, to the address set forth herein, unless specifically directed otherwise herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

H. Captions. The respective captions of the sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

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

J. Remedies Cumulative. Subject to applicable law, any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

K. Force Majeure. The Operator shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Operator to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Operator's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the City's intention to subject the Operator 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 the Subscribers within the Franchise area, or where strict performance would result in

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practical difficulties and hardship to the Operator which outweigh the benefit to be derived by the City and/or Subscribers.

L. **Severability.** If any section, 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, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

Section 61: Successors or Assigns.

This Franchise, including all Appendices, shall be binding on the Operator, its heirs, successors and assigns.

Section 62: Acceptance.

This Franchise and its terms and provisions shall be unconditionally accepted by the Operator by the submission of a written instrument, executed and sworn to by a corporate officer of the Operator before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the promise to comply with and abide by all its provisions, terms and conditions.

Section 63: Ratification.

Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 64: Effective Date.

This Ordinance, being an exercise of a power specifically delegated to the City's legislative body, is not subject to referendum, shall be in full force and effect five (5) days after its passage and publication of a summary consisting of the title.

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PASSED by the City Council and approved by its Mayor this 13th day of June, 2006.

THE CITY OF COVINGTON

Margaret Harto
Margaret Harto, Mayor

Attest:
Jackie R. Cronk
Jackie R. Cronk, City Clerk

Approved as to Form:
[Signature]
City Attorney

June 19, 2006
Published Date

Effective Date: June 24, 2006

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Appendix A

FCC Customer Service Standards

Title 47 CFR, Part 76 (Cable Television Service), Subpart H (General Operating Requirements) is amended as follows:

1. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614-615, 623, 632 as amended, 106 Stat. 1480; 47 U.S.C. Secs. 532, 533, 535, 543, 552.

2. Section 76.309 will be added to the Commission's Rules and will read as follows:

Section 76.309 Customer Service Obligations

(a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;

(2) a franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;

(3) any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein;
or

(4) the establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability-

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(A) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(i) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(ii) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(B) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(C) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(D) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(E) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls- Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(A) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(B) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(C) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(D) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(E) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

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(3) Communications between cable operators and cable subscribers-

(A) Notifications to subscribers-

(1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(i) products and services offered;

(ii) prices and options for programming and conditions of subscription to programming and other services;

(iii) installation and service maintenance policies;

(iv) instructions on how to use the cable service;

(v) channel positions of programming carried on the system; and,

(vi) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(2) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(B) Billing-

(i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(C) Refunds- Refund checks will be issued promptly, but no later than either-

(i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) the return of the equipment supplied by the cable operator if service is terminated.

(D) Credits- Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

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(4) Definitions-

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

(B) Normal Operating Conditions- The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(C) Service Interruption- The term "service interruption" means the loss of pictures or sound on one or more cable channels.

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Appendix B

Public Buildings

- | | |
|---------------------------------------|----------------------------------|
| A) Covington City Hall | 16720 SE 271st Street, Suite 100 |
| B) Covington Aquatic Center at Tahoma | 18230 SE 240th St |