

ORDINANCE 39-99

AN ORDINANCE of the County of Mason, relating to cable television communications regulations, repealing Ordinance 1223 and establishing new conditions, requirements, obligations and duties of construction, maintenance and operation of cable communication systems as may be authorized under franchises with the County, attached as Appendix A.

Mason County Master Ordinance

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Section M1: Definitions.

- (a) "Access Channels" (Public, Educational or Governmental access facilities) means: 1. Channel capacity designated for public, educational, government use; and 2. facilities and equipment for the use of such channel capacity.
- (b) The "Act" means the *Cable Television Consumer Protection and Competition Act of 1992*, and the *Telecommunications Reform Act of 1996* as now existing or hereafter adopted or amended, and the *Cable Communications Policy Act of 1984*, as now existing or hereafter adopted or amended.
- (c) "Addressability" means the ability of a system allowing a Franchisee to authorize by remote control customer terminals to receive, change or to cancel any or all specified programming.
- (d) "Applicant" means any person or entity that applies for a Franchise.
- (e) "Basic Cable Service" means all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental programming required by the Franchise to be carried on the basic tier, and any additional video programming signals and service added to the basic tier by a cable Franchisee.
- (f) "Cable Services" means (i) the one-way transmission to subscriber of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection or use by the subscriber of such video programming.
- (g) "Cable Communication System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other service to

subscribers.

(h) "Channel" means a single path or section of the spectrum which carries a television signal.

(i) "Character generator" means a device used to generate alpha numerical programming to be cablecast on a cable channel.

(j) "Commissioners" means the Board of Commissioners for Mason County acting in its official capacity.

(k) "County" means Mason County, a municipal corporation of the State of Washington.

(l) "Data Transmission" means (1) the movement of encoded information by means of electrical or electronic transmission systems; (2) the transmission of data from one point to another over communications channels.

(m) "Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple family residential units.

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

(o) "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.

(p) "Fiber Optics" means the technology of guiding and projecting light for use as a communications medium.

(q) "Franchise" means the initial authorization, or renewal thereof, issued by the

franchising authority, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the Cable Communication System for the purpose of offering cable service or other service to subscribers.

(r) "Franchisee" means the person, firm or corporation to whom or which a Franchise, as herein above defined, is granted by the Board of County Commissioners under this Ordinance and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in County ordinance.

(s) "Gross revenues" means any and all receipts and revenues received directly or indirectly from all sources derived from the provision of cable services furnished by a Franchisee, including franchise fees if allowable by Federal law, other than transactions related to real property receipts by a Franchisee not including bad debt and any taxes on services furnished by a Franchisee, imposed on any subscriber or used by any governmental unit, agency or instrumentality and collected by a Franchisee for such entity.

(t) "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

(u) "Installation" means the connection of the Cable Communication System from feeder cable to subscribers' terminals.

(v) "Institutional networks (I-Nets)" means a cable communications system designated principally for the provision of non-entertainment services to schools, public agencies or other non-profit agencies, separate and distinct from the subscriber network, or on secured channels of the subscriber network.

(w) "Interactive services" means services provided to subscribers where the

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APPENDIX A

subscriber either (i) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (ii) transmits signals to any other location for any purpose.

(x) "Office" means the person or entity designated by the County as being responsible for the administration of a Franchise for the County.

(y) "Property of Franchisee" means all property owned, installed or used by a Franchisee in the conduct of its business in the County under the authority of a Franchise granted pursuant to this Ordinance.

(z) "Proposal" means the response, by an individual or organization, to a request by the County regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the County.

(aa) "Public Right of Way" or "Street" means the land owned, dedicated or conveyed to the County or a unit of government, including, but not limited to, any public alley, boulevard, lane, way, place, drive, easement, right-of-way or sidewalk, or any portion thereof, under the jurisdiction of the County.

(bb) "Subscriber" means a person or entity or user of the cable system who lawfully receives cable services or other service therefrom with Franchisee's express permission.

Section M2: Terms of Franchise.

(a) **AUTHORITY TO GRANT FRANCHISES OR ORDINANCES FOR CABLE TELEVISION:** It shall be unlawful to engage in or commence construction, operation, or maintenance of a cable communications system without a franchise issued under this Ordinance. The Commissioners may, by ordinance, award a non-exclusive

franchise to construct, operate and maintain a cable communications system which complies with the terms and conditions of this Ordinance.

This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit the County of Mason from granting other utilities under, along, across, over and upon any of the County roads, rights-of-way or other County property subject to this franchise and shall in no way prevent or prohibit the County of Mason from constructing, altering, maintaining or using any of said roads, rights-of-way, drainage structures or facilities, irrigation structure or facilities, or any other County property or affect its jurisdiction over them or any part of them with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the County may deem fit.

(b) INCORPORATION BY REFERENCE: The provisions of this Ordinance shall be incorporated by reference in any franchise ordinances or licenses approved hereunder. The provisions of any proposal submitted and accepted by the County shall be incorporated by reference in the applicable franchise. However, in the event of any conflict between the proposal, this Ordinance and the franchise, the franchise shall be the prevailing document.

(c) NATURE AND EXTENT OF THE FRANCHISE: The said Franchisee, successors and assigns shall have the right and authority to enter upon County roads, rights-of-way and other County property as designated in Section M3 - Service Area, for the purpose of constructing cable television lines and all necessary facilities connected therewith, and for repairing all such lines and facilities, and for operating and maintaining said lines and facilities.

Any franchise granted hereunder by the County shall authorize a franchisee, subject to the provisions herein contained:

(1) To engage in the business of operating and providing cable service and

the distribution and sale of such service to subscribers within the County;

(2) To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and pertinent to the cable communications system; and, in addition, so to use, operate and provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other franchisee franchised or permitted to do business in the County. No privilege or exemption shall be granted or conferred upon a franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

(d) TERM OF FRANCHISE: The County shall have the right to grant a franchise for a period of time most appropriate to the circumstances of the particular grant.

Section M3: Service Area.

The County, while recognizing that some franchisees have previously been granted a geographically limited franchise area, may wish, upon the expiration of such franchises, to remove such restrictions and to make the entire County open to franchisees. Such conditions, if appropriate, will be addressed in individual franchise ordinances.

Section M4: Application.

An applicant for a franchise either to construct or operate and maintain a cable communications system within the County shall file an application in a form prescribed by the County, accompanied by a non-refundable filing fee in an amount determined by the County.

Section M5: Franchise Issuance.

Prior to the granting of a Cable Franchise, the Board of County Commissioners shall conduct a public hearing to determine the following:

A. Initial Franchise.

1. That the public will be benefited by the granting of a Franchise to the Applicant;
2. That the Applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a Cable Television System in the area;
3. That the Applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the County;
4. That the Applicant will comply with all terms and conditions placed upon a franchisee by this Ordinance;
5. That the Applicant is capable of complying with all relevant federal, state, and local regulations, codes and standards pertaining to the construction, operation and maintenance of the Cable Facilities and systems incorporated in its application for a Franchise;
6. That the Public Rights-of-Way have the capacity to accommodate the Cable Television System;
7. That the proposed Franchise is consistent with the County's present and future use of the Public Rights-of-Way to be used by the Cable Television System;
8. That the benefit to the public from the Cable Television System outweighs the potential disruption to existing users of the Public Rights-of-Way to be used by the Cable Television System, and the resultant inconvenience which may occur to the public; and

9. That all other conditions resulting from the grant of the Franchise have been considered by the County and that the County determines that the grant is still in the public's best interest.

B. Renewal Franchise.

1. That the franchisee has substantially complied with the material terms of the existing Franchise.
2. That the quality of the franchisee's previous service including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs.
3. That a franchisee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
4. That a franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in a franchisee's proposal.
5. That such renewal is consistent with Section 626 of the Federal Cable Act, 47, USC §5 as amended.

Section M6: Acceptance.

(a) No franchise granted pursuant to the provisions of this Ordinance shall become effective unless and until the ordinance granting same has become effective.

(b) Within sixty (60) days after the effective date of the Ordinance awarding a franchise, or within such extended period of time as the Commissioners in their discretion may authorize, a franchisee shall file with the Clerk of the Board its written acceptance of the franchise, in a form satisfactory to the Prosecuting Attorney's Office, together with proof of the bond and insurance policies required by Sections M49: Performance Bond and M48: Insurance herein.

Section M7: Police Powers.

In accepting any franchise, a franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the County to adopt and 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 County pursuant to such power.

Section M8: Rules and Regulations by the County.

(a) In addition to the inherent powers of the County to regulate and control any franchise it issues, the authority granted to it by *The Act*, and those powers expressly reserved by the County, or agreed to and provided for in a franchise, the right and power is hereby reserved by the County to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers, giving due regard to the contractual rights of the franchisee under the franchise.

(b) The County Commissioners reserve the right to delegate their authority for franchise administration to a designated agent.

Section M9: Technical Standards.

(a) Subject to Federal, State and local law, a franchisee shall comply with FCC rules, Part 76, Subpart K, Section 76.601 through 76.610 as may be amended, or any more restrictive standards that may be promulgated by the NCTA hereafter, and, at the minimum, the following:

- (1) Applicable County, State and National/Federal Codes and Ordinances;
- (2) Applicable Utility Joint Attachment Practices;
- (3) The National Electric Safety Code; ANSI C2;
- (4) Local Utility Code Requirements;
- (5) Local Rights-of-Way Procedures;

(b) Preventive Maintenance: A comprehensive routine preventive_maintenance program shall be developed, effected, and maintained to ensure continued top quality cable communications operating standards in conformance with FCC Regulations Part

76 or as may be amended.

The Franchisee shall notify the County prior to the date of the semi-annual FCC Proof of Performance Test so that the County, as is its right under the pertinent FCC regulations, may, at its option, monitor the taking of such tests. The Franchisee shall upon request provide a copy of the results of the system evaluation to the County at the same time as submission to the FCC. Such inspections shall be at the expense of the franchising authority.

Section M10: Construction Standards.

The cable television system and all franchise property and appurtenances shall be designed, installed, constructed, and maintained using the current industry standard regarding components, materials, and methods. A franchisee shall at all times comply with all current applicable state, federal, and County standards. All of a franchisee's plant and equipment, including but not limited to, the antenna sites, headend and distribution system towers, dwelling connections, structures, poles, wires, cables, coaxial cables, fixtures, and appurtenances shall be designed, located, installed, erected, constructed, reconstructed, replaced, removed, repaired, operated, and maintained in accordance with good engineering practices and performed by experienced construction and maintenance personnel so as not to endanger or unreasonably interfere in any manner with the rights of any property owner, or hinder, or to obstruct pedestrian or vehicular traffic. A franchisee shall additionally comply with all applicable County construction codes and permit procedures. County shall be entitled to charge reasonable permit fees. Notwithstanding the granting of a franchise, a franchisee shall not be authorized to do any work under the franchise for which issuance of a permit is required unless and until such permit is issued for such work. A franchisee shall not have an absolute right to the issuance of a permit.

All construction and installation work where crossing County roads or rights-of-

way or other County property outside of the corporate limits of any incorporated town shall be subject to the approval and pass the inspection of the County Engineer.

In preparing Plans and Specifications for the installation of cable television lines across County roads and rights-of-way the Franchisee shall use as a guide and reference the latest compilation of the Standard Specifications for Road and Bridge Construction established by the Washington State Department of Transportation and/or APWA.

All plans and specifications for County road crossings shall be subject to the approval of the Mason County Engineer.

Notwithstanding the provisions of this section, the County Engineer may require or permit modifications of such specifications referred to in this section and approve such plans and specifications submitted by the Franchisee in applying for a permit for such work.

Mason County reserves for itself the right at any time upon ninety (90) days written notice to the Franchisee, to so change, amend, modify or amplify any of the provisions or conditions herein enumerated to conform to any state statute or County regulations, relating to the public welfare, health, safety or highway regulation, as may hereafter be enacted, adopted or promulgated and this franchise may be terminated at any time if the Franchisee's lines and facilities are not operated or maintained in accordance with such statute or regulation.

Section M11: Construction Notification.

At least fifteen (15) days prior to the intended construction, a franchisee shall inform all residents in the affected area that a construction project will commence, the dates and nature of the project, and a toll-free telephone number which the subscriber may call for further information. A pre-printed door hanger may be used for this purpose.

(a) Notice of Entry on Private Property. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new plant construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property. A franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

(b) Emergency Repairs. Notice requirements of subsections (a) and (b) above, are suspended for purposes of entry upon private property to perform repairs at the subscriber's request or in the event of system outage repairs or other emergencies in which insufficient time is available to provide notice to subscribers.

(c) Restoration of Property. After performance of work, franchisee shall restore private property as nearly as possible to its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements on private property shall, at the sole expense of a franchisee, be promptly repaired and restored (including replacement of such items as shrubbery and fencing) to the reasonable satisfaction of the property owner.

(d) The laying, construction, operation and maintenance of the Franchisee cable television lines and facilities authorized by the franchise shall not preclude the County of Mason, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of the Franchisee providing that the Franchisee shall be given forty-eight (48) hours notice of said blasting or other work in order that the Franchisee may protect cable television lines and facilities.

M12: Undergrounding and Landscaping.

In those areas and portions of the County where the transmission or distribution facilities of the public utility providing telephone service and those of the facility providing electric service are underground or hereafter may be placed underground, then a franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground. Such activities shall be made in coordination with the other affected utilities. Amplifiers and associated equipment in a franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground. A franchisee shall be responsible for insuring that such housing located upon the surface of the ground is clearly visible to the County so as to facilitate lawn mowing and other landscaping activities. The County shall not be responsible for any damage to the facilities during normal maintenance activities.

Section M13: Construction in Right-of-Way.

(a) Notification of County Public Works Department. Prior to commencement of construction of said cable television lines or facilities, the Franchisee shall first file with the County Engineer their application for permit to do such work together with plans and specifications in triplicate showing the position, depth and location of all such lines and facilities sought to be constructed, laid, installed or erected at that time, showing their relative position to existing County roads, rights-of-way or other County property upon plans drawn to scale, hereinafter collectively referred to as the "map of definite location." A franchisee shall submit an application for permit to perform work in the County's rights-of-way. No work, other than emergency repairs shall commence without such a permit. Emergency repairs may be made immediately with notification given to the County no later than the next business day.

(b) Installation. The lines and appurtenant facilities shall be laid in exact conformity with said map of definite location, except in instances in which deviation

may be allowed thereafter in writing by the County Engineer pursuant to application by the Franchisee. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc. No such construction shall be commenced without the Franchisee first securing a written permit from the County Engineer, including approval endorsed on one set of plans and specifications returned to the Franchisee. All such work shall be subject to the approval of and shall pass the inspection of the County Engineer. The Franchisee shall pay all applicable permit fees in conjunction with this work.

In any work which required breaking of soil of the County roads, rights-of-way or other County property subject to this franchise for the purpose of laying, re-laying, connecting, disconnecting and repairing the said cable television lines and facilities, and making connections between the same to structures and buildings or consumers or making connections to other facilities of the Franchisee now in existence or hereafter constructed, the Franchisee shall be governed by and conform to the general rules adopted by the officers charged with the supervision and care of such County roads, rights-of-way, and other County property; and the Franchisee at their own expense and with all convenient speed shall complete the work for which the soil has been broken and forthwith replace the work and make good the County road, right-of way or County property, and leave the same in as good condition as before the work was commenced, provided, however, that no such breaking of the soil on County roads, rights-of-way, or other County property, shall be done prior to the obtaining of a permit issued by the County Engineer except on an emergency basis. Application for such permit shall be accompanied by specifications for the restoration of the County road, right-of-way or other County property to the same condition as it was prior to

such breaking, and such specifications must be approved by the County Engineer before such breaking of the soil is commenced; provided further that the County Engineer may require a performance bond in a sum sufficient to guarantee to Mason County that such County road, right-of-way or other County property shall be restored to the same condition as it was prior to such breaking of the soil, the amount of said bond to be fixed by the County Engineer. The County Engineer may at any time do, order or have done any and all work that they consider necessary to restore to a safe condition such County road, right-of-way or other County property left by the Franchisee or its agents in a condition dangerous to life or property, and the Franchisee, upon demand, shall pay to the County all cost of such work provided that the Franchisee has first been given notice and an opportunity to correct or repair such condition(s) itself, prior to any such demand.

All cable television lines and facilities constructed, operated and maintained across County road, rights-of-way or other County property covered by this franchise shall be constructed, operated and maintained in compliance with the provisions of Mason County Ordinance No. 85-97, Accommodations of Utilities on Road Right-of-Way, effective August 12, 1997. The cable television lines shall be laid as directed by the County Engineer at depths of not less than specified in the Ordinance referred to above. All construction or installation of such lines and facilities, service, repair, or relocation of the same, performed along or under the County roads, rights-of-way of other County property subject to this franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvements of such County roads, rights-of-way or other County property. The owners of all utilities (public or private) installed in such County roads, rights-of-way or other County property prior in time to the lines and

facilities of the Franchisee, shall have preference as to the positioning and location of such utilities so installed with respect to the Franchisee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such County road or right-of-way.

In accordance with the permit issued all transmission lines, equipment, and structures shall be located and installed so as to cause minimum interference with the rights and reasonable convenience of property owners, and at all times shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used 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 a franchisee shall be placed in such manner as not to interfere with the usual travel on such public way.

(c) Interference With Use of Streets. All work done under this franchise shall be done in a thorough and workmanlike manner. In the laying of cable television lines and the construction of other facilities and the opening of trenches, the tunneling under County roads, rights-of-way or other County property, the Franchisee shall leave such trenches, ditches and tunnels in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work; and where any of such trenches, ditches and tunnels are left open at night, the Franchisee shall place warning lights and barricades at such a position as to give adequate warning of such work. The Franchisee shall be liable for any injury to person or persons or damage to property sustained through their carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the Franchisee.

A franchisee must obtain an application for permit to perform work in the rights-of-

way for all work performed by the franchisee in such areas. When installing, locating, laying, or maintaining facilities, apparatus, or improvements, a franchisee 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 franchisee of such work. Any facility, apparatus, or improvement under this Ordinance shall be laid, installed, located, or maintained in conformance with instructions given by, and to the satisfaction of the County. In any event, a franchisee shall, at its own expense, and to the satisfaction of the County in accordance with the terms of the application for permit to perform work in the rights-of-way, restore to County standards and specifications any damage or disturbance caused to streets as a result of franchisee's construction or operations.

(d) Relocation/Removal. If, at any time, the County of Mason shall improve or change any County road, right-of-way or other County property subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage facilities, the Franchisee, upon written notice from the County Engineer, shall, at their sole expense, promptly change the location or readjust the elevation of cable television lines and other facilities so that the same shall not interfere with such County work and so that such lines and facilities shall conform to such new grades or routes as may be established. Except under emergency circumstances the County shall furnish fourteen (14) days advance written notice of such anticipated changes. The County of Mason shall in no way be held liable for any damages to said Franchisee that may occur by reason of any of the County's improvements, changes or works above enumerated. The County of Mason shall provide the utility a copy of the Six Year Transportation Program and the Annual Construction Program after adoption each year. It is anticipated these programs will aid the utility in planning construction

programs.

All work to be performed by the Franchisee under this section shall be under the direction, approval and shall pass the inspection of the County Engineer. The Franchisee shall obtain the requisite permits involved.

Mason County reserves for itself the right at any time upon ninety (90) days written notice to the Franchisee, to so change, amend, modify or amplify any of the provisions or conditions herein enumerated to conform to any state statute or County regulations, relating to the public welfare, health, safety or highway regulation, as may hereafter be enacted, adopted or promulgated and this franchise may be terminated at any time if the Franchisee's lines and facilities are not operated or maintained in accordance with such statute or regulation.

Upon receipt of sixty (60) days prior written notice, a franchisee, at its own expense, shall protect, support, temporarily disconnect, relocate, or remove any of its property when, in the judgment of the County Engineer, the same is required by reason of traffic conditions, public safety, and/or improvements by governmental agencies. Nothing herein shall be deemed a taking of the property of a franchisee, and franchisee shall be entitled to no surcharge by reason of this section. After receipt of thirty (30) days prior written notice, upon failure of a franchisee to commence, pursue, or complete any work required by the provisions of this Ordinance to be performed on any street, within the reasonable time prescribed and to the satisfaction of the County, the County may, at its option, cause such work to be done, and a franchisee shall pay to the County the reasonable cost thereof, within thirty (30) days after receipt of demand.

(e) Street Vacations. Easements will be reserved for utilities at the time of any street or road vacations."

(f) Existing Monuments. Before any work is performed under this franchise

which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Franchisee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Franchisee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by the Franchisee.

A complete set of reference notes for monuments and other ties shall be filed with the office of the Mason County Engineer.

(g) Whenever any of the County roads, rights-of-way or other County property as designated in this franchise, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, then this franchise shall terminate in respect to the said roads, rights-of-way or other County property so included with city or town limits; but this franchise shall continue in force and effect to all County roads, rights-of-way or other County property not so included in city or town limits.

Section M14: Safety Requirements.

A Franchisee, in accordance with applicable national, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, equipment and connections in, over, under, and upon the Public Rights of Way or places of a Franchise area, wherever situated or located, shall

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

The County reserves the general right to see that the system of a Franchisee is constructed and maintained in a safe condition.

Section M15: Building Moving.

Whenever any person shall have obtained permission from the County to use any street for the purpose of moving any building, a franchisee, upon fourteen (14) days written notice from the County, shall raise or remove, at the expense of the permittee desiring to move the building, any of a franchisee's wires which may obstruct the removal of such building; provided, that the moving of such building shall be done in accordance with regulations and general ordinances of the County. It is further provided that the person or persons moving such building shall indemnify and save harmless said franchisee of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of a franchisee, and that franchisee shall have the right to require payment in advance.

Section M16: Tree Trimming.

Upon prior approval of the County except in the case of emergencies and in accordance with all County rules, regulations, ordinances, policies and standards, Franchisee shall have the authority, at its expense, to trim trees upon and overhanging Streets, Public Rights of Way and places in the Franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of a Franchisee. A Franchisee shall be responsible for debris removal from such activities.

Section M17: Coverage.

A franchisee shall provide cable television service in the entire franchise area except that it is not required to furnish cable to those areas having cable television

service provided by another franchisee. Recognizing that full coverage does not now exist, a franchisee shall complete such wiring and be in a position to offer cable reception to all residents within twelve (12) months from the grant of the franchise subject to Section M18: Extraordinary Installation.

In those areas which are adjacent to an unbuilt area, the franchisee with the nearest trunk and/or distribution line will be responsible to furnish cable service subject to the same conditions.

Section M18: Extraordinary Installation

(a) Drop Line Costs. All residents requesting cable service and living within three hundred (300) feet of existing cable distribution lines shall have the cable installed at the prevailing published installation rate.

In the event a request is made for service and the residence is more than three hundred (300) feet from an existing cable distribution line, such installation shall be completed on a time and material cost basis for that portion of the service line extending beyond three hundred (300) feet.

(b) Distribution Line Costs. Cable Service shall be available to all residents within the County provided there are at least thirty two (32) dwelling units per street mile as measured from the nearest distribution line.

A subscriber who has paid such extra installation charges may request a pro-rata reimbursement when and if additional installations are made on the same distribution line. Such subsequent subscriber shall make payment directly to the franchise who shall, in turn, make a pro-rata refund to the original installee(s). Such process will continue as additional installations are made and the subscribers may have recovered their extra installation cost.

Section M19: Emergency Override

The franchisee shall be in compliance with all federal Emergency Alert System (EAS)

requirements by no later than the date mandated by FCC Regulations.

Section M20: Interconnection

The County may request a franchisee to interconnect PEG access channels of a cable television system with any and all other contiguous and compatible cable systems. Interconnection of system may be accomplished by direct cable connection, microwave link, or other technically feasible method.

Interconnection shall immediately initiate negotiations with other affected system(s), and shall report to the County the results of such negotiations no later than sixty (60) days after such initiation.

Franchisee may be granted additional reasonable extensions of time to interconnect, or the County may rescind its request to interconnect upon petition of a franchisee, if the County finds that a franchisee has negotiated in good faith and has failed to obtain approval from the system(s) of the proposed interconnection, or that the cost of interconnection would cause an unreasonable financial burden as determined by the County upon a franchisee and/or its subscribers. The costs of any required PEG interconnect shall be shared between the participating cable franchisees on a pro rata basis, proportionate to the number of subscribers served, and may be passed on through to subscribers pursuant to FCC rules.

Section M21: Institutional Networks (I-Nets)

The County may request that a franchisee provide an institutional network (I-Net). (Alternatively, a franchisee may submit a proposal for provisions of modems and unlimited access, without cost, to the Internet system to accomplish these ends.) An entity desiring use of such will provide the Board of Commissioners demonstrated need of such use.

Prior to implementation of any I-Net service a public hearing shall be convened by the Commissioners, to discuss the benefits and associated costs of constructing

said I-Net to the residents of the County. Upon a finding by the Commissioners that an I-Net is reasonably required to meet community needs, taking into consideration the expense of providing such services and the potential costs to subscribers, the County may require the implementation of such features in accord with the provisions of this agreement.

Section M22: Access and Institutional Network Equipment

A franchisee may be required to contribute a sum of moneys for the purchase of, or augmentation of broadcast equipment for PEG access and I-Net cablecasting. These expenditures will be pro-rated by the County based upon the number of subscribers to each system.

Section M23: Public Buildings

A franchisee shall furnish a cable outlet and converter, if required, for the reception of basic service at County buildings without charge including schools specified in individual franchises. Provided however that this requirement may be waived by the County if any such location, now or hereafter is not within five hundred (500) feet of any existing cable distribution facilities. For the purposes of this section, public housing facilities are not considered County buildings.

Section M24: Rates.

Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, a franchisee shall provide the County and all subscribers a minimum of thirty (30) days prior written notice of such change.

Subject to Federal, State and local law, the County may regulate the approval of increases of rates or charges for providing cable service and prescribe reasonable rate approval procedures.

Section M25: Customer Service.

A franchisee shall comply with the customer service requirements of Section 632

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of the Cable Communications Policy Act of 1984 (47 U.S.C. S 552), as amended by the Cable Television Consumer Protection and Competition Act of 1992, and all applicable standards and regulations adopted by the Federal Communications Commission (FCC) pursuant thereto. Such FCC standards are attached as Exhibit "A".

The County reserves the right to enact or enforce any customer protection law, containing more stringent standards, to the extent not specifically preempted by the FCC in 47 CFR §76.309.

Section M26: Parental Control Devices.

A franchisee will make available at the cost formula provided by the FCC a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

Section M27: Refunds for Outages.

After notification from a subscriber of an outage, franchisee will credit the Subscriber's account if the Subscriber was without service for a period exceeding twenty-four (24) hours provided franchisee is notified by the Subscriber within thirty (30) days.

Section M28: Failure to Improve Customer Service.

The County or its designee shall review telephone response and customer service information with a franchisee. It will be assumed that improvements will be made by a franchisee in the areas of non-compliance from the last reporting period. Failure to do so may result in the calling of a public hearing by the County Commissioners for the purpose of examining the reasons, if any, why such improvements were not achieved by a franchisee. Further action may be taken in accordance with FCC violation procedures.

An unsatisfactory record will also result in the hearings being made part of an exhibit under *Section 626(c)(1)(A) and (B) of The Act* alleging that such practices

have failed to conform with future refranchising requirements as stated therein. In addition a franchisee's Corporate office, in all instances, shall be advised of the County's findings.

Section M29: Franchise Fee.

A franchisee shall pay to the County quarterly, on or before the thirtieth (30th) day of each January, April, July and October, a percentage of gross revenues as defined herein for the preceding three months. Such remittances shall be accompanied by forms furnished by the County to report detailed information as to the sources of such income.

Section M30: Periodic Meetings.

Upon request, a franchisee shall meet with designated County officials and/or designated representative(s) to review the performance of a franchisee for the preceding period. The subjects may include, but are not limited to, those items covered in the periodic reports and performance tests.

Section M30: Reports.

The franchisee shall furnish, upon request, a report of its activities as appropriate. Such report shall include

1. Most recent annual report.
2. A copy of the 10-K Report, if required by the Securities and Exchange Commission.
3. The number of homes for which cable is available.
4. The number of Subscribers with basic services.
5. The number of Subscribers with expanded basic services.
6. The number of Subscribers with premium services.
7. The number of Pay-Per-View purchases.
8. The number of hook-ups in the period.
9. The number of disconnects in the period.

10. Total number of miles of cable in the County.
11. Statistical data that will allow the County to ascertain the number of complaints received by category, length of time taken to resolve and action taken to provide resolution.
12. Copies of all FCC complaint logs.
13. A statement of its current billing practices, and a sample copy of the bill format.
14. A current copy of its Subscriber service contract.
15. A current copy of its cable rate sheet delivered to Subscribers.
16. Report on operations - Such other reports with respect to its local operation, affairs, transactions or property that may be appropriate.

Section M32: Discounts. A franchisee may offer a discount from the normal charge for basic services and installation to those individuals age sixty-two (62) or older or disabled who are the legal owner or lessee/tenant of their residence provided that their combined disposable income from all sources does not exceed the Housing and Urban Development (HUD) standards for the Seattle-Everett area for the preceding calendar year.

The County or its designee shall be responsible for certifying to a franchisee that such applicants conform to the specified criteria.

Section M33: External Franchising Costs.

A franchisee shall have the authority to pass through such external costs as allowed under 47 CFR 76.922. However, the County reserves the right to review and approve certain specific features and/or services delineated in a franchise agreement prior to the implementation of such items and the pass through of any associated costs pertaining thereto.

Section M34: Cable System Evaluation.

In addition to periodic meetings, the County may require reasonable evaluation sessions at any time during the term of a Franchise.

It is intended that such evaluations cover areas such as customer service, response to the community's cable-related needs, and a franchisee's performance under and compliance with the terms of a Franchise.

Section M35: Non-Discrimination.

A franchisee shall not deny service, deny access, or otherwise discriminate against subscribers, PEG channel users, or general citizens on the basis of income, race, color, religion, national origin, age or sex. A franchisee shall comply at all times with all other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to nondiscrimination, which are hereby incorporated in and made a part of this Ordinance by reference.

Section M36: Equal Employment Opportunities

A franchisee shall strictly adhere to equal employment opportunity requirements of federal, state, and local laws and regulations in effect on the date of the franchise grant, and as amended from time to time.

Section M37: Continuity of Service.

It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to a franchisee are fulfilled.

(a) In this regard a franchisee 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 a franchisee fails to operate a system for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the County Board of Commissioners unless there is just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond a franchisee's control, the County may, after notice and an opportunity for a franchisee to commence operations at its option, operate the system

or designate someone to operate the system until such time as a franchisee restores service to conditions acceptable to the Commissioners or a replacement franchisee is selected. If the County is required to fulfill this obligation for a franchisee, a franchisee shall reimburse the County for all reasonable costs or damages in excess of revenues from the system received by the County that are the result of a franchisee's failure to perform.

Section M38: Franchise Renewal.

The provisions of *Section 626* of *The Act* or other applicable Federal or State law will govern the actions of the County and a franchisee in proceedings relating to franchise renewal. The County expressly reserves the right to establish guidelines and monitoring systems in accordance with the provisions of *The Act* to measure the effectiveness of a franchisee's performance during the term of such franchise.

Section M39: Transfer of Ownership.

All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Franchisee, and all privileges, as well as all obligations and liability of the Franchisee, shall ensure to its successors and assigns equally as if they were specifically mentioned wherever the Franchisee is mentioned.

The Franchisee, its successors and assigns shall not sell, transfer or assign this franchise without first securing the written permission to do so of the Board of County Commissioners of Mason County.

A Franchise shall not be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless written approval is granted by the Board of County Commissioners to ensure a review of unforeseen circumstances not present at the time of the original Franchise. The County's approval shall not be unreasonably withheld. Such costs associated

with this review process shall be reimbursed to the County by a new prospective Franchisee. This proceeding shall be in conformance with the Federal Communications Commission (FCC) Regulation 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, which will govern the rights of the parties and establish time limitations for responses.

An assignment of a Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

A Franchisee shall promptly notify the County prior to any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee's company. Every change, transfer, or acquisition of control of a Franchisee's company shall cause a review of the proposed transfer. In the event that the County adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the County may cancel the Franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a Franchisee to another person or entity controlling, controlled by, or under common control with a Franchisee.

If, in accordance with FCC 394 guidelines, the County adopts a resolution denying its consent, such changes, transfers or acquisition of control shall be deemed not to have been consummated. A Franchisee may take such legally allowable actions following such refusal to accept such transfer.

The County shall be reimbursed for its out-of-pocket costs associated with its review of a Franchisee's request. Such costs will not exceed in constant dollars those incurred during the original franchising or refranchising process.

Section M40: Record Inspection

(a) Retention Periods. A franchisee shall establish, keep, and maintain books, accounts, papers, maps, and other records as is reasonably necessary to ensure compliance with the terms of this Ordinance and its franchise. Such records shall include, but shall not be limited to, any public records required to be kept by a franchisee pursuant to the rules and regulations of the FCC, and shall be maintained for a period in accordance with the following schedule:

- (1) Over Term of Franchise: Ordinance, amendments to the Ordinance, Ordinance applications and related materials, construction maps, documents filed or presented to the County or County Commissioners, and records relating to bonds or other security;
- (2) Seven (7) Years: Financial information, including, but not limited to, annual reports of a franchisee, franchise fee reports, records of gross receipts, receipts, and income, and
- (3) Three (3) Years: All other records required under this Ordinance unless otherwise specified.

(b) Inspection of Records. A franchisee shall agree that the County, upon reasonable notice to a franchisee, may review such of its books and records at a franchisee's business office, during normal business hours and on a nondisruptive basis, to ensure compliance with the terms of this Ordinance and its franchise. Notwithstanding anything to the contrary set forth herein, a franchisee shall not be required to disclose information which is reasonably deems to be proprietary or confidential in nature. The County agrees to treat any information disclosed by a franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. A franchisee shall not be required to provide Subscriber information in violation of

Section 631 of the Cable Act.

If any such books or records are not kept in the local office, or if on reasonable request, are not made available to County inspection within the County, and if the County shall reasonably determine that an examination of such records is necessary or appropriate to the performance of the County's responsibilities hereunder, then all reasonable travel and subsistence expense necessarily incurred in making such an examination by the County shall be paid by a franchisee, provided that such inspections do not occur any more frequently than once every three years.

(c) Confidentiality. County shall maintain the confidentiality of any trade secrets or other proprietary information of a franchisee in the possession of the County, and further, records shall be exempt from public inspection pursuant to this section to the extent such records are made except from public disclosure by state or federal statute and to the extent such records are protected by state or federal statute against discovery in civil litigation.

Section M41: Rights Reserved to the County

The County of Mason, in granting this franchise, does not waive any rights which it now has or may hereafter acquire with respect to County roads, rights-of-way or other County property and this franchise shall not be construed to deprive the County of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the County roads, rights-of-way and other County property covered by this franchise.

The rights reserved to the County set forth below are in addition to all other rights of the County, whether reserved herein or otherwise authorized by law, and no action, proceeding, or exercise of a right shall affect any other rights which may be held by the County except as expressly otherwise stated in the franchise. Franchisee, by acceptance of the Ordinance, agrees to be bound thereby and to comply with any

action or requirement of the County in its exercise of any such right or power.

(a) Delegation of Authority. The County may exercise or delegate its regulatory power to a subordinate body of its officers, employees, agencies, committees, or departments to insure the proper implementation of this Ordinance.

(b) Establishment of New Requirements. The County may establish additional requirements for new franchises or franchise renewals, and may modify requirements from time to time to reflect changing conditions and the industry standards.

(c) County Inspections. The County shall have the right to inspect all cable television system construction or installation, and to make such tests as it shall find necessary to ensure compliance with the terms of the Ordinance and other applicable provisions of law. Inspections will not unreasonably disrupt a franchisee's operations or conduct of its business.

(d) Intervention by County. The County shall have the right of intervention, at its own cost, in any suit or proceeding involving a cable system or franchise to which a County franchisee is a party.

(e) Street Improvements. The County reserves the right to improve any street, or other public place, or other portions thereof, over and within which the Ordinance is granted, including the widening, change of grade, change of alignment, construction or reconstruction of such street, or any portion thereof, and the County further reserves the right to construct, or reconstruct, install, repair and maintain any such street, or other public places, or any portions thereof.

Section M42: Effect of Termination for Non-Compliance.

Subject to State and Federal law, if any franchise is terminated by the County by reason of a franchisee's non-compliance, may exercise its rights under Section 626(b) of the Act a franchisee shall, upon order of the County Commissioners, remove the system as required under Section M44: Removal & Abandonment of Property of

Franchisee of this Ordinance.

Section M43: Termination of Subscriber Services

Upon termination of any subscriber, a franchisee shall promptly remove all of its facilities and equipment, excepting drop cable and internal wiring, from the premises of such subscriber upon subscriber's request, except as provided in subsection (b), below.

(a) Charges Upon Failure to Recover Equipment. Upon termination of services, should a franchisee not promptly collect its equipment from the premises of the subscriber within five (5) working days, the subscriber shall not be charged for continued services, nor for failure to return any equipment, provided the equipment is returned.

(b) Equipment Returns. Should a franchisee require the subscriber to return the equipment, a franchisee shall establish convenient hours including evening and weekend hours, for return of the equipment, and the subscriber shall have a reasonable length of time in which to return the equipment. The subscriber shall be advised of the date by which the equipment must be returned before a charge may be imposed for failure to return equipment.

Section M44: Removal & Abandonment of Property of Franchisee.

The County may direct a Franchisee to temporarily disconnect or bypass any equipment of a Franchisee in order to complete street construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the County. Such removal, relocation or other requirement shall be at the sole expense of a franchisee.

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 system or property has been installed in any street or public place without complying with the

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requirements of the Franchise or other County ordinances or the Franchise has been terminated, canceled or has expired, a franchisee, upon being given ten (10) days' written notice, shall remove within ninety (90) days from the streets or public places all such property and poles of such system other than any which the County may permit to be abandoned in place. In the event of such removal, a franchisee shall promptly restore the street or other areas from which such property has been removed to a condition similar to that existing before such removal and satisfactory to the County. Such approval shall not be unduly withheld.

Any property of a franchisee remaining in place ninety (90) days after the termination or expiration of the franchise shall be considered permanently abandoned. The County may extend such time not to exceed an additional ninety (90) days. However, in the event of an appeal being filed, calculation of the first ninety (90) day period shall not begin to accrue until after the final adjudication of such an appeal.

Any property of a franchisee to be abandoned in place shall be abandoned in such manner as the County shall prescribe. Upon permanent abandonment of the property of a franchisee in place, the property shall become that of the County, and a franchisee shall submit to the Clerk of the Board an instrument in writing, to be approved by the Prosecuting Attorney's Office, transferring to the County the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under State, or Federal law. In the event the County and a franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of this Section either party may invoke arbitration to resolve such question.

Section M45: Penalties.

The County shall notify a franchisee in writing stating the nature of a perceived deficiency in the operation of the cable system and setting forth the time a franchisee

will be allowed to rectify such alleged improper condition, which shall be reasonable and no less than thirty (30) days. A franchisee may request an extension of time in certain circumstances: for instance, if construction is suspended or delayed by the County, or if unusual weather, acts of God (e.g. earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of a franchisee, delay corrective action. In such circumstances, the additional amount of time allowed will be reasonably determined by the County and a franchisee.

Failure of a franchisee to correct these deficiencies, except in those circumstances cited above, may result in the County calling a hearing to determine if penalties should be imposed upon a franchisee or if a material violation of the franchise has occurred.

If, following such hearing, it is determined by the County Board of Commissioners that a franchisee has failed to comply with the terms of the Franchise, penalties of up to \$200.00 (Two Hundred Dollars) per day or per instance (depending on the violation) may be imposed at any time after the notice and opportunity to cure period has expired.

Monetary penalties may be assessed retroactive to the date that notification was provided to a franchisee in such cases where a franchisee has been non-responsive in correcting the situation or in the case of flagrant violations.

If payment of any of these penalties is delinquent by three (3) months or more, the County may require partial or total forfeiture of performance bond or other surety.

Section M46: Revocation for Cause.

If a franchisee shall willfully violate, or fail to comply with any of the provisions of this franchise through willful or unreasonable neglect or fail to heed or comply with any notice given a franchisee under the provision of this grant, then the said franchisee shall forfeit all rights conferred hereunder and this franchise may be revoked by the

Board of County Commissioners.

Any franchise granted by the County may be terminated during the period of such franchise for failure by an Franchisee to comply with the material provisions of this Ordinance and/or the Franchise.

The procedure to be followed resulting in termination unless by Franchisee's request, shall be:

- (a) The County shall provide Franchisee with a detailed written notice of such violation. Within 30 days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a reasonable period of time specified by the Board of County Commissioners.
- (b) If said response is not satisfactory to County, County may declare an Franchisee in default, with written notice to Franchisee. Within ten (10) business days after notice to Franchisee, Franchisee may deliver to County a request for a hearing before the Board of County Commissioners. If no such request is received, County may declare the franchise terminated for cause.
- (c) If the Franchisee timely requests a hearing, such hearing shall be held within thirty (30) days after County's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged non-compliance. Within ten (10) days after the hearing, the Board of County Commissioners, on the basis of the entire record, will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The Board of County Commissioners may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Board of

Commissioners does not grant any additional period, the Board of County Commissioners may by order declare the franchise to be terminated and forfeited.

- (d) If the Franchisee appeals revocation, such revocation shall be held in abeyance pending judicial review by a court of competent jurisdiction, provided an Franchisee is otherwise in compliance with the Franchise.
- (e) Nothing contained in the above subsections of this Section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, upon satisfactory assurances made to the Board of County Commissioners that the terms and conditions of this Ordinance can be met by the new Franchisee.

Section M47: Indemnification & Hold Harmless.

The franchisee does hereby agree to protect and save harmless the County of Mason from all claims, actions or damages of every kind and description which may occur to or be suffered by any person or persons, corporation or property by reason of the construction, operation and maintenance of the franchisee's said cable television lines and facilities. In case that suit or action is brought against the County of Mason for damages arising out of or by reason of the above-mentioned causes, the Franchisee will, upon notice to him of the commencement of said action, defend the same at their sole cost and expense.

Acceptance by the County of any work performed by the Franchisee at the time of completion shall not be a grounds for avoidance of this covenant.

Notwithstanding the above, the County agrees to defend, indemnify, save and hold harmless the Franchisee, its directors, officers, shareholders, and employees against any and all claims, costs and liability for damages, injury or death arising from or connected with the County's use of the Franchisee's cable communications system

due to or claimed to be due to or alleged to be due to negligent or wrongful acts, errors or omissions of the County, its officers, employees, contractors, agents or any person under its direction or control, save and except claims or litigation's arising through the franchisee's sole negligence or sole willful misconduct, and will defend any such suits at the sole cost and expense of the County, and failing to do so will make good to and reimburse the Franchisee for any expenditures, including reasonable attorney's fees, the Franchisee may make by reason of such matters. As used in this section, the term "use" shall refer only to physical use of the Franchisee's cable communications system, such as cablecasting of PEG programming, the use of Franchisee poles and aerial and underground structures and the activation of the emergency alert override.

Section M48: Insurance.

A Franchisee shall furnish the County with a certified copy or original of a comprehensive liability insurance policy naming the County as an additional insured. The amount of such policy shall be as deemed appropriate by the County. Such insurance must be in place no later than the date of acceptance of a Franchise by a Franchisee. This insurance shall be maintained in full force at the Franchisee's expense throughout the period of the Franchise. The County may delineate more specific details concerning such insurance prior to the award of a given Franchise.

Section M49: Performance Bond.

A Franchisee shall promptly repair or cause to be repaired any damage to County property caused by a Franchisee or any agent of a Franchisee. A Franchisee shall comply with all present and future ordinances and regulations regarding excavation or construction and, if deemed necessary by the County, shall be required to post a performance bond or other surety acceptable to the County in an amount specified by the County in favor of the County warranting that all restoration work will be done promptly and in a workmanlike manner and that penalties, if any, after final adjudication

are paid to the County within ninety (90) days of such finding.

Section M50: Recourse Against Bonds and Other Security

Bonds and other security may be utilized by the County for the purposes, including, but not limited to, reimbursement of the County by reason of a franchisee's failure to pay the County any sums due under the terms of this Ordinance or the franchise, reimbursement of the County for reasonable costs borne by the County to correct franchise violations not corrected by a franchisee after due notice; and monetary remedies or damages assessed against a franchisee due to default or violations of the franchise requirements or this Ordinance.

(a) Recourse. In the event franchisee has been declared to be in default by the County under Section M46: Revocation For Cause, and if a franchisee fails, within thirty (30) days of mailing of the County's finding, to pay the County any franchise fee, penalties, or monetary sanctions, or fails to perform any of the conditions of the franchise, the County may thereafter foreclose against the performance bond and/or withdraw from any other security an amount sufficient to compensate the County's damages, with interest at the legal rate. Upon such foreclosure or withdrawal, the County shall notify a franchisee in writing, by First Class Mail, postage prepaid, of the amount and date thereof.

(b) Restoration. Within thirty (30) days after mailing notice to a franchisee that the County has foreclosed franchisee's performance bond or that any amount has been withdrawn by the County from the other security pursuant to subsection (a) above, a franchisee shall deposit such further bond or sum of money, or other security, as the County may require, sufficient to meet the requirements of this Ordinance.

(c) Rights of the County. The rights reserved to the County with respect to any bond or security are in addition to all other rights of the County whether reserved by this Ordinance or authorized by law, and no action, proceeding, or exercise of a right

with respect to any bond or other security shall constitute an election or waiver of any rights or other remedies the County may have.

Section M51: Equalization of Civic Contributions

As existing franchises are renewed or additional granted, the County may require that subsequent franchisees pay to the County an amount proportional to the costs in constant dollars contributed by any preceding franchisees. These costs may include but are not limited to such features as access and institutional network costs, bi-directional or equivalent cable installed to municipal buildings and similar expenses.

On the anniversary of the grant of each later awarded franchise, such franchisees shall pay to the County an amount proportional to the amount contributed by the original franchisee, based upon the amount of subscribers held by such franchisees.

Additional franchisees shall provide all PEG access channel(s) currently available to the subscribers of existing franchisees. In order to provide these access channels, additional franchisees may interconnect, at their cost, with existing franchisees, subject to any reasonable terms and conditions that the existing franchisee providing the interconnection may require. These interconnection agreements shall be made directly between the franchisees, but the County may be called upon to arbitrate any dispute regarding these arrangements.

Section M52: Inconsistency.

If any portion of this Ordinance should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other federal or state law and it is determined by the County Attorney that such FCC rule, or federal or state law preempts this Ordinance, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC, federal or state law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this Ordinance shall not be effected thereby.

Section M53: Severability.

If any section, sentence, clause, or phrase of this Ordinance should be held to be

invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section M54: Effect of Change in Law.

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

Section M55: Independent Contractors.

This agreement shall not be construed to provide that the Franchisee is the agent or legal representative of the County for any purpose whatsoever. The Franchisee 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 County or to bind the County in any manner or thing whatsoever.

Section M56: Entire Ordinance.

This ordinance, including the Franchise Cable Ordinance and exhibits that are attached hereto and incorporated herein by reference represents all of the covenants, promises, agreements, and conditions, both oral and written, between the parties. However, the County reserves the right to waive any of these sections without affecting the applicability of other sections not so specifically waived. Waiver of any Franchise requirement or Ordinance Sections by the County shall be in writing in order to be effective.

Mason County Master Ordinance

APPENDIX A

Section M57: Successors or Assigns.

This Ordinance and the subsequent Franchise Agreement including all addenda, shall be binding to the Franchisee, its heirs, successors, and assigns.

Section M58: Force Majeure.

Prevention or delay of any performance under this ordinance due to circumstances beyond the Franchisee's control or acts of God shall not be deemed noncompliance or a violation of this Agreement.

Section M59: Ratification.

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

Section M60: Effective Date.

This Ordinance shall take effect and be in full force thirty (30) days after its passage, according to law.

PASSED by the Mason County Board of County Commissioners this 20th
day of April, 1999.

MASON COUNTY

Cynthia Olsen
County Commissioner

Mary Jo Cady
County Commissioner

Mike
County Commissioner

ATTEST:

Rebecca Rogers
COUNTY CLERK

APPROVED AS TO FORM:

CH-DPA
PROSECUTING ATTORNEY

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. 1460; 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-

(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.

(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.

(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.