

**ORDINANCE NO. 99-99**

**AN ORDINANCE GRANTING A FRANCHISE TO FALCON CABLE  
TELEVISION, INC**

**WHEREAS**, pursuant to Master Cable Ordinance No 39-99 approved on April 20, 1999, Mason County agrees to grant Falcon Cable Television, Inc all necessary rights and privileges to use public rights-of way necessary for the construction, maintenance, operation and reconstruction of a Cable Communications System,

**NOW, THEREFORE, be it hereby ordained by the Mason County Board of Commissioners** to enter into the franchise agreement with Falcon Cable Television, Inc, (attachment A).

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. Purpose .....	2
2. Length of Franchise .....	2, 3
3. Application .....	3
4. Service Area .....	3, 4
5. Franchise Fee .....	4, 5
6. Access Interconnection .....	6
7. Access Channels .....	6, 7
8. Institutional Interconnections .....	7, 8
9. Public and Educational Facilities .....	8
10. Access Equipment .....	8
11. Discounts .....	9
12. Standby Power .....	9
13. Insurance .....	9
14. Penalties .....	10
15. Franchising Costs .....	10, 11
16. Acceptance .....	11
17. General Provisions .....	11-13
18. Effective Date .....	13

**Section 1: Purpose**

This Franchise shall constitute an agreement between Mason County (hereinafter the "County") and Falcon Cable Television, Inc. (hereinafter the "Operator"). The Operator promises to construct, maintain, and operate a Cable Communications System for the distribution of Cable Services pursuant to the terms of this Franchise and the Master Cable Ordinance No. 39.99 passed and approved by the County Commissioners on April 20, 1999 and incorporated herein by reference, provided that in the case of any conflict between the express terms of this Franchise and the express terms of the Master Ordinance, this Franchise shall govern. The County agrees to grant the Operator all necessary rights and privileges to use public rights-of-way necessary for the construction, maintenance, operation and reconstruction of a Cable Communications System. This Franchise shall, as of its effective date, supersede and replace all existing franchises previously granted by Mason County to the Operator or any of its predecessors, subsidiaries or affiliated companies.

**Section 2: Length of Franchise.**

The term of this franchise shall be for a period of four (4) years commencing upon September 5, 1999 and terminating at midnight September 5, 2003.

Provided, however, that if the Operator has increased the cable television system channel capacity to no less than seventy-five (75) channels using fiber technology within the initial four (4) year term, the franchise shall automatically, subject to the provisions of Section 46: Revocation for Cause of the Master Cable Television Ordinance, be extended for an additional four (4) years. Notwithstanding, nothing in the above shall restrict the franchisee from seeking renewal under Section 47USC54, or as amended. Moreover, if this franchise is

not extended for such additional four year period, the franchisee shall be deemed to have complied with the renewal notification under such section without impairment of such rights granted therein.

At the end of such eight (8) year period the County shall examine any additional feature that other Operators in the County may have incorporated into their systems. If the commissioners find that such features are desirable in other areas of the County covered by the Operator, taking into due consideration the cost to the subscriber and the applicability of such features and/or services, the Operator will be granted an additional four (4) years to incorporate such designated features in the Operator's system. Failure to install these features, ones promised, shall be deemed as a failure to fulfill the conditions of the franchise extension. Provided, however, that the Operator shall be under no obligation to make such a promise and any failure to do so shall not be considered a violation of the terms of this agreement.

**Section 3: Application.**

The Operator making application for such a franchise renewal shall submit the application on applicable forms and furnish a non-refundable filing fee of Seven Thousand Five Hundred dollars (\$7,500.00) which is not in lieu of franchise fees or other contributions to the County.

**Section 4: Service Area.**

The Operator's service area shall be the entire unincorporated area of Mason County, in its present unincorporated form or in any later reorganized, enlarged or consolidated form. However, in accordance with Section 17 of the Master Cable Ordinance, the Operator shall not be required by this Franchise to extend its Cable System and provide Cable Services to areas where service is provided by other cable operators. Extensions of the Operator's Cable System

into areas of the County not currently receiving Cable Service shall be governed by Section 18: Extraordinary Installation.

**Section 5: Franchise Fee.**

The Operator shall pay to the County quarterly, on or before the forty-fifth (45th) day after the end of each quarter (March, June, September, December), a sum equal to five percent (5%) or maximum allowable of Gross Revenues, as defined in Master Ordinance, 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.

The County 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 County Commissioners to discuss said modification. Following such a hearing the County Commissioners may require the implementation of such modification in accordance with the provisions of this Ordinance.

In the event the Act, as now existing or hereafter adopted or amended, is revoked, and other laws, statutes, rules or regulations are adopted which authorize the County to impose a greater Franchise fee or other charge upon the cable communication system, then Operator agrees to the inclusion of such Franchise fee in this Franchise.

A. Late Payment. Any quarterly franchise fee not paid by the Operator within forty-five (45) days of the end of a quarter shall bear interest at the rate of twelve percent (12%), per annum or whatever maximum amount is allowed under State law, whichever is greater, from the due date until paid.

B. Financial Reports. Each Franchise fee payment shall be accompanied by a financial report on a form provided by the County compatible to the

Operator's computer system showing the basis for the Operator's computation, including, without limitation, revenues received by the Operator within the County 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 County.

C. Audit by County. The County may, upon seven (7) days' advance notice, inspect the books and records of the Operator during normal business hours, for the purpose of ascertaining the actual gross revenues for the previous year collected by the Operator. 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 County the costs of such audit. In the event that such audit results in a determination that additional franchise fees are due the County, the Operator further agrees to pay interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable. The County agrees to close the audit within six (6) months.

D. Non-waiver. Acceptance of any franchise fee payment by the County shall not be construed as an agreement by the County that the franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the County be construed as a release or waiver of any claim the County 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: Access Interconnection.**

Upon request of the County the Operator in conjunction with the other major operator with the County (currently TCI of Washington, Inc.) shall present a joint feasibility study within one hundred twenty (120) days, for providing a county-wide PEG Access Interconnect. The feasibility study shall include the additional estimated per subscriber cost of construction and interconnect that shall be passed through to subscribers. After the County has reviewed the study, if the additional costs are deemed reasonable, the County will instruct the Operators to proceed with the interconnect. However, if the total cost of the interconnect shall exceed one hundred thousand dollars (\$100,000.00), the project shall be postponed. Upon request of the County, which shall not occur more frequently than once every two years, the Operator with the largest cost potential shall be responsible for updating and representing the design and feasibility study. Subsequent interconnect projects shall be subject to the same approval and monetary restrictions as listed above.

Within one hundred and twenty (120) days of the effective date of this franchise the Operator shall have made the necessary provisions and have obtained the required equipment so that character generated messages initiated by the County may be cablecast over a separate government access channel provided by the Operator.

In addition, within this time frame, the Operator will submit the County an operational plan and cost estimate that will permit tapes of Commissioner's meetings, if so desired, to be cablecast over the Mason County government access channel by the Operator on a tape delayed basis.

**Section 7: Access Channels**

Within two (2) months following the completion of the upgrade and following a showing to County Supervisors by appropriate members of the

community of the perceived need for such channel a further channel(s) shall be made available for educational or public cablecasting purposes. At this time an additional channel shall be made available for other government cablecasting such as TVW, at the discretion of the Commissioners.

Additional channels over and above these two shall be made available when a channel is used for access purposes with programming of any type during fifty percent (50%) of the hours between 10:00 a.m. and 10:00 p.m., during any consecutive ten (10) week period. Except for character generated announcements, the programming of additional channels required shall be distinct and non-repetitive of the previous channel. Character generated announcements, however, which may be cablecast on additional channels which are duplicative of those on another channel shall not be counted towards the total channel usage. Based upon this criterion the Operator shall, within six (6) months following a request by the County, provide another designated access channel for this purpose. However, at no time during the term of this franchise shall the total number of PEG access channels exceed five (5). If an activated channel fails to meet the continuing criteria of programmed usage, for one hundred and eighty (180) continuous days of operation, upon thirty (30) days written notification sent by certified mail, such channel shall revert to the Operator for whatever use it deems appropriate.

**Section 8: Institutional Interconnections.**

In accordance with Section 21: Institutional Networks, at such time as the Operator shall offer Internet services all schools and Public Buildings (Appendices "A" and "B") within the Operator's franchise area shall be provided with one cable modem per site, and services shall be provided free of charge. Alternatively, if the Operator does not provide Internet service to its subscribers within the first four years of the franchise, said buildings shall be connected to



provide the capability of two-way audio/video communication in accordance with Section 21: Institutional Networks, of the Master Cable Television Ordinance.

However, in the event that the County wishes to elect to be provided with a direct cabled Institutional Network rather than Internet services, such alternative shall be installed only if the total cost of the project, amortized over the remaining franchise term is less than one dollar (\$1.00) per subscriber per month based upon 1999 dollars.

**Section 9: Public and Educational Facilities**

All buildings listed on Appendices "A" and "B" shall be provided with a single outlet and converter, if required, for the reception of basic cable service within the limitations of Section 23: Public Buildings of the Master Cable Television Ordinance. Additional outlets, if requested, shall be furnished on a time and material basis. Such authorization shall be made by a delegated school official.

**Section 10: Access Equipment**

Upon sixty (60) days notice from the County, the Operator shall, at its discretion, make either a one time payment of \$60,000.00 or begin collecting for pass through to the County on a quarterly basis nineteen cents (19¢) per customer per month on or before the thirtieth (30th) day of each January, April, July and October. These sums represent the Operator's portion of its support for the County's PEG access program.

At the option of the County, the amount of the per customer contributions may be adjusted every five years by the Gross National Product Price Index (GNP-PI) published by the U.S. Department of Commerce. Operator may pass all contributions through to subscribers on a pro-rata basis.

**Section 11: Discounts**

A franchisee shall 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-Olympia area for the preceding calendar year. The operator will periodically, and no less than once a year, notify subscribers of the availability of the discount.

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

**Section 12: Standby Power**

The system must have back-up power supplies capable of providing power to the system for four hours in the event of an electrical outage. This obligation requires Operator to provide back-up power supplies at headend and primary node locations. Such standby power shall be capable of providing at least four (4) hours of emergency operation. The Operator shall maintain standby power system supplies, rated for at least two (2) hours duration throughout the trunk and distribution networks.

**Section 13: Insurance**

The Operator shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, and property damage. The Operator shall provide annually a Certificate of Insurance designating the County as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days' prior written notice to the County.

**Section 14: Penalties**

Liquidated damages may be assessed by the County in accordance with the Master Cable Ordinance for failure to comply with the following:

1. Conform to customer service standards as required by, Section 25: Customer Service.
2. Provide PEG access channels as required by Section 7: Access Channels.
3. Provide the Capital Contribution as required by 10: Access Equipment.
4. Provide two-way connections as required by Section 8: Institutional Interconnections.
5. Provide Coverage of existing and future annexed areas as required by Section 17: Coverage.

Liquidated damages may be assessed retroactive to the date that notification was provided to the Operator in such cases where the Operator 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 15: Franchising Costs**

Upon acceptance of any initial franchise or renewal franchise granted hereunder, the Franchisee shall pay to the County the County's out-of-pocket costs associated with the franchising process. Costs may include such items as consulting fees, expenses, and the costs of publishing notices and ordinances, etc. Operator's share of such expenses shall not exceed Fifteen Thousand Dollars (\$15,000.00). The application fee may be deducted from this amount. Such payment is not to be considered in lieu of franchise fee payments.

Payment is due within thirty (30) days of receipt of appropriate invoice from the County.

**Section 16: Acceptance.**

This grant of Franchise and its terms and provisions shall be 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 County within thirty (30) 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 17: 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. No provision of this Franchise may be amended or added to except by agreement in writing signed by both of the Parties.

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

D. Assignment. Operator shall not have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the County. Any assignee shall, within thirty (30) days of the date of any approved assignment, file written notice of the assignment with the County together with its written acceptance of all terms and conditions of this Franchise.

E. Attorney Fees. In the event the County or the Operator defaults on the performance of any terms in this Franchise, and the Operator or the County

places the enforcement of the Franchise or any part thereof, or the collection of any monies due, or to become due hereunder, in the hands of an attorney, or file suit upon the same, each party shall pay its own costs, including reasonable attorneys' fees, costs and expenses. The venue for any dispute related to this Franchise shall be in a court of competent jurisdiction.

F. No Waiver. Failure of the County 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 County shall have the right to declare any such breach or default at any time. Failure of the County to declare one breach or default does not act as a waiver of the County's right to declare another breach or default.

G. 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.

H. Authority. Each individual executing this Franchise on behalf of the County and Operator represents and warrants that such individuals are duly authorized to execute and deliver this Franchise on behalf of the Operator or the County.

I. Notices. Any notices required to be given by the County to Operator or by Operator to the County shall be delivered by registered mail to the parties at the following addresses:

Operator:  
Falcon Cable Television  
4519 SE Hwy. 160  
P.O. Box 88  
Port Orchard, WA 98366  
Attn.: Legal Department

County:  
County Clerk of the Board  
Mason County Courthouse  
Building 1  
411 N 5th St.  
Shelton, WA 98584

Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set

forth herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

J. 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.

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


L. Remedies Cumulative. 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 County at law, in equity or by statute.

**Section 18: Effective Date**

This Ordinance shall be in full force and effect five days after its passage, provided Operator files acceptance pursuant to Section 6 of the Master Ordinance.

PASSED by the County Commissioners and approved this 31st day of August, 1999.

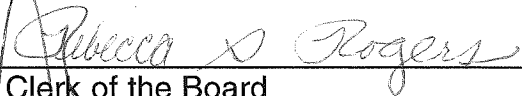
MASON COUNTY

  
County Commissioner

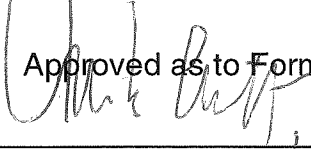
  
County Commissioner

  
County Commissioner

Attest:

  
Clerk of the Board

Approved as to Form:

  
MASON County Prosecutor

**Appendix "A"****MASON COUNTY  
SCHOOL BUILDINGS**

Grapeview School District Headquarters  
E 822 Mason-Benson Rd.  
Grapeview WA 98546  
(360)426-4921

Grapeview Middle School  
E 822 Mason-Benson Rd.  
Grapeview, WA 98546  
(360)426-4921

Grapeview Elementary  
E 822 Mason-Benson Rd.  
Grapeview, WA 98546  
(360)426-4921

Hood Canal School District Headquarters  
No. 404 (475)  
N 111 Highway 106  
Shelton, WA 98584  
(360)877-9700

Hood Canal Junior High  
N 111 Highway 106  
Shelton, WA 98584  
(360)877-5463

Hood Canal Elementary  
N 111 Highway 106  
Shelton, WA 98584  
(360)877-5463

Mary M Knight School District Headquarters  
No. 311 (270)  
W 2987 Matlock Brady Rd.  
Elma, WA 98541  
(360)426-6767

Mary M Knight High  
W 2987 Matlock Brady Rd.  
Elma, WA 98541  
(360)426-6767

Mary M Knight Elementary  
W 2987 Matlock Brady Rd.  
Elma, WA 98541

Hawkins Middle School  
E 50 North Mason School Rd.  
Belfair, WA 98528  
(360)275-4461

Belfair Elementary  
22900 Hwy 3  
P.O. Box 167  
Belfair, Wa 98528  
(360)275-2863

Sand Hill Elementary  
791 NE Sandhill Rd.  
P.O. Box 167  
Belfair, WA 98528  
(360)275-6080

Mission Creek Youth Camp  
791 NE Sandhill Rd.  
P.O. Box 100  
Belfair, WA 98528  
(360)275-6080

Pioneer Elementary/Middle School  
E 611 Agate Rd.  
Shelton, WA 98584  
(360)426-8291

Pioneer Primary School  
E 611 Agate Rd.  
Shelton, WA 98584  
(360)427-2737

**Appendix "A"**

(360)426-6767

North Mason School District Headquarters

E 50 North Mason School Rd.

P.O. Box 167

Belfair, WA 98528

(360)275-2881

North Mason High School

E 50 North Mason School Rd.

P.O. Box 167

Belfair, Wa 98528

(360)275-2811



**Appendix "B"****MASON COUNTY  
PUBLIC BUILDINGS**Mason County Courthouse No.1

411 North Fifth St.  
Shelton, WA 98584  
(360)275-4467

Mason County Courthouse No.2

419 North Fourth St.  
Shelton, WA 98584

Mason County Courthouse/Jail

416 North Fifth St  
Shelton, Wa 98584

Mason County Juvenile Detention Center

317 North Fifth St  
Shelton, Wa 98584

Mason County Cooperative Extension Center

North 11840 Hwy. 101  
Shelton, WA 98584

Belfair Annex

NE 23780 Hwy 3  
Belfair, WA 98528  
Pioneer School District Headquarters  
E 611 Agate Rd.  
Shelton, WA 98584  
(360)426-9115

**FIRE DISTRICTS**Aracadia / Kamilche No.4

SE 2970 Arcadia Rd.  
Shelton, WA 98584

Allyn/Agate/Shelton No.5

E 2520 Mason-Benson Rd.  
P.O. Box 127  
Allyn, WA 98524  
(360)426-5533

Union No.6**FIRE DISTRICTS (cont.)**Skokomish Valley No.9

W 2320 Skokomish Valley Rd.  
Shelton, WA 98584  
(360)427-7426

Hoodsport No.1

N 331 Finch Creek Dr.  
P.O. Box 354  
Hoodsport, WA 98548  
(360)877-5186

Belfair No.2

NE 460 Old Belfair Hwy.  
P.O. Box 277  
Belfair, WA 98528-0277  
(360)275-6711

Grapeview No.3

E 4350 Grapeview Loop Rd.  
P.O. Box 142  
Grapeview, WA 98546  
(360)275-4483

No.11

E 130 Island Lake Rd.  
P.O. Box 743  
(360)426-1822

No.12

P.O. Box 102  
Matlock, WA 98560  
(360)426-6721

Lilliwaup/Eldon No.17

N 34571 Hwy. 101  
P.O. Box 4  
Lilliwaup, WA 98555

Lake Cushman No.18

Lake Standstill Dr .

**Appendix "B"**

E 50 Seattle St.  
P.O. Box 39  
Union, WA 98592  
(360)898-4871

Hoodspport, WA 98548  
(360)877-9882

No.8  
NE 14880 North Shore Rd.  
P.O. Box 299  
Tahuya, WA 98588  
(360)275-6478