

ORDINANCE NO. 2636

AN ORDINANCE GRANTING A FRANCHISE TO NORTHLAND CABLE TELEVISION, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF MOSES LAKE AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Findings: Northland Cable Television, Inc., DBA Northland Cable Television ("Northland" or "Grantee") desires to operate a cable system in the rights-of-way of the City of Moses Lake ("City" or "Grantor"). Negotiations between Northland and the City have been completed and the franchise process followed in accordance with the guidelines established by applicable law. As a condition of receiving this franchise, Grantee has agreed to abide by the City's current and future lawful policies, ordinances and regulations regarding infrastructure usage, and street-cuts and rights-of-way.

Section 2. Adoption: This ordinance shall be known as the Northland Cable Television, Inc. 2012 Franchise (this "Franchise") and shall provide as follows.

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SECTION 1. DEFINITIONS: For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 "**Affiliate**" when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- 1.2 "**Basic Service**" means any service tier, which includes the retransmission of local television broadcast signals, or as such service tier may be further defined by federal law.
- 1.3 "**Cable Act**" means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including

those contained in the Telecommunications Act of 1996, and any future federal cable television legislation.

- 1.4 **"Cable Operator"** means any Person or groups of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- 1.5 **"Cable Service"** means the one-way transmission of video programming or other programming service to Subscribers, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, and as otherwise defined or permitted by the FCC from time to time.
- 1.6 **"Cable System"** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Cable Service directly to Subscribers; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.7 **"Channel"** means a portion of the electromagnetic spectrum which is used in a Cable System and is capable of delivering a television channel, as television channel is defined by the FCC in other applicable regulations.
- 1.8 **"Downstream"** means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
- 1.9 **"FCC"** means the Federal Communications Commission or any successor agency thereto.
- 1.10 **"Franchise"** means the non-exclusive and revocable authorization or renewal thereof for the construction, operation, upgrade, rebuild or maintenance of a Cable System within the Franchise Area such as is granted by this Ordinance, whether such authorization is designated as a franchise, license, resolution, contract, certificate, agreement or otherwise. This Franchise is an agreement between the City of Moses Lake and Northland.
- 1.11 **"Franchise Area"** means the area within the jurisdictional boundaries of the City of Moses Lake, Grant County, Washington, including any areas annexed by Grantor during the term of this Franchise.
- 1.12 **"Grantee"** means Northland Cable Television, Inc. DBA Northland Cable Television or its lawful successors and assigns.
- 1.13 **"Gross Revenues"** means all amounts accrued by Grantee in whatever form and from all sources, from the operation of Grantee's Cable System to provide Cable Service within the Franchise Area. "Gross Revenues" shall include, without limitation, all amounts for all Cable Services, including, but not limited to, Basic, expanded basic, premium, and pay-per-view services, and installation fees and charges. "Gross Revenues" shall also include any revenue received by any Affiliate of Grantee where such revenue in the ordinary course of business has been paid to Grantee from the operation of its Cable System to provide Cable Service

within the Franchise Area. "Gross Revenues" shall not include Subscriber leased or purchased equipment related to Cable Service reception, advertising sales, customer bad debt, sales taxes, or other taxes, which are collected by Grantee on behalf of and for payment to, the local, state or federal government.

- 1.14 "Headend" means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.
- 1.15 "Interconnect" means the provision by Grantee of technical, engineering, physical, and all other necessary components to maintain a physical linking of Grantee's Cable System and Cable Service or any designated Channel or signal pathway thereof with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this Franchise.
- 1.16 "Person" means any individual, natural person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.
- 1.17 "School" means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools, and colleges and universities.
- 1.18 "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements (dedicated for compatible uses), rights-of-way and similar public property and areas.
- 1.19 "Subscriber" means any Person who elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System serving the Franchise Area.
- A. "Commercial Subscriber" which means any Subscriber other than Residential Subscriber.
- B. "Residential Subscriber" which means any Person who receives Cable Service delivered to single or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis.
- 1.20 "Upstream" means the carrying of a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE:

2.1 Grant:

- A. Grantor hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Streets within the Franchise Area to construct, operate, maintain, reconstruct, replace, upgrade and repair a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Franchise.
- B. This Franchise is intended to convey limited rights and interests only as to those Streets in which the Grantor may lawfully convey such rights and interests. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee any interest in any

particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the Grantor of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Grantor's Streets covered by this Franchise, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

- C. This Franchise is subject to the general lawful police power of Grantor affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted by Grantor.
- D. This Franchise authorizes Grantee to engage in providing Cable Service. This Franchise shall not be interpreted to prevent the Grantor from imposing additional conditions, including additional compensation conditions for use of the rights-of-way should Grantee provide service other than Cable Service. However, this Franchise shall not be read as a concession by Grantee that it needs authorization to provide service other than Cable Service.
- E. Grantee promises, as a condition of exercising the privileges granted by this Franchise, Grantee will comply with the terms and conditions of this Franchise.

2.2 Use of Public Streets and Ways: Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, must obtain any and all necessary permits from the Public Works Department prior to commencing any construction activities. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the streets within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Franchise.

2.3 Duration:

- A. The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be from the effective date of this Franchise through March 31, 2022.
- B. If Grantee successfully completes an upgrade as set forth in Section 10, and if such upgrade is confirmed by the City, which confirmation will not be unreasonably withheld, then Grantee shall be entitled to an automatic five (5) year extension of the Franchise term (that is, through March 31, 2027).

2.4 Effective Date: The effective date of this Franchise shall be April 1, 2012, unless Grantee fails to file an unconditional written acceptance of this Franchise and post the security required by Section 5.3 hereof by August 31, 2011, in which event this Franchise shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Franchise are hereby terminated.

- 2.5 **Franchise Nonexclusive:** This Franchise shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, right-of-way, easement, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit in connection with its exercise of lawful police power. Grantor may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional Franchises for Cable Systems, as Grantor deems appropriate, upon such terms and conditions as Grantor deems appropriate.
- 2.6 **Grant of Other Franchises:** In the event the Grantor enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Grantor's Streets for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area or is required to extend Cable Service to under the provisions of Section 11.2 of this Franchise, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.
- 2.7 **Police Powers:** Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Notwithstanding the foregoing, Grantor agrees it will not impose any regulation pursuant to the Cable Act not contained herein during the term of this Franchise. Provided however, in the event of conflicts between provisions of this Franchise and other ordinances of the Grantor, the terms of this Franchise shall prevail except as to health and safety issues.
- 2.8 **Relations to Other Provisions of Law:** This Franchise and all rights and privileges granted under the Franchise are subject to, and the Grantee must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the Grantor's exercise of its police and other powers and all applicable law. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. Neither Grantee nor Grantor waives its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The Franchise issued and the Franchise fee paid hereunder are in lieu of any other required permit, authorization, fee, charge, or tax, except for Grantor's utility occupation tax, as referenced in Section 3.1, set as of the effective date at 3%, which is subject to change at the City Council's discretion, or unless expressly stated herein.
- 2.9 **Effect of Acceptance:** By accepting this Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce this Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise; and (3) agrees that its will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

- 3.1 **Franchise Fee:** As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use Grantor's Streets, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise fees shall commence as of the effective date of this Franchise. The Franchise fees are in addition to all other fees, assessments, taxes or payments of general applicability that the Grantee may be required

to pay under any federal, state, or local law. The City of Moses Lake, as of the date of the adoption of this ordinance, assesses a three percent (3%) utility occupational tax against cable subscription systems. The tax is subject to change.

- 3.2 **Payments:** Grantee's Franchise fee payments to Grantor shall be computed monthly. Each monthly payment shall be due and payable no later than thirty (30) days after the last day of the preceding month.
- 3.3 **Acceptance of Payment and Recomputation:** No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.
- 3.4 **Monthly Reports:** Each payment shall be accompanied by a written report to Grantor, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.
- 3.5 **Annual Reports:** Grantee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to the City a statement stating the total amount of gross revenues and all payments, deductions, and computations for the period covered by the payments. Such statement shall be reviewed and certified by an officer of Grantee prior to submission to the City.
- 3.6 **Audits:** On an annual basis, upon thirty (30) days' prior written notice, at Grantor's sole cost and expense (except as expressly provided below), Grantor shall have the right to conduct an independent audit during normal business hours of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide copies of all necessary records to the certified public accountant. If the audit shows that Franchise fees have been underpaid by five percent (5%) or more, Grantee shall pay the reasonable fees of the independent certified public accountant within thirty (30) days from receipt of the audit results. If such audit reflects an overpayment, Grantor refund such overpayment to Grantee within thirty (30) days of the audit results. Any such audit shall take place within thirty-six (36) months following the respective calendar year and for records thereof in question.
- 3.7 **Interest on Late Payments:** In the event that a Franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the interest rate specified for judgments entered in the Superior Court of the State of Washington.
- 3.8 **Alternative Remedies:** If any Section, subsection, paragraph, term or provision of this Franchise or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other Section, subsection, paragraph, term or provision hereof.
- 3.9 **Additional Commitments Not Franchise Fees:** No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise fees to Grantor. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Franchise (e.g. business license fee) may total more than five percent (5%) of Grantee's

Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under any federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

- 3.10 Costs of Publication: Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by Grantor or applicable law.
- 3.11 Tax Liability: Payment of the franchise fees under this franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee, or other generally applicable fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by the City.
- 3.12 Payment on Termination: If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by a declaration or affidavit of an officer of the Grantee, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available pursuant to security provided by the Grantee in accordance with Section 5.

SECTION 4. ADMINISTRATION AND REGULATION

- 4.1 Authority: Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.
- 4.2 Rates and Charges: All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.
- 4.3 Rate Discrimination: All of Grantee's rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all Subscribers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Franchise Area. Grantee shall provide equivalent Cable Service to all Residential Subscribers at similar rates and to Commercial Subscribers as authorized by applicable laws. Nothing herein shall be construed to prohibit:
- A. The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
 - B. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
 - C. Grantee from establishing different and nondiscriminatory rates and charges and classes of service for commercial customers, as well as different nondiscriminatory monthly rates for classes of commercial customers as allowable by federal law and regulations; or

- D. Grantee from establishing different and nondiscriminatory rates and charges for residential Subscribers as allowable by federal law and regulations.

4.4 Filing of Rates and Charges:

- A. Upon written request, not more frequent than monthly, Grantee shall provide to Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns provided that Grantee shall make reasonable efforts to notify Grantor in writing in advance of such promotions.
- B. Grantee shall provide upon written or faxed request from Grantor a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee.

- 4.5 Time Limits Strictly Construed: Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Franchise and sufficient grounds for Grantor to invoke any relevant provision of this Franchise, subject to the notice and cure provisions of Section 14. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the reasonable control of Grantee, such as acts of God (for example, floods, tornadoes, earthquakes, power outages, strikes or walkouts, technical failures or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise or procure a substitute for such obligation which is reasonably satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

4.6 Performance Evaluation Sessions:

- A. City may hold upon no less than ninety (90) days written notice to Grantee and no more frequently than once per calendar year regular performance evaluation sessions upon the sixty (60) and one hundred twenty (120) month anniversary dates of the effective date of this Franchise. All such evaluation sessions shall be conducted by City and Grantee jointly.
- B. Special evaluation sessions may be held at any time by City during the term of this Franchise upon the same notice as specified in Subsection (A).
- C. All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- D. Evaluation sessions shall deal with the Grantee's performance of the terms and conditions of the Franchise and compliance with state and federal laws and regulations.
- E. As part of the performance evaluation session, Grantee shall submit to the City a plant survey report, or map, reasonably acceptable to the City which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available, including those areas where the system has been upgraded pursuant to Section 10 of this Franchise if so requested by the City. Such report shall also include the number of miles and location of overhead and underground cable plant. If the City has reason to

believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the City, at its expense, retains the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System; provided, Grantor promptly provides Grantee with a copy of such report, at Grantee's cost, and that Grantee has a representative present during any such evaluation and verification.

- F. During evaluations under this Section, Grantee shall cooperate with City and shall provide such information and documents that have been filed with the FCC within the most recent three year period.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Insurance Requirements:

- A. General Requirement. Grantee must have adequate insurance during the entire term of this Franchise to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Franchise or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.
- B. Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor from time to time. The Grantee shall obtain policies for the following initial minimum insurance limits:
1. Commercial General Liability: Two-million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollars (\$2,500,000) aggregate limit;
 2. Automobile Liability: Two-million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
 3. Employer's Liability: Two-million dollars (\$2,000,000).

5.2 Indemnification

- A. Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief (the "Claims") solely to the extent the Claims arise out of Grantee's or Grantee's agent's negligent acts or negligent omissions; provided, however, the Grantee will not be obligated to indemnify Grantor or its officers, commissions, agents, or employees should Grantor intervene in any proceeding regarding the grant of this Franchise. This indemnity provision shall include damages and liabilities, if and to the extent such damages and liabilities are a result of Grantee's or Grantee's agent's negligent acts or negligent omissions.
- B. Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee written notice within five (5) days of receiving any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. Failure of Grantor to provide such notice shall result in waiver of Grantee's indemnification obligations with respect to such action; suit or other proceeding otherwise covered by the indemnity in this Section. In the event any such claim arises, the Grantor or any other indemnified

party, as defined by this Franchise, shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within ten (10) days of its receipt of the written notice described above. In the event that the Grantee declines defense of the claim in violation of this Section 5.2, the Grantor may defend such claim and seek recovery from Grantee its reasonable expenses for attorneys' fees and other expenses, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

- 5.3 The provisions of Section 5.2 shall apply to claims by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors to which Grantee might otherwise be immune under Title 51 RCW. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Grantee acknowledges that the City would not enter into this Franchise without Grantee's waiver thereof.
- 5.4 Performance Bond: Upon or before the effective date of this Franchise, Grantee shall obtain and maintain during the entire term of this Franchise, including any extensions or renewals thereof, at its own cost and expense, a performance bond that shall be filed with the Grantor in the amount of fifteen thousand dollars (\$15,000) as guarantee for the faithful performance by it of all the provisions of this Franchise. Such bond shall be reviewed at the end of sixty (60) months. The amount of the bond shall be set for the remainder of the Franchise term at the greater of fifteen thousand dollars (\$15,000) or the amount of franchise fees paid in the sixtieth month.

SECTION 6. CUSTOMER SERVICE

- 6.1 Customer Service Standards: The Grantee shall reasonably meet or exceed any customer service standards adopted by the FCC so long as they are commercially reasonable.
- 6.2 Subscriber Privacy: Grantee will comply with privacy rights of Subscribers in accordance with federal and state law.
- 6.3 Local Office: Throughout the Franchise term, the Grantee must maintain, at a minimum, one (1) customer service center located in Grant County within ten miles of Moses Lake's city limits which will be open during normal business hours to provide Subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints. Grantee shall maintain telephones and other equipment so that customer complaints and service requests can be received by Grantee on a 24-hour basis at a toll-free telephone number.
- 6.4 Emergency Broadcast: The Grantee shall cooperate to the extent required by FCC rule or the Cable Act with Grant County Emergency Services (GCES) or its successor agency to accommodate Emergency Alert System information or other information the GCES deems appropriate to be broadcast over the Grantee's system compatible with Grantee's equipment.

SECTION 7. REPORTS AND RECORDS

- 7.1 Open Records
- A. Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to City. City shall have access to, and the right to inspect, any books and records of Grantee, which are reasonably related and necessary to the administration or enforcement of the terms of this Franchise. Grantee shall not deny City access to any such records of Grantee on the basis that Grantee's

records are under the control of any parent corporation, affiliated entity or a third party related to this Franchise. City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to City at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that City inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local area office and not made available in copies to City upon written request as set forth above, and if City reasonably determines that an examination of such records is necessary or appropriate to the performance of any of City's duties, administration or enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee. If any books or records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) working days.

B. Grantee shall at all times maintain and allow City reasonable access and the right to review a full and complete set of plans, records and "as built" maps in the Grantee's possession showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the City and the Grantee.

7.2 **Confidentiality:** City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each document that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, City shall, so far as consistent with applicable law, advise Grantee in advance so that Grantee may take appropriate steps to protect its interests and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, City agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person.

7.3 **Complaint File:** Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System as required by the FCC.

7.4 **Inspection of Facilities:** Grantor may, at its own cost and expense, inspect upon reasonable written request any of Grantee's facilities and equipment to confirm performance under this Franchise at any time upon at least five (5) business days notice, or, in case of an emergency, upon demand without prior notice.

7.5 **False Statements:** Any intentional false or misleading statement or representation in any report required by this Franchise may be deemed a material violation of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to City under this Franchise or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories:

- A. Grantee's Cable System shall provide a wide diversity of programming. Grantee shall provide at least the following broad categories of programming to the extent such categories are commercially reasonably available:
1. Educational programming;
 2. Washington State news and information;
 3. Sports;
 4. General entertainment (including movies);
 5. Children/family-oriented;
 6. Arts, culture and performing arts;
 7. Foreign language;
 8. Science/documentary;
 9. Weather information;
 10. Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
 11. National, state, and local government affairs.
- B. Grantee shall not delete any broad category of programming within its control.
- C. The parties expressly agree that the programming described in Section 8.1 (A) represent broad categories of video programming within the meaning of 47 U.S.C. 544(b) (2) (B), as may be amended from time to time.

8.2 Parental Control Device: Upon request by any Subscriber, Grantee shall make available a parental control or lockout device; traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and annually thereafter.

8.3 Leased Access Channels: Grantee shall comply with the FCC's rules and regulations regarding Leased Access Channels.

8.4 Continuity of Service:

- A. It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied and Grantee continues to serve the Franchise Area. Subject to the *force majeure* provisions of this Franchise, Grantee shall use commercially reasonable efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service.
- B. In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall reasonably cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

8.5 Community Programming Needs: At the written request of the Mayor, but no more than twice during the term of this Franchise, ninety (90) days after a Performance evaluation session as provided in Section 4.6, the Grantee may furnish to all Subscribers along with their monthly service statement, a list of broad categories of programming, and other services available to Grantee. The menu may be in the format of a mailback survey for determination

of the Subscriber's programming preference. The results of the survey are to be provided the City as soon as commercially practical by the Grantee with any proposed change(s) in programming.

- 8.6 **Service for Disabled:** To the extent technically feasible and in accordance with FCC requirements, Grantee shall retransmit all closed-captioned signals made available by programmers in conjunction with programming in its line-up and which are provided in order to facilitate viewing by handicapped persons. Grantee shall comply with the Americans with Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations. To the extent technically feasible and in accordance with FCC requirements, Grantee shall maintain the necessary head-end equipment to make Second Audio Program (SAP) features available to Subscribers. Grantee's obligations under this subsection do not extend to providing customer premises equipment.

SECTION 9. GENERAL STREET USE AND CONSTRUCTION

9.1 Construction:

- A. Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Franchise, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.
- B. Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Franchise. When obtaining a permit, Grantee shall inquire about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.

- 9.2 **Location of Facilities:** Grantee shall use the one call locator service prior to performing any excavation in the Grantor's Streets.

- 9.3 **Relocation:** Grantor shall have the right to reasonably require Grantee to change the location of any part of Grantee's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date reasonably established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Streets, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

9.4 Restoration of Streets:

- A. Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition.

- B. All of Grantee's work under this Franchise, and this Section in particular, shall be done in strict compliance with this Franchise rules, regulations and ordinances of Grantor. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to Grantor.

9.5 Maintenance and Workmanship:

- A. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, Grantor's authority.
- B. Grantee shall provide and use any equipment necessary to control and carry Grantee's Cable System signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and reasonably presentable condition.

- 9.6 Reservation of Grantor Street Rights: Nothing in this Franchise shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Street; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Cable System shall be relocated in accordance with 9.3.

- 9.7 Use of Conduits by Grantor: The Grantee and the City shall grant to each other, free of expense, joint use of any and all poles, ducts, conduits or equipment in the streets or other public places owned by either party for any proper purpose, insofar as the same may be done without interfering with the use and enjoyment of either party's own wires and other facilities and provided that all such joint use shall be in full compliance with all rules, regulations, requirements and conditions of the National Electrical Safety Code prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters affecting electrical installations which may be presently in effect or future amendments thereto as well as being subject to the City's obligations to any other franchise holder with which it may have a similar joint use agreement. Additionally, the City may install or affix and maintain wires and equipment owned by the City for municipal purposes in or upon Grantee's equipment in the Streets and other public places without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable City Ordinances and Codes. For the purposes of this Subsection 9.7, "municipal purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor.

- 9.8 Street Vacation: If any Street or portion thereof used by Grantee is vacated by Grantor during the term of this Franchise, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall with thirty (30) day written notice and without expense to Grantor either remove its facilities from such streets and restore street in accordance with 9.4 or negotiate an arrangement with the owner or controller of the vacated Street apart from this Franchise.

9.9 **Discontinuing Use of Facilities:** Whenever Grantee discontinues using any facility within the Streets, Grantee shall provide written notice to Grantor's with a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule approved by Grantor. Until such time as Grantee removes or modifies the facility, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental or educational purposes. For purposes of this Section 9.9, "abandons" shall have the meaning set forth in Section 15.1 of this Franchise.

9.10 **Hazardous Substances:**

A Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.

B. Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable written notice to Grantee, Grantor and Grantee may jointly inspect Grantee's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residues of hazardous substances related thereto.

9.11 **Undergrounding of Cable:**

A. **Wiring:**

1. Where electric, telephone or other utility or other third party wiring is installed underground at the time of Cable System construction, or when such wiring is subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line service at no additional expense to the Grantor. Related Cable System equipment such as pedestals must be placed in accordance with applicable Code requirements and underground utility rules as reasonably interpreted by the Grantor's Director of Public Works. In areas where electric, telephone or other utility or other third party wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear and pre-pay the additional cost in excess of aerial installation.

2. The Grantee shall utilize existing poles and conduit wherever commercially reasonable.

3. This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment or any other Person without their permission except to the extent permitted under applicable federal and state law.

B. Repair and Restoration of Property:

1. The Grantee shall protect public and private property from damage by its Cable System. If damage occurs the Grantee shall promptly notify the property owner within twenty-four (24) hours of its knowledge of such damage in writing or in person.
2. If public or private property is disturbed or damaged by Grantee, the Grantee shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way shall be repaired and restored in accordance with Section 9.4. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than five (5) business days.
3. Prior to entering onto private property to construct, operate or repair its Cable System where the property owner has not requested such construction, operation or repair, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

C. Movement of Cable System For and By Grantor: To the extent necessary, the Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the Grantor in the case of fire, disaster, or other emergency, or when a project or activity of the Grantor's makes the removal, replacement, modification or disconnection necessary or less expensive for the Grantor. Except during an emergency, the Grantor shall provide reasonable written notice to Grantee prior to taking such action and shall provide Grantee with reasonable opportunity to perform such action. Following notice by the Grantor, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other property of the Grantor, except that the Grantor shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the Grantor's reasonable satisfaction, the Grantor may cause such work to be done and bill the cost of the work to the Grantee. Within thirty (30) days of receipt of an itemized list of those reasonable costs, the Grantee shall pay the Grantor.

D. Movement for Other Franchise Holders: If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity at the responsible entity's sole and pre-paid cost and expense.

E. Movement for Other Permittees: At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require a reasonable deposit of the estimated payment in advance.

F. Tree Trimming: Subject to acquiring prior written permission of the City, the Grantee shall have the authority but not the obligation to trim trees that overhang a public right-of-

way of the City so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and accepted professional tree trimming practices; provided that in an emergency situation Grantee may trim trees to protect its facilities in which circumstance written notice of that the trimming occurred shall be delivered to Grantor.

9.12 Codes: Grantee shall strictly adhere to all building and zoning codes in effect at the time of applicable construction. Grantee shall arrange its lines; cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

9.13 Standards:

- A. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- B. Grantee shall ensure that the drops are properly bonded to the electrical power ground at the home, consistent with the requirements of the National Electric Code and the National Electrical Safety Code. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

SECTION 10. MEANS OF FRANCHISE TERM EXTENSION

10.1 Design.

- A. Grantee has determined that an appropriate design plan for Cable System upgrade in the Franchise Area will include the following components, which Grantee will provide and construct, in order to take advantage of the five (5) year automatic extension of the Franchise term as provided in Section 2.3 hereof:
 - 1. The System will utilize hybrid fiber/coax architecture. This will utilize deployment of fiber optic cable throughout those portions of the System to be upgraded. The upgraded plant will tie into a hybrid fiber/coaxial Cable System already serving Subscribers.
 - 2. The System will serve no more than 1,500 customers per fiber node.
 - 3. All active electronics will be at minimum 550 MHZ capable equipment.
 - 4. All passive devices will pass a minimum bandwidth of 550 MHZ.
 - 5. Upon completion of the upgrade, the Cable System shall be capable of delivering at least seventy-seven (77) analog and/or digital Channels of video programming services to Subscribers.
 - 6. As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed, FCC technical quality standards. The upgrade shall be completed on or before the end

of the seventh (7) year of the current ten (10) year term. The upgraded Cable System will be capable of supporting addressable equipment throughout the System and shall enable the provision of digitally compressed video services. Grantee's upgraded Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

10.2 System Functionality:

- A. It is the intent of the parties to provide for a process that provides the Grantor with an opportunity to confirm the Cable System design and functionality and ensure the Cable System meets the specifications described herein. Grantee agrees that it shall provide Grantor, upon written request, information that measures the relevant performance and functionality criteria of the Cable System that is generated through the Grantee's established assurance procedures.
- B. At least sixty (60) days before the upgrade of the Cable System begins, Grantee shall provide the Grantor with a proposed timeline for the upgrade and an opportunity to review the proposed system design plan consistent with Grantee's obligations as described in section 10(A). The Grantor shall indicate, in writing, to Grantee, within thirty (30) days of the receipt and review of materials, as to any aspects of the timeline and/or design plan Grantor believes are inconsistent with the requirements set forth herein in Section 10(A). Grantee shall respond within thirty (30) days to the Grantor to resolve any inconsistencies.
- C. Grantee and Grantor may meet to discuss the progress of the upgrade and work cooperatively to speed the construction (e.g. by discussing any problems in obtaining permits) and to minimize the impact upon Subscribers. At each meeting, Grantee will provide a progress report on the upgrade detailing its progress in satisfying the requirements of this Section.
- D. Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

10.3. Timing of Construction: Grantee's decisions on constructing plant for service from each hub or node shall be based solely upon legitimate engineering decisions and cost analysis and shall not take into consideration the income level of the Franchise Area.

SECTION 11. TEST AND COMPLIANCE PROCEDURES

Upon reasonable written request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of Grantor may witness tests, and any written test reports filed with the FCC may be made available to Grantor upon reasonable written request.

As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor copies of the results of such tests that are filed with the FCC upon written request.

SECTION 12. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

12.1 Equivalent Service: It is Grantee's general policy that all residential dwelling units in the Franchise Area served by Grantee's Cable System have equivalent availability to Cable

Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions.

12.2 Service Availability:

- A. With respect to aerial line extensions, Grantee shall extend energized cable from any existing terminus of trunk cable of its Cable System to any area in the City in which aerial power and telephone utility services are available and which has a density of at least eight (8) Dwelling Units along one-quarter (1/4) of a linear mile of cable, provided that the Dwelling Unit nearest to the existing terminus of trunk cable of the Cable System is situated no more than one-eighth (1/8) of a linear mile of cable from the existing terminus of trunk cable of the Cable System.
- B. With respect to underground line extensions, Grantee shall extend energized cable from any existing terminus of trunk cable of its Cable System to any area in the City in which underground power and telephone utility services are available and which has a density of at least ten (10) Dwelling Units along one-quarter (1/4) of a linear mile of cable, provided that the Dwelling Unit nearest to the existing terminus of trunk cable of the Cable System is situated no more than one-eighth (1/8) of a linear mile of cable from the existing terminus of trunk cable of the Cable System.
- C. Construction of the line extensions required by subsection (A) and (B) above shall commence within one hundred twenty (120) days after the (i) the determination of the minimum densities as provided in such clauses and (ii) the receipt by Grantee of a request for service to such a Dwelling Unit along with the associated first month's payment for services and the applicable installation fees. As used in this Section 12.2, the term "Dwelling Unit" shall mean a single-family or multi-family dwelling unit that (x) is fully-constructed and capable of occupancy in accordance with applicable building, housing and zoning codes, and (y) is situated along public easements to which Grantee can gain access.

12.3 Connection of Public Facilities: Grantee shall, at no cost to Grantor, provide at least one (1) outlet of Basic and expanded basic programming to all buildings in the Franchise Area owned by Grantor, as designated by the Grantor on the attached Schedule A. In addition, Grantee shall provide, at no cost to the building owner, one (1) outlet of Basic and expanded basic programming to all such future public buildings owned by the Grantor if the drop line to such building does not exceed one-hundred twenty-five (125) cable feet from the terminus of trunk cable of the Cable System or if Grantor agrees to pay the incremental cost of such drop line in excess of one-hundred twenty-five (125) cable feet, including the cost of such excess labor and materials. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. The City shall be responsible for all costs of such distribution of the Cable Service provided, to insure it is done in accordance with the technical requirements of the industry to avoid an impact on Grantee's Cable System, and any such distribution wiring shall be tested by Grantee to insure the expansion does not impair the Grantee's Cable System.

SECTION 13. STANDBY POWER

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, for outages affecting more than 10% of Subscribers, rated for at least two (2) hours duration, throughout the trunk and distribution networks. In addition, throughout the term

of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages affecting more than 10% of Subscribers for more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to Grantor no later than ninety (90) days following the effective date of this Franchise.

SECTION 14. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

14.1 Procedure for Remedying Franchise Violations

- A. If Grantor reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee shall have thirty (30) days from the date of receipt of such notice to:
1. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection C below; or
 2. Cure the violation; or
 3. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, because of the nature of the violation and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (B) below.
- B. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor or its designee shall set a public hearing within thirty (30) days of Grantor's receipt of such notice to review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found to be reasonable, the same shall be approved by the Grantor.
- C. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor or designee pursuant to subsection (B), the Grantor or designee shall set a public hearing to determine what sanctions shall be applied. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (A)(1) above, the Grantor or designee shall set a public hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what sanctions shall be applied.
- D. In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor shall also hear any other Person interested therein.
- E. If, after the public hearing, Grantor or designee determines that a violation exists, Grantor or designee may utilize one or more of the following remedies subject to Grantee's rights under federal, state or local law to appeal such determination:
1. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor or designee shall determine;
 2. Revoke this Franchise, subject to subsection (F) of this Section; and/or

3. Pursue any other legal or equitable remedy available under this Franchise or any applicable law.
 - F. This Franchise shall not be revoked except by City Council after notice and hearing as set forth in this Section and in accordance with the Cable Act and other applicable law.
 - G. The determination as to whether a violation of this Franchise has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.
- 14.2 **Revocation**: In addition to all other rights and powers retained by the Grantor under this Franchise or otherwise, and subject to the provisions of Section 14.1 the Grantor reserves the right to forfeit and terminate this Franchise and all rights and privileges of the Grantee hereunder in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to, the following:
- A. Violation of any material provision of this Franchise or any other Franchise between Grantor and Grantee, or any material rule, order, regulation or determination of the Grantor or authorized agent made pursuant to this Franchise or other agreement;
 - B. Attempt to evade any material provision of this Franchise or to practice any fraud or deceit upon the Grantor or its Subscribers or customers;
 - C. Material misrepresentation of fact in the application for or negotiation of this Franchise;
or
 - D. If Grantee becomes insolvent, or the subject of a bankruptcy proceeding.
- 14.3 **Removal**
- A. In the event of termination, expiration or revocation of this Franchise, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at Grantee's sole expense. Grantee shall have one (1) nine (9) month period within which to sell, transfer or convey its Cable System to a qualified purchaser, or to remove its plant, structures and equipment from the Grantor's Streets and other public places as directed by the Grantor. During this period which shall run from the effective date of the final, non-appealable order or decision of the city council or a court of competent jurisdiction imposing termination, the Grantee shall have the ability to operate the Cable System pursuant to the provisions of this Franchise. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.
 - B. If Grantee fails to complete any required removal pursuant to Subsection (A) to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs or Grantor may recover the costs through the security provided by Grantee.

14.4 Receivership and Foreclosure

- A. At the option of Grantor, subject to applicable law, this Franchise may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:
1. The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment; or
 2. The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all violations under the Franchise. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Franchise.
- B. If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:
1. Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and
 2. The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Franchise.

14.5 No Recourse Against Grantor: Except where otherwise provided herein, Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Franchise are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under federal or state law.

14.6 Nonenforcement by Grantor: Grantee is not relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Franchise shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation; whether similar or different from that waived.

14.7 Relationship of Remedies: The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

SECTION 15. ABANDONMENT

15.1 Effect of Abandonment: If the Grantee abandons its Cable System serving the Franchise Area during this Franchise term, the Grantor, at its option, may operate the Cable System

or designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until the Franchise is revoked and a new Franchisee is selected by the Grantor.

15.2 What Constitutes Abandonment: The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:

- A. The Grantee fails to provide any Cable Service to 90% of its Subscribers in accordance with this Franchise for more than twenty (20) consecutive business days, unless the Grantor or designee authorizes a longer interruption of service which authorization shall not be unreasonably withheld; or
- B. For purposes of this Franchise, "abandons" shall mean the Grantee's intentional surrender, desertion or relinquishment of its Cable System where Grantee fails to provide any Cable Service to 100% of its Subscribers for a period of no less than ninety (90) days.

SECTION 16. FRANCHISE RENEWAL AND TRANSFER

16.1 Renewal

- A. The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal law.
- B. In addition to the procedures set forth in said Section 626(a) of the Cable Act, the Grantor agrees to notify Grantee in writing within 90 days of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act.

16.2 Transfer of Ownership or Control

- A. This Franchise shall not be assigned or transferred, either in whole or in part, either by involuntary sale or by voluntary sale, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld or delayed; provided, however, Grantee may from time to time transfer and assign this Franchise to its lender(s) for security purposes.
- B. The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person

or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Grantor shall have consented thereto.

- C. The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- D. The Grantor shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all information requested in accordance with the Cable Act and the FCC regulations promulgated thereunder. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree in writing to an extension of time.
- E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a written notice confirming such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- F. In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be directly and solely related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee as permitted by the Cable Act and the FCC's regulations promulgated thereunder.
- G. The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.
- H. Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Franchise.

SECTION 17. SEVERABILITY

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

SECTION 18. MISCELLANEOUS PROVISIONS

- 18.1 Preferential or Discriminatory Practices Prohibited: Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the

term of this Franchise, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

- 18.2 **Notices:** Throughout the term of the Franchise, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon three (3) days after the date of mailing. At the effective date of this Franchise, such addresses shall be:

Northland Cable Television, Inc.
ATTN: Legal Department
101 Stewart Street, Suite 700
Seattle, WA 98101

With a copy to:

Northland Cable Television, Inc.
Attention: General Manager
Post Office Box T
Moses Lake, WA 98837

All notices to be sent by Grantee to Grantor under this Franchise shall be sent, postage prepaid, and such notices shall be effective upon three (3) days after the date of mailing. At the effective date of this Franchise, such address shall be:

City of Moses Lake
Attention: City Manager
PO Drawer 1579
Moses Lake, WA 98834

- 18.3 **Binding Effect:** This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.
- 18.4 **Authority to Amend:** This Franchise may be amended at any time by written agreement between the parties.
- 18.5 **Governing Law:** This Franchise shall be governed in all respects by the laws of the State of Washington.
- 18.6 **Guarantee:** The performance of the Grantee shall be guaranteed in all respects by the Grantee until this Franchise expires, is terminated as provided herein or is assigned.
- 18.7 **Captions:** The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.
- 18.8 **Construction of Franchise:** The provisions of this Franchise shall be liberally construed to promote the public interest.
- 18.9 **Entire Franchise:** This Franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this Franchise and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Franchise may be amended or added to except by agreement in writing signed by both of the parties.

18.10 Force Majeure: The performance of either party under this Franchise is excused for such period of time as its performance is rendered impossible by acts of nature, war, terrorist attacks, or labor disputes.

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

Section 3. This ordinance shall take effect and be in force five (5) days after its passage and publication of its summary as provided by law.

Adopted by the City Council and signed by its Mayor on December 13, 2011.



Jon Lane, Mayor

ATTEST:



Ronald R. Cone, Finance Director

APPROVED AS TO FORM:



Katherine L. Kenison, City Attorney