

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Mary Scrimsher	<i>MS</i>	9/27	RECEIVED OCT 11 1995 WHATCOM COUNTY COUNCIL	October 17	1) Public Works Committee 2) Introduce at Regular Council Meeting the same evening to schedule a Public Hearing.
Division Head:					
Dept. Head: Jeffrey M. Monsen	<i>JM</i>	9/27/95			
Prosecutor: Randy Watts	<i>RW</i>	9/27/95			
Purchasing/Budget:					
Executive:	<i>BJ</i>	10/6/95			

SUBJECT:

TCI CABLEVISION DRAFT ORDINANCE GRANTING A 15 YEAR FRANCHISE TO TCI.

ATTACHMENTS:

DRAFT FRANCHISE DOCUMENT , Will be distributed at Council Committee

SUMMARY STATEMENT:

Please complete sections of box as appropriate & explain the item below.

Related County contract #:	Should Clerk schedule a hearing? NO /_/ YES /x_/ Requested date: See note below 11/14/95
Amount budgeted for this item/project:	Is it (or will it be) within budget? YES /_/ NO /_/ (Please explain below)
Budget line item number(s):	

*** The City of Bellingham Council Chair will contact County Council Chair to arrange a date for a joint City/County Public Hearing in early November.

ORIGINATOR'S RECOMMENDED ACTION:

For Council to review the draft Franchise, refer questions to staff and introduce at the October 17 Council Meeting.

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

Oct 17, 1995: Introduced
 1995-307-A
 11/14/95: Written record left open until 11/22/95.
 1/23/96: Amended and Adopted, 7-0. Ordinance #96-005

Related File Numbers:

Ordinance or Resolution Number (this item only):

Ord. # 96-005

SPONSORED BY: Consent

PROPOSED BY: Public Works

INTRODUCTION DATE: October 17, 1995

ORDINANCE NO. 96-005

AN ORDINANCE GRANTING A FRANCHISE TO TCI CABLEVISION OF WASHINGTON, INC. TO OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN UNINCORPORATED WHATCOM COUNTY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR COUNTY REGULATION AND ADMINISTRATION OF THE CABLE COMMUNICATIONS SYSTEM; AND TERMINATING ORDINANCE NO. 83.30, 83.38, 84.60, 87.06, 89.56, 93.002

WHEREAS, TCI Cablevision of Washington, Inc., desires to continue operation of a cable television system in the rights-of-way of Whatcom County; and

WHEREAS, the Home Rule Charter of Whatcom County, Section 9.30 authorizes the County Council to grant non-exclusive franchise for a fixed term not to exceed 25 years for the use of any street, road or public place; and

WHEREAS, R.C.W. Chapter 36.55 provides that the County Council may grant franchises to persons or private or municipal corporations to use that right-of-way of County roads in their respective counties for the construction and maintenance of water works, gas pipes, telephones, telegraph and electrical light lines, sewers and other such facilities and including cable television wires and other cable television facilities; and

WHEREAS, TCI Cablevision of Washington, Inc., a sole proprietorship, hereinafter referred to as "TCI," has applied for a 25 year non-exclusive franchise to operate and maintain cable along all roads in unincorporated Whatcom County, Washington, and notice of this hearing having been duly published on the 28 and X days of October, 1995, and on the 4 and X days of November 1995 in the official newspaper for Whatcom County, and that it appearing to the County Council that notice of said hearing having been given as required by law and that it is in the public interest to grant the franchise for a period of 15 years; and

WHEREAS, negotiations with TCI and the County have been completed and the franchise process followed in accordance with the guidelines established by the County Charter and the 1984 and 1992 Cable Communications Act; and

WHEREAS, the County Council has reviewed the qualifications of TCI and the adequacy of its provision of services to Whatcom County; and

WHEREAS, the franchise granted by Ordinance No. 83.30, 83.38, 84.60, 87.06, 89.56, and 93.002, shall be terminated and be replaced by this Franchise; and

NOW, THEREFORE, WHATCOM COUNTY DOES ORDAIN that a franchise is hereby granted to TCI Cablevision of Washington, Inc. to operate and maintain a cable communications system in Whatcom County upon the following terms and conditions:

Section 1. DEFINITIONS. For the purposes of this Ordinance 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 number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in the Franchise is not defined in this Section and there is a definition for the term in the Cable Communications Policy Act of 1984 or the Cable Television Consumer Protection and Competition Act of 1992 (hereinafter collectively referred to as the Cable Act), the Cable Act definition shall apply. Other terms in the Franchise which are not defined in this Section shall be given their common and ordinary meaning.

1.1 "Access Channel" or "Public, Educational or Government Access (PEG) Channel" means any channel or portion of a channel utilized for programming, whether by TCI or in cooperation with, by or through the County, where any resident of the County or any non-commercial organization whose members reside in the County may be a programmer, either without charge or in a non-profit manner, on a non-discriminatory basis. The term "programming" as used in this section shall include video, voice, and data transmission.

1.2 "Access Provider, Access Services" or "Community Access Services" The access provider is a non-profit agency designated by Whatcom County, The City and the Administrative Board which will provide community access activities. Access services and community access services mean programming provided on any public, educational or government access channel, and the provision of any facilities, equipment, channels or other services for the purpose of facilitating such programming.

1.3 "Addressability" means the capability of the cable communications system to provide programming to specific subscribers on a per-program, per-event, and per-program-package basis.

1.4 "Administrative Board" means the entity to be created by the County and the City to implement provisions of this agreement as assigned to it. The activities of the administrative board shall be financed solely out of funds generated by the County and the City franchise fee increased reflected in this agreement (plus any other private contributions or public grants available to it), and shall not be financed from the general fund of either the County or the City.

1.5 "Basic Service" or "Basic Cable Service" means any tier of service regularly provided to all subscribers. It includes, but is not specifically limited to, the retransmission of local broadcast television signals and the cable casting of public, educational, or governmental access channels. Nothing in this definition shall be deemed to limit the rights of TCI or the County with respect to the regulation of rates and charges as permitted by applicable law.

1.6 "Cable Communications System" or "Cable System", or "System," shall have the meaning specified for "Cable Communications System" in the Cable Act. Unless otherwise specified it shall in this document refer to the cable communications system constructed and operated in Whatcom County under this Franchise.

1.7 "Channel" means a radio frequency band or its technical equivalent on the cable system, which is capable of carrying either one standard television signal, or a number of audio, digital or other non-video signals, or some combination of such signals. "Standard Television Channel" or "Standard Video Channel" means a six Megahertz (MHz) frequency band or its technical equivalent, prior to any signal compression.

1.8 "County" shall mean Whatcom County of the State of Washington and all the territory within

1.9 "Franchise" shall mean the right granted by this Ordinance and conditioned as set forth herein by which the County authorizes TCI to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Communications System in the County. The Franchise granted herein shall be a nonexclusive franchise.

1.10 "Franchise Fee" shall mean the fee assessed by the County to TCI, in consideration of TCI's right to operate the cable system within the County's streets and rights of way, determined in amount as a percentage of TCI's gross revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include any tax, fee, or assessment of general applicability, nor any payments by the County called for in this Franchise as reimbursement of the County's costs, or support of community access services.

1.11 "Gross Revenues" means any and all compensation in whatever form, from any source, directly or indirectly earned by TCI or any affiliate of TCI or any other person who would constitute a cable operator of the cable system under the Cable Act, derived from the operation of the cable system insofar as such operation in any manner requires use of the County roads and rights of way in the franchise area. Amounts identified by the County as copyright or other license fees, shall not be excluded from gross revenues. Gross revenues shall include but not be limited to basic and pay service revenues, revenues from installation and equipment rental and sale, the applicable percentage of local and regional advertising revenues, any leased access revenues, and revenues from any tiered or packaged services.

Gross revenues shall not include any taxes on services furnished by TCI, which taxes are imposed directly on a subscriber or user by a city, county, state or other governmental unit, and collected by TCI for such entity. Gross revenues shall not include amounts which cannot be collected by TCI and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in gross revenues for the period in which they are collected.

Amounts included in gross revenues shall not be counted more than once; therefore, amounts included once in TCI's gross revenues shall not be added to gross revenues again if they are received by an affiliate of TCI in payment for programming or other goods or services supplied to TCI.

1.12 "Interactive Services" are those services provided to subscribers whereby the subscriber either (a) both receives information consisting of either television or other signal and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose or (b) transmits signals to any other location for any purpose.

1.13 "Headend" means the control center of the cable system where incoming signals are amplified, converted, processed, and combined into a common cable for transmission to the subscriber.

1.14 "Leased Access" shall mean the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the County and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 U.S.C. 521 et. seq.).

1.15 "Pay Service" or "Premium Service" means programming (such as non-advertiser-supported movie channels or pay-per-view programs) offered individually to subscribers on a per-channel, per-

program or per-event basis.

1.16 "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

1.17 "Public Agency Network" (PAN) is a cable communications network designed principally for the provision of non-entertainment two-way services to schools, public agencies or other non-profit agencies for use in connection with the on-going operations of such institutions.

1.18 "Subscriber" means any person who legally receives any one or more of the services provided by the Cable Communications System.

1.19 "Street" shall mean the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all unincorporated areas of the County.

1.20 "TCI" shall mean TCI Cablevision of Washington, Inc., its agents and assignees.

Section 2. FRANCHISE.

2.1 Grant of Franchise. The County hereby grants to TCI a nonexclusive franchise which authorizes TCI, subject to the terms of this Ordinance, to construct and operate a cable system and offer cable service and other services in, along, among, upon, across, above, over, under, or in any matter connected with the roads located in un-incorporated Whatcom County and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across or along any street or extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system. Said Franchise shall constitute both a right and an obligation to provide the services of a Cable Communications System as required by the provisions of this Ordinance.

2.2 Franchise Term. The term of the Franchise shall be 15 years, unless terminated sooner in accordance with this Franchise agreement.

2.3 Franchise Area. The Franchise Area shall be that area within the present or future unincorporated limits of Whatcom County. Service shall be provided to all persons whose homes or business are within the line extension policy outlined in this Ordinance and to such further homes or businesses as agreed to by TCI.

2.4 Franchise Nonexclusive. The Franchise granted herein shall be nonexclusive. The County specifically reserves the right to grant, at any time, such additional franchises for a Cable Communications System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to TCI.

The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to TCI.

The County acknowledges that TCI will make system upgrades and financial contributions to enhance cable service to customers as conditions of this grant of franchise. Similarly, the County agrees to grant additional franchises upon terms and conditions which, in its sole discretion, it in good faith

believes will enhance cable service and not grant an unfair competitive advantage to one franchisee over another.

2.5 Franchise Renewal or New Franchise. The County may establish appropriate requirements for new franchises or franchise renewals consistent with federal, state and local law.

2.6 Periodic Public Review of Franchise. The County may at approximately three-year intervals during the term of the Franchise, and at such other times as the County deems appropriate, conduct a public review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Franchise continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests, and other such factors. Both the County and TCI agree to make a full and good faith effort to participate in the review in a manner that accomplishes this end. It is not intended that the Franchise be modified as a result of such review, except as a last resort for achieving the purpose of the review. The County shall establish a procedure for ensuring orderly review, full discussion of any proposed policy changes between the County and TCI, and full public hearing regarding all matters discussed during the review.

Matters appropriate for discussion at the public reviews in accordance with this Section include without limitation:

- (a) TCI's overall compliance with the Franchise;
- (b) Policies and practices necessary to ensure continued support for public, educational and government access at substantially the same level provided for in the Franchise;
- (c) System upgrade and rebuild requirements; and
- (d) The resolution of any evident patterns of existing customer service problems.

If so ordered by a written request of the County Council, following public review under this Section and after the fourteenth year of the effective date of the Franchise, TCI shall agree to meet to discuss and plan with the County a rebuild or upgrade of the system such that the system as upgraded or rebuilt shall represent the then-current, non-experimental state-of-the art in system technical capacity and performance, as well as provide general parity of overall cable service with the most advanced cable service provided by TCI and other operators in Washington and Oregon.

The periodic public reviews described in this Section may be but need not be made coincident with public reviews involved in the consideration of TCI requests for franchise renewal, franchise extension, or approval of transfer of system ownership.

2.7 Transfer of Ownership. This Franchise shall not be sold, leased, mortgaged, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except TCI, either by act of TCI or by operation of law, without the prior consent of the County, expressed in writing. The granting of such prior consent in one instance shall not render unnecessary any subsequent prior consent in another instance. Any transfer of ownership shall make this Franchise subject to revocation unless and until the County shall have given written prior consent thereto.

In accordance with FCC rules and regulations, within 30 days of a postmarked request to consent to transfer, the County shall notify TCI in writing of information it requires to make its decision whether to consent. When the County has received such information, it shall have 120 days within which to act. If the County has not taken action on TCI's request for consent to transfer within this 120-day period, it shall be deemed to have consented.

The requirements of this Section shall not be deemed to prohibit the use of TCI's property as collateral for security in financing the construction or acquisition of all or part of the cable communications system franchised hereunder. However, such financing shall be subject to the provisions of this Franchise.

2.8 Change in Control. TCI shall promptly notify the County through the County Council of any proposed change in, transfer of, or acquisition by any other party of control of TCI. If beneficial ownership of 10% of the stock of TCI, or of any entity now owning or later acquiring such a beneficial interest is acquired by a single entity or by several entities under common control, if such entity or agent of common control is other than an organization a) whose primary business is cable system operation, and b) is more than 50 percent owned by TCI or a parent of TCI, then a change in control will be deemed to have taken place unless the County, upon request of TCI, finds otherwise. Such change in control shall make this Franchise subject to revocation unless and until the County shall have given written consent thereto. For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, the County may inquire into the qualifications of the prospective controlling party to perform the obligations of TCI under this Franchise agreement. TCI shall assist the County in any such inquiry. The County may condition its consent upon such terms and conditions as it deems appropriate. Consent to the transfer shall not be unreasonably withheld.

2.9 Receivership. The County shall have the right to declare a forfeiture or otherwise revoke this Franchise 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of TCI, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have vacated prior to the expiration of said 120 days, or unless;

(a) within 120 days after his election or appointment, such receiver or trustee shall have been approved by the County and shall fully have complied with all the provisions of the Franchise and remedied all defaults thereunder; and,

(b) such receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by the County, as well as the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the Franchise.

2.10 Expiration. Upon expiration of the Franchise, the County shall have the right, at its own election subject to Section 626 of the Cable Act to:

(a) extend the Franchise, though nothing in this provision shall be construed to require such extension;

(b) renew the Franchise, in accordance with applicable valid law;

(c) invite additional franchise applications or proposals;

- (d) terminate the Franchise without further action; or
- (e) take such other action as the County deems appropriate.

2.11 Right to Purchase the System.

(a) In the event the County has declared a forfeiture for cause or otherwise revoked for cause this Franchise agreement as provided herein, or in the event of expiration of the initial term of this Franchise agreement without the Franchise being renewed or extended and the County Council has so ordered by resolution, TCI shall continue its operations for a period of 270 days after either the effective date of the resolution or expiration of the initial term of the franchise unless the resolution in either case orders termination by TCI of its operations at an earlier time. During this period, TCI shall not transfer any portion of its cable system to any other person, including parts of the system rented, leased, or leased purchased without prior written consent of the County. Within 30 days of the order by the County to continue operations, TCI shall tender to the County an inventory of its system used in the operations under this Franchise agreement. After receiving the inventory, the County may notify TCI that it desires to acquire by purchase all or a portion of the system used by TCI in its operation, exclusive of parts of the system essential to TCI's operation of parts of the system, or of other systems, not acquired. Such notice shall be by resolution or other appropriate writing of the County and shall state a date upon which TCI shall cease its operations and receive payment as described below.

Under this Section, if a franchise renewal is denied, the County shall have an option to acquire TCI's system at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the Franchise itself. If a franchise is revoked for cause, the County shall have an option to acquire TCI's system at an equitable price.

(b) In the event the County purchases, acquires, takes over, or holds all or parts of the system pursuant to Subsection (a) above, the County shall have the right without limitation to assign, sell, lease, or otherwise transfer its interest in all or parts of the system to any other persons, including any other grantee of a cable communications franchise, on whatever terms the County deems appropriate.

2.12 Right to Require Removal of Property. At the expiration of the term for which the Franchise is granted providing no renewal is granted, or upon its forfeiture or revocation, as provided for herein, the County shall have the right to require TCI to remove, at TCI's own expense, all or any part of the cable communications system from all streets and public ways within the Franchise area. If TCI fails to do so, the County may perform the work and collect the cost thereof from TCI. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of TCI effective upon filing of the lien with the Whatcom County Auditor.

2.13 Continuity of Service Mandatory. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to TCI are honored. In the event that TCI elects to overbuild, rebuild, modify, or sell the system, or the County revokes or fails to renew the Franchise, TCI shall make its best effort to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstances, during the lifetime of the Franchise. In the event of expiration, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other person, including any other grantee of a cable communications franchise, the current grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this agreement for a temporary period sufficient in length

to maintain continuity of service to all subscribers.

Section 3. OPERATION IN ROADS AND RIGHTS-OF-WAY.

3.1 Use of Roads. TCI may, subject to the terms of this Resolution, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the roads within the County such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable Communications System within the County.

3.2 Construction or Alteration. TCI shall in all cases comply with all lawful County laws, resolutions and regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the cable system. TCI shall, upon request, provide information to the County regarding its progress in completing or altering the cable system.

3.3 Non-Interference. TCI shall exert its best efforts to construct and maintain a Cable Communications System so as not to interfere with other use of streets. TCI shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to TCI. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, TCI shall provide at least two weeks' advance notice of the same to such affected residents.

3.4 Consistency with Designated Use. Notwithstanding the above grant to use roads, no road shall be used by TCI if the County, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used under County, State or local laws.

3.5 Undergrounding. TCI shall place underground all of its transmission lines which are located or are to be located above or within the roads of the County in the following cases:

- (a) all other existing utilities are required to be placed underground by statute, resolution, policy or other regulation;
- (b) TCI is unable to get pole clearance;
- (c) underground easements are obtained from developers of new residential areas; or
- (d) utilities are overhead but residents prefer underground (service provided at cost).

If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including TCI's cable plant which is then located overhead, TCI shall participate in such underground project and shall remove poles, cables and overhead wires within such district if requested to do so and place facilities underground. If such undergrounding of TCI facilities is part of such a project, the costs thereof shall be included in such local improvement district.

TCI shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for drops from pedestals to subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. TCI shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 Maintenance and Restoration.

(a) **Restoration.** In case of disturbance of any road, public way, paved area or public improvement, TCI shall, at its own cost and expense and in accordance with the requirements of local law, restore such road, public way, paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place.

All requirements of this Section pertaining to public property shall also apply to the restoration of private easements and other private property.

TCI shall perform all restoration work promptly.

If TCI fails, neglects or refuses to make restorations as required under this Section, then the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by TCI.

If TCI causes any damage to private property in the process of restoring facilities, TCI shall repair such damage or pay the owner therefor.

(b) **Maintenance.** TCI shall maintain all above ground improvements that it places on County right-of-way pursuant to this franchise. In order to avoid interference with the County's ability to maintain the right-of-way, TCI shall provide a clear zone of five feet on all sides of such improvements.

If TCI fails to comply with this provision, and by its failure, property is damaged, then TCI shall be responsible for all damages caused thereby.

(c) **Disputes.** In any dispute over the adequacy of restoration or maintenance relative to this Section, final determination shall be the prerogative of the Public Works Department of Whatcom County.

3.7 Work on Private Property. TCI, with the consent of property owners, shall have the authority to trim trees upon and overhanging roads, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of TCI, except that at the option of the County, such trimming may be done by it or under its supervision and direction at the reasonable expense of TCI.

3.8 Relocation.

3.8.1 County Property. If during the term of the Franchise the County or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, TCI shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed.

3.8.2 Utilities and Other Franchisees. If during the term of the Franchise another entity which holds a franchise or any utility requests TCI to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or their more efficient use, or to "make ready" the requesting party's facilities for use by others, or because TCI is using a facility which the requesting party has a right or duty to remove, TCI shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, provided that the County shall not be liable for such costs.

3.8.3 Notice to remove or relocate. Any person requesting TCI to remove or relocate its facilities shall give TCI no less than 45 days' advance written notice to TCI advising TCI of the date or dates removal or relocation is to be undertaken; provided that, no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered.

3.8.4 Failure by TCI to remove or relocate. If TCI fails, neglects or refuses to remove or relocate its facilities as directed by the County; or in emergencies or where public health and safety or property is endangered, the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by TCI. If TCI fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if TCI would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by TCI.

3.8.5 Procedure for removal of cable. TCI shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. TCI may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Subject to applicable law, TCI shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the roads along the extension thereof or otherwise which is ordered to be removed by the County based upon a determination, in the sole discretion of the County, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the roads which is not removed shall be deemed abandoned and title thereto shall be vested in the County.

3.9 Movement of Buildings. TCI shall, upon request by any person holding a building moving permit, franchise or other approval issued by the County, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and TCI shall be authorized to require such payment in advance. The County shall require all building movers to provide not less than 15 days' notice to the cable company to arrange for such temporary wire changes.

Section 4. SYSTEM DESIGN AND CAPACITY.

4.1 Availability of Signals and Equipment. TCI shall, commencing with the effective date of the Franchise, at a minimum:

- (a) make available to subscribers all local broadcast signals, and any other signals that are required to be made available by the FCC;
- (b) distribute, as received, all broadcast signals carried unless a substantial reason for noncompliance can be demonstrated;

- (c) make available a minimum of 36 activated channels, including all basic cable services;
- (d) make available upon request, free of charge, an RF switch (an A/B switch) permitting conversion from cable to antenna reception;
- (e) upon request, shall provide, without installation charge:
 - (1) One outlet of Basic Service to Bellingham City Hall, the Whatcom County Courthouse, the Western Washington University Computing Center, the Bellingham School District Headquarters, and any public fire station passed by the Cable System; and
 - (2) One outlet containing all signals, excluding premium channels, to all public educational buildings and facilities and all government buildings and facilities that are passed by the Cable System.

Notwithstanding anything to the contrary set forth in this Section, TCI shall not be required to provide an outlet to such buildings unless it is technically feasible. Said outlets and maintenance of said outlets shall be provided free of fees and charges.

4.2 Equal and Uniform Service. TCI shall provide access to equal and uniform cable television service throughout the franchise area.

4.3 System Upgrade and Construction Schedule.

4.3.1 System Upgrade Required. TCI shall rebuild or modify its cable system to upgrade the system to a minimum practical capacity of 70 downstream standard video channels throughout the franchise area. The system, as upgraded, shall have the capacity to provide pay-per-view and other services requiring addressability. In all its construction and service provision activities, TCI shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise agreement.

4.3.2 Construction Schedule. A detailed construction schedule, which shall be subject to County approval, shall be submitted to the County no later than 45 days prior to the commencement of construction of the system upgrade. The schedule shall include, at a minimum, 3-month and 6-month milestones signifying specific elements of system upgrade completion. TCI shall commence construction within thirty-six months after the effective date of this Franchise, and shall complete construction and all activation procedures within seventy-two months of the effective date of this Franchise. Following such construction and activation and throughout the term of the Franchise, at least 70 standard video channels must be able to be delivered on the system without additional construction activity or the addition of any further electronic equipment to the system, and the system shall have the capacity to provide pay-per-view and other services requiring addressability. For purposes of this Franchise agreement, "commencement of construction", as finally determined by the County if necessary, shall mean the beginning of installation of any part of the system upgrade, including, but not limited to, the construction of any facility, building or structure, or the stringing of any strand wire or the laying of any conduit, or the installation of any active or passive electronic equipment to facilitate the required system upgrade.

4.3.3 Remedies. In addition to any other remedies provided under the County Code, the County may assert any of the following remedies in the event TCI defaults on the approved construction schedule:

(a) As the County finds it impractical to calculate the actual amount of damages in the event of delay or nonperformance of the system upgrade construction schedule, the County has adopted the following schedule of liquidated damages.

Accordingly, TCI agrees to pay liquidated damages as follows:

- (1) \$300 per day for each day in excess of 14 days that any 3-month milestone is not completed as set forth in the construction schedule as approved by the County.
- (2) \$800 per day for each day in excess of thirty days that any 6-month milestone is not completed as set forth in the construction schedule approved by the County.
- (3) Forfeiture of the faithful performance bond for delays in the completion of construction of the upgrade exceeding one year.
- (4) If, after thirty-six months after the effective date of the Franchise, TCI has not commenced upgrade construction and TCI does not commence construction within 30 days of written notice from the County of such failure, the County may impose liquidated damages in an amount not to exceed \$3,000 per day for each day TCI fails to initiate construction.

Liquidated damages will not be assessed for any delays for which an extension of time is granted. TCI shall not be liable for liquidated damages for any delay caused by acts of nature, force majeure or circumstances beyond its reasonable ability to control. No payment of liquidated damages will, in any degree, release TCI from further obligations and liabilities to complete the entire Franchise.

(b) Termination of the Franchise for delays in upgrade construction completion exceeding 18 months.

4.3.4 Hearing Process.

(a) If the County concludes that TCI is liable for liquidated damages pursuant to Section 4.3.3, the County shall issue to TCI by certified mail a notice of intention to assess liquidated damages. The notice shall set forth the basis for the assessment, and shall inform TCI that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the County Council.

(b) Should TCI desire a hearing before the County Council TCI shall send a written notice of appeal by certified mail to the County Council within 15 days from the date on which the County sent the notice of intention to assess liquidated damages. The hearing on TCI's appeal shall be within 30 days from the date on which TCI sent its notice of appeal to the Council.

(c) Unless the County Council rules (1) that the violation has been corrected, or (2) that an extension of time or other relief should be granted, said liquidated damages shall be assessed beginning with the date on which the County sent the notice of the intention to assess liquidated damages and continuing thereafter until such time as the County determines that the violation has ceased, such determination not to be unreasonably withheld.

4.3.5 Right of Inspection of Construction. The County shall have the right to inspect all construction or installation work performed within the Franchise area, and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise agreement and other pertinent provisions of law.

4.3.6 Emergency Alert Capability. TCI shall provide the system capability for the County to transmit an emergency alert signal from locations designated by the County to all subscribers. TCI shall also provide an emergency audio and video override capability to permit the County to interrupt programming and cablecast from locations designated by the County an audio and video message on all channels simultaneously in the event of disaster or public emergency. Emergency alert capability as required in this Section shall be operational throughout the term of the Franchise.

4.3.7 Standby Power. TCI shall provide standby power generating capacity at the cable communications system control center and at all hubs. TCI shall maintain standby power system supplies, rated at least at two hours' duration, throughout the trunk and distribution networks. In addition, TCI shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the County as part of the construction schedule for approval prior to the effective date of the Franchise.

4.3.8 Provision of Bi-Directional Capability. TCI shall construct the upgraded system with bi-directional capability. Bi-directional capability shall be considered to be in place according to the requirements of this Franchise if a) all headend equipment for active return communications is installed, b) all amplifiers on the system have appropriate space available for return communications modules, c) TCI completes for the County a demonstration of return video, voice and data communications on a portion of the system utilizing a sequence of normally spaced amplifiers, with all forward and return signals meeting the technical standards of this Section, and d) return amplifier modules are installed, tested and balanced to permit active return video, voice and data communications meeting the technical standards of this Section from at least 10 initial locations in areas to which TCI's system already has been extended. The locations shall be designated by the County, following consultation with TCI.

4.3.9 Public Agency Network Construction. The County may request TCI to submit a proposal for development and construction of a Public Agency Network (PAN), with capacity for two-way high-speed data, video, and voice transmission. The PAN shall be constructed to serve at a minimum all governmental buildings within unincorporated Whatcom County. The PAN shall initially link the Bellingham City Hall, the Whatcom County Courthouse, the Western Washington University Computing Center, the public access facility, and the Bellingham School District Headquarters.

The PAN shall provide a minimum of 6 upstream and 6 downstream standard video channels for full time institutional use under the control of the City of Bellingham and The County. TCI shall maintain and operate the PAN to permit high quality voice, video, and high and low speed data transmission meeting commonly accepted industry performance standards for such transmission; and shall ensure that all repairs are made within 24 hours.

TCI shall cooperate fully with the County and any public agency identified by the County, to ensure that the PAN may be used to the maximum public benefit throughout the term of the Franchise.

Actual funding for construction and maintenance of the PAN will be determined at the time of valuation of the proposals.

4.4 Technical Standards. The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply. The County may establish reasonable technical standards for the performance of the cable system if the FCC permits it to do so, or if the FCC standards are repealed in whole or in part.

4.5 Performance Testing. TCI shall perform all system tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. These tests shall include, at a minimum:

- (a) Initial proof of performance for any construction;
- (b) Semi-annual compliance tests;
- (c) Tests in response to subscriber complaints; and
- (d) Tests requested by the County to demonstrate franchise compliance.

Written records of all system test results performed by or for TCI shall be maintained, and shall be available for County inspection upon request.

The County shall be given the opportunity to review and approve test sites in advance. At least two of the test locations shall be the far end of the distribution trunk cables. The tests may be witnessed by representatives of the County, and TCI shall inform the County of the time and place of each test no less than three weeks prior to the test. Written test reports shall be submitted to the County. The County may conduct independent tests of the system for which TCI shall give its fullest cooperation. If more than one of the locations tested fail to meet the performance standards, TCI shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed, and at least eight additional randomly chosen locations. If a second test results in failure of one or more sites, then the County may seek remedies in accordance with Sections 7.5 and 7.6 unless the circumstances of the failure are caused by conditions which are beyond TCI's control, as determined, acknowledged and verified by the County.

Section 5. PROGRAMMING AND SERVICES

5.1 Categories of Programming Service. Until the system upgrade required by this Franchise is completed, TCI shall deliver broad categories of video programming substantially equal to or greater than those delivered at the time the Franchise is granted. Upon completion of the system upgrade required by this Franchise, TCI shall provide video programming services in at least the following broad categories:

- Local Broadcast
- Public Broadcast
- Distant Broadcast
- News and Information
- Sports
- General Entertainment
- Arts/Performance/Humanities
- Science/Technology
- Children/Family/Seniors

Foreign Language/Ethnic Programming
Public, Educational and Governmental Access Programming
Movies

5.2 Changes in Programming Services. TCI shall not delete or so limit as to effectively delete any broad category of programming or any channel within its control without the County's consent and shall provide at least 60 days' prior written notice to subscribers and to the County of TCI's request to do so, including all proposed changes in bandwidth or channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

5.3 New and Upgraded Service. Upon the request of the County, following a public hearing, TCI shall upgrade its service automatically to incorporate new services and improvements in services. At a minimum TCI shall provide the same new and improved services and the same number of channels within 12 months of when they are provided to fifty percent of TCI's subscribers in Western Washington. These shall include, but not be limited to, the following:

- (a) Two way interactive video, voice and high speed communications service for all cable subscribers and public institutions connected to the system.
- (b) Communications that serve the public; for example, links that tie facilities, government agencies and/or homes.
- (c) Services for the disabled, including, but not limited to, closed captioning capabilities for local programming.

5.4 Basis for Programming Decisions. TCI shall make available to the County upon request all documents and records pertaining to the basis for programming decisions, including, but not limited to, all customer surveys and survey results, individual requests, inquiries and complaints regarding program changes and types of programming. An explanation of local programming policies guiding TCI's programming decisions shall be provided as a part of each year's annual report.

5.5 Ascertainment Process. TCI shall:

(a) At least annually, using a methodology approved by the County, provide a systematic ascertainment of the community's views regarding the nature and adequacy of TCI's services, and of the cable related needs and interests of the community and the preferences of customers in Whatcom County.

(b) Following completion of the ascertainment process, a report of the results shall be provided to the County Council for review. After considering the report, the Council may direct TCI to make such adjustments to its programming services as are reasonably necessary to accommodate the cable related needs and interests of the community as reflected in the ascertainment report.

5.6 Administrative Board. The County may establish an administrative board to administer this Franchise and to perform such other functions as may be designated by the County and the City.

5.7 Obscenity. TCI shall not transmit over the cable system programming which is obscene or otherwise unprotected by the Constitution of the United States; provided, however, TCI shall in no way be responsible for programming over which it has no editorial control, including public, educational and governmental access programming.

5.8 Parental Control Device. Upon request by any subscriber, TCI shall make available a parental control or lockout device that will enable the subscriber to block all access to any and all channels without affecting those not blocked. TCI shall inform subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

Section 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

SECTION 6 IMPLEMENTATION LANGUAGE :

Upon request by the County with at least one year of written notification to TCI, Section 6 shall be implemented. Until such time of written notification, PEG Access shall remain as it is currently operated by TCI in compliance with Federal Law. Before any of the terms or conditions of Section 6 can be modified, those conditions shall be mutually agreed upon by the County and TCI.

Section 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

6.1 Access Channels.

(a) Until the completion of the system upgrade pursuant to Section 4.3 (construction time table) herein, TCI shall make available one standard video channel on the system for public, educational and/or governmental (PEG) access purposes. Channel 10 shall remain as the PEG channel. The control and administration of the public access channel(s) shall be transferred to the access provider no later than the completion of the rebuild.

(b) No later than completion of the system upgrade, one additional channel - making a total of two channels - shall be devoted to access programming, under the control of an access provider designated by the County. The County and TCI agree that one of these channels shall be the channel also provided under the requirements of TCI's Franchise with The City Of Bellingham and programmed for cablecast within the County.

(c) One additional channel beyond the initial two, up to a maximum of five channels, shall be made available for access programming each time it occurs that each of the channels being used for access is cable casting first run programming during at least 32 hours per week between 10:00 a.m. and 10:00 p.m., during any consecutive 10 week period, on the average, and upon request by the County for such a channel. The third (and subsequent) showing of a given program shall not be counted toward the "32-hours per week" computation.

If the conditions described above are met, TCI shall, within six months following a request by the County, provide a new specifically designated channel for access. TCI shall continue to provide the additional channel for as long as the triggering criteria stated herein continue without a significant break during any ten consecutive week period. If any channel in addition to two channels is designated for community use, but after one year such channel is not programmed at least 25% of the hours between 10:00 a.m. and 10:00 p.m. with first run programming, the community access provider designated by the County shall, within six months of receiving a written request from TCI, group all access programming on that channel into one continuous block of time selected by the provider. The remaining programming time of such channel shall then revert back to TCI for its unrestricted use within the terms and conditions of this Ordinance. In no event shall TCI be required to provide more than five access channels.

In addition to the foregoing, PEG channels may be used for transmission of non-video signals in

compliance with federal law. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should TCI develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow subscribers to transmit data to the PEG facility.

(d) TCI shall make every reasonable effort to coordinate the cable casting of public, educational and/or governmental access programming upon the Cable Television System and upon the same channel designations as such programming is currently cablecast within the community. In any event, channel 10 shall remain a PEG channel and in no event shall any other PEG channel reallocations be made prior to six months' written notice to the County by TCI.

(e) All access channels shall be provided as part of basic service and all PEG channels will have the same bandwidth as basic service channels.

6.2.1 Purchase or Lease of Facilities by TCI. To help meet Whatcom County's access needs over the life of the Franchise, TCI shall lease or purchase a building or facility (site) of at least 5,000 square feet with suitable space for a production studio, a studio control room, three edit suites, a playback and master control room, a training and multi-purpose meeting room, offices, set storage, an area for equipment check-in and check-out, an equipment maintenance area, a vehicle storage area, and a tape storage room. Whether the provision of the site shall be by purchase or by lease shall be at the discretion of TCI. The site shall be made available for the exclusive use of the County's designated access provider, which shall only use the facilities and equipment for authorized PEG access as permitted by Federal regulation and this agreement. The selection of the site shall be made in cooperation with the County's designated access provider, and shall be located in an area conducive to maximum use by Whatcom County residents. The site shall have appropriate power and HVAC to support all necessary access activities, as well as reasonable parking to support necessary access activities. If the public access facility has been purchased or leased to purchase by TCI, on termination or expiration of this franchise the County and City by mutual agreement, shall have the option to purchase such facility at its fair market value.

6.2.2 Financial Responsibility of TCI. TCI shall pay all mortgage or lease payments, property taxes, and real property insurance on the site. TCI shall maintain real property insurance against loss, theft, vandalism or other casualty for the access facility. The designated access provider shall be responsible for the costs of any damages to the access site as a result of misuse or vandalism by the designated access provider, its employees or members.

6.2.3 Timing for Provision of Facilities. The access site shall be purchased or leased and made available to the County's designated access provider at the earliest possible date following the effective date of the Franchise. In any event, the site shall be fully operational within one year of the effective date of this franchise.

In the interim period, TCI will operate the existing TCI public access facility, including the studio, edit suite, and office space. Access to this facility for local origination or TCI's use shall be scheduled by TCI.

6.2.4 Return Feed from Facilities. TCI shall provide all necessary technical equipment and support to provide a high quality 24 hour per day return feed for each access channel from the access site to the system headend.

6.2.5 Satellite Reception. TCI shall provide a satellite reception system for exclusive use of the access

provider capable of high-quality reception from various satellites.

6.3 Capital Grant for Access Equipment and Facilities. TCI shall contribute a total sum of \$375,000 in the form requested by the access provider, the City of Bellingham and The County for the purpose of set-up of and equipment for the PEG facility. These funds will be available from TCI beginning six months from the effective date of this agreement.

6.4 Termination of the access provider. In the event the access provider is terminated by the County and the City and not replaced within a reasonable time, PEG facilities and equipment shall revert to the public entity chosen by the administrative board for use by TCI.

6.5 PEG operation funding. Funds for operation of PEG will be generated by the additional 1% franchise fee payable to the County, referred to in section 11.1.

Section 7. REGULATORY PROVISIONS.

7.1 Intent. In accordance with the provisions of Whatcom County Code, the County shall have the right to administer and regulate activities under the Franchise up to the full extent permitted by applicable federal, state, and local law.

7.2 Delegation of Authority to Regulate. The County reserves the right to delegate its regulatory authority wholly or in part to agents of the County including, but not limited to, an agency which may be formed to regulate several franchises in the Whatcom County region.

7.3 Areas of Administrative Authority. In addition to any other regulatory authority granted to the County by law or franchise, the County shall have administrative authority in the following areas:

- (a) Administering and enforcing the provisions of this Franchise agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- (b) Coordinating the operation of public, government and educational channels.
- (c) Coordinating TCI's technical, programming and operational assistance and support to public agency users.
- (d) Establishing procedures and standards for making use of TCI's support of public institutional operations and services, provision of dedicated channels, assistance to public facilities, support for community access, and the interconnection of the cable system with other area systems.
- (e) Planning expansion and growth of public cable services;
- (f) Formulating and recommending long-range cable communications policy for the Franchise area.
- (g) Disbursing and utilizing Franchise revenues paid to the County.
- (h) Administering the regulation of rates, to the extent permitted by law.

TCI shall cooperate fully in facilitating the County's discharge of its administrative authority.

7.4 Regulation of Rates and Charges.

7.4.1 Right to Regulate. The County reserves the right to regulate rates or charges for any service within the limits of federal and state law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.

7.4.2 Notice of Change in Rates and Charges. Throughout the term of this Franchise, TCI shall give the County and all subscribers within Whatcom County at least 30 days' notice of any intended modifications or additions to subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users.

7.4.3 Rate Discrimination Prohibited. Within any category of subscribers, TCI shall not discriminate among subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of subscribers shall be made by TCI on the basis of those considerations. Nevertheless, TCI shall be permitted to establish discounted rates and charges for providing cable service to low-income, handicapped, or low-income elderly subscribers.

7.5 Franchise Violations, Remedies, and Revocation.

7.5.1 Remedies. Other than the liquidated damages specified in Section 4.3.3 of this Franchise agreement which relate to the construction schedule, the County shall have the right to assert the remedies set out below in the event TCI violates any provision of this Franchise agreement. These remedies are intended to embody the County's and/or the public's rights under The Whatcom County Home Rule Charter to the extent permitted by law.

- (a) To the extent the County deems necessary to remedy the default, proceeding against all or any part of any security provided under the Whatcom County Code or this Franchise, including without limitation, any bonds, security funds, or other surety. Should the County take this action, TCI shall be responsible for all direct and actual costs related to the foreclosure action including, but not limited to, legal and administrative costs;
- (b) Commencing an action at law for monetary damages or seeking other equitable relief, including specific performance;
- (c) In the case of a TCI's default as to a material provision of the Franchise, proceeding to revoke the Franchise; or,
- (d) Requiring TCI to correct or otherwise remedy the violation prior to considering the approval of any proposed rate increase if rate regulation is authorized by law and is in effect.

In determining which remedy or remedies for TCI's violation are appropriate, the County shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether TCI has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

7.5.2 Revocation. The County has the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

(a) TCI is in violation of any material provision of the Franchise agreement and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation as noted in Section 7.5.3.2, Procedure for Remedying Franchise Violations; or

(b) TCI's completion of the upgrade construction as required by Section 4.3 is delayed for more than 18 months from the completion date identified in the construction schedule approved by the County; or

(c) TCI or TCI West, Inc. becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or

(d) TCI is found to have engaged in any actual or attempted fraud or deceit upon the County, persons or subscribers; or

(e) TCI fails to obtain and maintain any permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; or

(f) TCI fails to maintain the full amount of its security fund or to post a performance bond as required under the terms of this Franchise.

7.5.3 Procedure.

7.5.3.1 Summary forfeiture. Upon the occurrence of one of the events set out in subparagraphs (b) through (f), of section 7.5.2, above, following 14 days' written notice to TCI of the occurrence and the proposed forfeiture and an opportunity for TCI to be heard by the County Council, the County may by resolution or other appropriate document, declare a forfeiture. If TCI requests a hearing, it shall be afforded the right to question witnesses and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the County's decision. If a forfeiture is lawfully declared, all rights of TCI shall immediately be divested without a further act upon the part of the County.

7.5.3.2 Forfeiture for breach of material provision.

(a) In the event that the County believes that TCI has not complied with the terms of the Franchise (other than those in subsections (b) through (f) of section 7.5.2), the County shall notify TCI in writing of the exact nature of the alleged noncompliance.

(b) TCI shall have 30 days from receipt of the notice described above to (1) respond to the County contesting the assertion of noncompliance, or (2) to cure such default or, in the event that by the nature of default such default cannot be cured within the 30 day period, initiate reasonable steps to remedy such default and notify the County of the steps being taken and the projected date that they will be completed.

(c) In the event that TCI fails to respond to the notice described herein or cure the default pursuant to the procedures set forth above, or in the event that TCI contests the assertion of non-compliance, the County shall schedule a public meeting to investigate the non-compliance. The County shall give TCI 14 calendar days' notice of the time and place of such meeting and provide TCI with an opportunity to be heard.

(d) In the event the County, after such meeting, determines that TCI is in non-compliance with any provision of the Franchise, the County may impose any of the remedies set out in Section 7.5.1, above.

7.5.5.3 Removal of cable following expiration of franchise. Any order by the County to remove cable or conduit shall be mailed to TCI not later than thirty (30) calendar days following the date of expiration of the Franchise. TCI shall file written notice with the County not later than 30 calendar days following the date of expiration or termination of the Franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the County. Removal shall be completed not later than 12 months following the date of expiration of the Franchise.

7.6 Failure to Enforce. TCI shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the County to enforce prompt compliance, and County's failure to enforce shall not constitute a waiver of rights or acquiescence in TCI's conduct.

7.7 Acts of Nature. TCI shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by acts of nature, power outages, or other events reasonably beyond its ability to control. However, TCI shall take all reasonable steps necessary to provide service despite such occurrences.

7.8 Alternative Remedies.

(a) As an alternative to the remedy set forth herein, the parties may mutually agree to submit any alleged violation of the provisions of this franchise to arbitration. The matter shall be determined by a board of three arbitrators, all of whom shall be citizens and taxpayers of the State of Washington, and shall be selected as follows: one by the County Council, one by the Franchisee, and one by the two so appointed. Should the two arbitrators be unable to name a third, such third arbitrator shall be named by a judge of the Superior Court for Whatcom County. Said board shall make its decision in writing and file its decision with the parties within 60 days from the date of the appointment of the final arbitrator. The decision of the board shall be by a majority vote and signed by at least two arbitrators. The written decision shall be final and binding upon the parties.

(b) No provision of this Franchise shall be deemed to bar the right of the County to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in the Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the County to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by TCI, or to seek and obtain judicial enforcement of TCI's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

7.9 Compliance with the Laws; eminent domain. TCI shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the County heretofore or hereafter adopted or established during the entire term of this Franchise. Nothing in the Franchise shall limit the County's right of eminent domain under state law. Nothing in the Franchise shall be deemed to waive the requirements of any lawful code, ordinance or resolution of the County requiring permits, fees to be

paid, or regulation of construction.

Section 8. REPORTING REQUIREMENTS.

8.1 Quarterly Reports.

(a) Within 45 calendar days after the end of each fiscal quarter of TCI, TCI shall submit to the County along with its franchise fee payment a financial report showing the basis for computation of such fees. This report shall separately indicate revenues received by TCI within the County from such items as basic service, pay TV service, and other sources of revenue.

(b) Within 60 days after the end of each of TCI's fiscal quarters, TCI shall submit a written report to the County, verified by an officer of TCI, which shall contain:

(1) A statement of all revenues earned by TCI or any parent or affiliate (other than a programming affiliate), related to operation of the cable system in the Franchise area, identified by source or type, e.g., basic, premium, pay per view, installation, advertising, etc. The statement shall be signed by an officer of TCI with an explicit certification by the officer that the reported amounts are an accurate reflection of the books and records of TCI and are consistent with Section 1.12 of this Franchise;

(2) An identification and explanation of any adjustment in the amount of gross revenues made in determining the Franchise fee calculation base; and

(3) A calculation establishing the Franchise fee due and owing.

8.2 Annual Report. On an annual basis, no later than five months following the end of TCI's fiscal year, TCI shall present a written report to the County which shall include:

(a) A summary of gross revenue and franchise fee calculations for the previous year.

(b) An audited financial statement for TCI West, Inc., and Tele-Communications, Inc.

(c) A summary of the previous year's activities for the Franchise area served by TCI including, but not limited to, the total number of subscribers for each category of service, the number of homes passed, miles of overhead and underground cable plant, other system facilities and equipment constructed, any services added or dropped, and any technological changes occurring in the system.

(d) A description of all significant changes and modifications to the system or services anticipated to occur in the ensuing five year period.

8.3 Monitoring and Compliance Reports. Upon request, but no more than once a year, TCI shall provide a written report of any and all FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, TCI shall provide reports of the semi-annual test and compliance procedures established by this Franchise agreement no later than 30 days after the completion of each series of tests.

8.4 Additional Reports. TCI shall prepare and furnish to the County, at the times and in the form

prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Agreement.

8.5 Communications with Regulatory Agencies. Upon request by the County, a summary of, or if the County requests, actual copies of, all petitions, applications, communications, and reports submitted by TCI to the FCC or any other federal or state regulatory commission or agency having jurisdiction with respect to any matter affecting construction or operation of the Cable Television System Franchised hereunder or services provided through such system. Such information shall be filed with the County no later than 10 days from the date of the request. Upon request, copies of responses or any other communications from the regulatory agencies to TCI or any affiliate pertaining to the cable system likewise shall be filed.

In addition, TCI and its affiliates shall within 10 days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the system, provide the County a copy of the communication, whether specifically requested by the County to do so or not.

Section 9. CUSTOMER SERVICE POLICIES.

9.1 Response to Customers and Cooperation with County. TCI shall promptly respond to all requests for service, repair, installation and information from subscribers. TCI acknowledges the County's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the County to resolve complaints.

9.2 Definition of "Complaint". For the purposes of Section 9, with the exception of Subsection 9.3, a "complaint" shall mean any communication to TCI or to the County by a subscriber or a person who has requested cable service; a person expressing dissatisfaction with any service, performance, or lack thereof, by TCI under the obligations of this Franchise.

9.3 Customer Service Agreement and Manual. TCI shall provide to subscribers a comprehensive service agreement and a customer manual for use in establishing subscriber service. This manual shall, at a minimum, contain the following information:

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Liability specifications.
- (f) Converter/subscriber terminal equipment policy.
- (g) Breach of Agreement specification.
- (h) How complaints are handled including TCI's procedure for investigation and resolution of subscriber complaints.

- (l) The name, address, and phone number of the person identified by the County as responsible for handling cable questions and complaints for the County. This information shall be prominently displayed in the manual, and TCI shall submit the information to the County for review and approval as to its content and placement in the manual prior to publication.

A copy of the customer service manual shall be provided to each subscriber at the time of initial connection and any subsequent reconnection. Thereafter, if the manual is modified to reflect material changes in policy an updated copy of the manual shall be sent to all subscribers within 30 days of such modification.

9.4 Reporting Complaints. TCI shall maintain a log of all subscriber complaints and make this log available for County inspection. The log shall include the date, name, address, telephone number of complainant. The log shall also contain the subject of the complaint, date and type of action taken to resolve the complaint, any additional action taken by TCI or the complainant and record whether or not the complainant was satisfied with the resolution or action taken. The log shall be maintained in a way that allows for sorting, deletion of fields, and manipulation of data per County specifications.

Upon request by the County, TCI shall provide a comma delimited ascii file of all subscriber complaints containing the above information.

The log shall be submitted on a monthly basis to the County or person or agency designated by the County. The County may request the log more frequently if it is deemed necessary. The County may contact any complainant listed in the log in order to insure satisfactory resolution of complaints with respect to this franchise.

9.5 County Right to Set Specific Customer Service Standards. The County reserves the right to enforce customer service and consumer protection standards at any time that such standards are established by local, state or federal law or regulation as applicable to cable system operations. In addition, the County reserves the right to establish specific customer service and consumer protection standards, by separate ordinance, under the following circumstances:

- (a) In the event that the total number of complaints received are equal to or more than 1% per month of TCI's subscribers residing in the franchise area: 1) during each of three consecutive months; or 2) during four out of any six consecutive months. The County shall then have the right to establish, by ordinance or resolution, after consultation with TCI, a set of customer service standards to be maintained by TCI for six months following their adoption by the County Council. TCI shall meet the adopted standards, and shall provide monthly reports of compliance with the standards.

Prior to formal consideration of such customer service standards by the County, the County and TCI shall meet to attempt, in good faith, to mutually agree upon a resolution of any outstanding complaint or issue. If no mutual agreement between the parties is accomplished, the County shall have the option to establish such customer service standards as the County deems appropriate.

- (b) If, in any consecutive 12 month period, the total number of complaints equal to more than 0.2% per month of TCI's subscribers in the franchise area during any eight individual months, the County shall have the right to establish by ordinance or resolution of the County Council, after consultation with TCI, a set of customer service standards to be maintained by

TCI for two years or until the next regular Franchise review date as provided for in Section 2.6, whichever comes later. TCI shall meet the adopted standards, and shall provide reports of compliance with the standards at intervals specified by the County during the period the County's standards are in effect.

Prior to formal consideration of such customer service standards by the County, the County and TCI shall meet to attempt, in good faith, to mutually agree upon a resolution of any outstanding complaint or issues. If no mutual agreement between the parties is accomplished, the County shall have the option to establish such customer service standards as the County deems appropriate.

(c) TCI shall cause to have printed on each cable bill a message to each subscriber informing the subscriber of the telephone number and address of the office designated by the County for handling unresolved complaints about cable service.

9.6 Failure to Resolve Complaints. TCI shall resolve a complaint within 30 days in a manner deemed reasonable by the County under the terms of the Franchise.

9.7 Maintain a Complaint Phone Line. TCI shall maintain a local or toll-free telephone subscriber complaint line, available to its subscribers 24 hours per day, seven days a week. This phone line may be answered by an answering machine after regular working hours and on holidays and weekends but must provide means for the customer to leave their name, address, phone number and nature of their complaint. Complaints left on this answering system shall be logged and handled in an appropriate time frame.

9.8 Notification of Complaint Procedure. TCI shall have printed clearly and prominently on each subscriber bill and in the customer service agreement provided for in section 9.3, the 24 hour TCI phone number for subscriber complaints. Additionally, TCI shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by TCI to remedy their complaint. This information will include the phone number of the County office or person designated to handle complaints. Additionally, TCI shall state that complaints should be made to TCI prior to contacting the County.

9.9 TCI Identification. TCI shall provide all customer service technicians and all other TCI employees entering private property with appropriate picture identification so that TCI employees may be easily identified by the property owners and subscribers.

Section 10. LINE EXTENSION POLICY.

10.1 TCI shall extend its facilities and offer its services to all areas within the franchise area which are contiguous to existing service areas, but which are not currently served, provided there are 30 assured subscribers per mile of aerial distribution cable (60 potential subscribers per mile of underground distribution cable) of new construction required. Such construction and services rendered in new building areas will be subject to and governed by the provision of this franchise ordinance. If TCI does not so extend its facilities and services within a reasonable time, upon request made by subscribers, the County's sole remedy shall be to terminate TCI's rights as to such area not served as set forth in the first sentence of this section. TCI shall make this service available within 60 days of request for service at standard installation rates and standard service rates for every potential subscriber.

Section 11. COMPENSATION AND FINANCIAL PROVISIONS.

11.1 Franchise Fees. The Franchise Fee shall remain at 4% until implementation of Section 6. At that time the Franchise Fee shall be increased to 5%. The 1% increase shall be dedicated to PEG use. If any such law, regulation or valid rule alters the 5% franchise fee ceiling enacted by the Cable Act, then TCI shall, at the request of the County, enter negotiations to review provisions of Section 11.1.

(a) Franchise fees shall be paid quarterly, not later than May 15, August 15, November 15, and February 15 for the preceding three-month period ending, respectively, March 31, June 30, September 30, and December 31. Not later than the date of each payment, TCI shall file with the County, a written statement signed by an officer of TCI, which identifies in detail the sources and amounts of gross revenues earned by TCI during the quarter for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the County may have for further or additional sums payable under the provisions of this Section.

(b) Neither current nor previously paid franchise fees shall be subtracted from the gross revenue amount upon which franchise fees are calculated and due for any period unless otherwise required by applicable law. Nor shall copyright fees or other license fees paid by TCI be subtracted from gross revenues for purposes of calculating franchise fees.

(c) Any franchise fees owing pursuant to this Franchise which remain unpaid more than 45 days after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12% per annum or 2% above prime lending rate as quoted by major Seattle banks, whichever is greater.

11.2 Auditing and Financial Records. TCI shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the County. The County shall have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time during normal business hours upon reasonable notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by TCI and any parent company pursuant to the rules and regulations of the FCC and other regulatory agencies, and other like materials of TCI and any parent company which relate to the operation of the Franchise. Access to the aforementioned records shall not be denied by TCI to representatives of the County on the basis that said records contain "proprietary" information. However, to the extent allowed by Washington law, the County shall protect the trade secrets and other confidential information of TCI and any parent company. All books and records relating to TCI's activities under the Franchise shall be, or upon request be made, available in Whatcom County.

TCI agrees to meet with representative of the County upon request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the County deems necessary for understanding the meaning of reports and records.

The County or its authorized agent may at any time and at the County's own expense conduct an independent audit of the revenues of TCI in order to verify the accuracy of franchise fees paid to the County. TCI and each parent company of TCI shall cooperate fully in the conduct of such audit. In the event it is determined through such audit that TCI has paid franchise fees in a lesser amount than was due the County, then TCI shall reimburse the County for the entire cost of the audit within 30 days of the completion and acceptance of the audit by the County.

The County agrees to request access to only those books and records, in exercising its rights under this Section, which it deems reasonably necessary for the enforcement and administration of the Franchise.

11.3 Performance Bond. Within 30 days after the award of this Franchise, but in no event sooner than the final reading of the Franchise ordinance, TCI shall submit to the Chief Civil Deputy Prosecuting Attorney, which shall be filed with the County, a performance bond running to the County, with good and sufficient surety licensed to do business in the State of Washington and approved by the County in the amount of \$25,000.00, conditioned that TCI shall well and truly observe, fulfill, and perform each term and condition of the Franchise. This bond shall be conditioned that in the event TCI shall fail to comply with any one or more of the provisions of this Franchise, then there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by the County as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property as prescribed; said condition to be a continuing obligation for the duration of the Franchise and thereafter until TCI has liquidated all of its obligations with the County that may have arisen from the acceptance of the Franchise by TCI or from its exercise of any privilege herein granted. Written evidence of payment of required premiums shall be filed and maintained with the County. In lieu of the bond, TCI may provide for a letter of credit or similar arrangement to be established giving the County rights substantially the same as the rights of the County in relation to the bond, the provisions of which letter of credit or other arrangement shall be subject to the approval of legal counsel for the County.

Neither the provisions of this Section, any bond accepted by the County pursuant thereto, nor any damages recovered by the County thereunder shall be construed to excuse faithful performance by TCI or to limit liability of TCI under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

11.4 Validity of Bond. If, at any time during the term of the Franchise, the condition of the entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the County, TCI shall replace such bond by a bond of like amount and similarly conditioned, issued by an entity satisfactory to the County. The County Council, from time to time, may authorize or require appropriate and reasonable adjustments in the amount of the bond; provided, however, that prior to any required increase in the amount of the bond, the County shall give TCI at least 60 days prior notice thereof stating the exact reason for the requirement. Such reasons must demonstrate a change in TCI's legal, financial or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

11.5 Security Fund.

(a) Within 30 days after the effective date of this Franchise, TCI shall deposit into a bank account, established by the County, and maintained through the term of this Franchise with interest running to TCI, the sum of \$25,000, as security for the faithful performance by it of all the provisions of this Franchise, and compliance with all orders, permits and directions of any agency of the County, and for the payment of any claims, liens and taxes due the County or liquidated damages imposed by the County which arise by reason of the construction, operation or maintenance of the system or pursuant to the terms of this agreement.

(b) Within 30 days after notice to it that any amount has been withdrawn by the County from the security fund pursuant to subdivision (a) of this Section, TCI shall deposit a sum of money sufficient to restore such security fund to the original amount in the account at the time of withdrawal.

(c) If TCI fails, after 10 days' notice to pay the County any delinquent fees, taxes or other amounts due and unpaid according to the terms of this Franchise; or, fails to repay to the County, after such 10 days' notice, any damages, costs or expenses which the County shall be compelled to pay by reason of any act or default of TCI in connection with this Franchise; or fails, after 45 days' notice of such failure by the County to comply with any provision of the Franchise which the County reasonably determines can be remedied by an expenditure of the security, the County may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the County shall notify TCI of the amount and date thereof.

(d) The security fund deposited pursuant to this Section shall become the property of the County in the event that the Franchise is canceled by reason of the default of TCI or revoked for cause. TCI, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the Franchise, or upon termination of the Franchise at an earlier date, upon payment of all sums then due from TCI to the County hereunder.

(e) The rights reserved to the County with respect to the security fund are in addition to all other rights of the County whether reserved by this agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the County may have.

(f) In lieu of the security fund provided for herein, TCI may provide for a letter of credit or similar arrangement to be established giving the County rights substantially the same as the rights of the County in relation to the security fund, the provisions of which letter of credit or other arrangement shall be subject to the approval of legal counsel for the County.

11.6 Indemnification by TCI. TCI shall, at its sole expense, fully indemnify, defend and hold harmless the County, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the County or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of TCI or its officers, agents, employees, or contractors or to which TCI's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or applicable law; arising out of or alleged to arise out of any claim for damages for TCI's invasion of the right of privacy, defamation of any person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of TCI's failure to comply with the provisions of any statute, regulation or Resolution of the United States, State of Washington or any local agency applicable to TCI in its business. Nothing herein shall be deemed to prevent the County, its officers, or its employees from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve TCI from its duty of defense against liability or of paying any judgment entered against the County, its officers, or its employees.

11.7 TCI Insurance. TCI shall maintain, throughout the term of the Franchise, liability insurance insuring the County and TCI, their respective officers, employees and agents, with regard to all claims and damages specified in Section 11.5 herein, in the minimum amounts of:

(a) \$3,000,000 for personal injury or death to any one person;

(b) \$3,000,000 for personal injury or death resulting from any one accident \$3,000,000 for property damage resulting from any one accident; and

(c) \$1,000,000 for all other types of liability.

Such insurance shall specifically name as additional insured Whatcom County, its officers, and employees, and shall further provide that the policy shall not be modified or canceled during the life of this Franchise without giving 30 days' written notice to the County.

TCI shall file with the County copies of all certificates of insurance showing up-to-date coverage, additional insured coverage, and evidence of payment of premiums as set forth above. Coverage shall not be changed or canceled without approval of the County, and failure to maintain required insurance may be considered a breach of this agreement. The County may at its option review all insurance coverage. If it is determined by the County that circumstances require and that it is reasonable and necessary to increase insurance coverage and liability limits to adequately cover the risks of the County and TCI, the County may require additional insurance to be acquired by TCI. The County shall provide TCI written notice should the County exercise their right to require additional insurance. All insurance shall provide 30 days' prior written notice to the County in the event of modification or cancellation. TCI shall provide written notice to the County within 30 days after any approved reduction in the general annual aggregate limit.

Section 12. MISCELLANEOUS PROVISIONS.

12.1 Posting and Publication. TCI shall assume the cost of posting and publication of this Franchise Ordinance as such posting and publication is required by law and such is payable upon TCI's filing of acceptance of this Franchise.

12.2 Guarantee of Performance. TCI agrees that it enters into this Franchise Ordinance voluntarily in order to secure and in consideration of the grant from the County of a 15 year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by TCI.

12.3 Entire Agreement. This Franchise agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties. This Franchise is intended to comply with all requirements set forth therein. In the event of a conflict between the provisions of this Franchise and the provisions of the Whatcom County Code, the provisions of the Whatcom County Code shall take precedence. To the extent that the Whatcom County Code changes materially affect this agreement, the parties will mutually agree upon appropriate amendments to this agreement.

12.4 Consent. Wherever the consent or approval of either TCI or the County is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

12.5 Parity with Area Franchises. If any service, or benefit related to any service, is provided subsequent to the effective date of this Franchise by TCI to 50% of its subscribers in Western Washington, the same or equivalent service and benefit shall be provided by TCI to subscribers in the Franchise area within twelve months of its provision in the Western Washington area.

12.6 Resolutions Terminated. The cable television franchises as originally granted by Ordinance No. 83.30, 83.38, 84.60, 87.06, 89.56, 93.002 are hereby terminated.

12.7 Franchise Acceptance. TCI shall execute and return to the County three original franchise agreements. The executed agreements shall be returned to the County accompanied by performance bonds, security funds, and evidence of insurance, all as provided in Sections 11.3, 11.4 and 11.6 of the Franchise agreement. In the event TCI fails to accept this Franchise agreement, or fails to provide the required documents, this Franchise shall be null and void.


12.8 Effective Date. This Ordinance shall be effective January 1, 1996. Provided, however, that if TCI does not accept this Franchise and comply with all conditions for such acceptance set forth herein prior to the effective date, this Ordinance shall be null and void.

12.9 Force Majeure. In the event that either party is prevented or delayed in the performance of any of its obligations, under this Agreement by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, sabotage, boycotts, lockouts, labor disputes, shortage of qualified labor, freight embargoes, shortages or unavailability of materials or supplies, unusually severe weather conditions, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Agreement, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

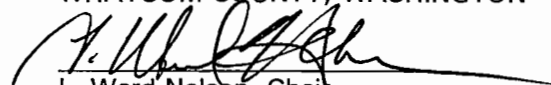
12.10 Relationship with City of Bellingham Franchise. This grant of franchise is intended to be consistent with the grant of franchise to TCI by City of Bellingham. To this end, the Capital Grant contained in section 6.3 represents TCI's total Capital Grant called for under this agreement to the PEG facility under both franchise agreements. Also, the PEG channel facilities and operation will be under the auspices of both the City and Whatcom County.

PASSED by County Council this 23 day of January, 1996.

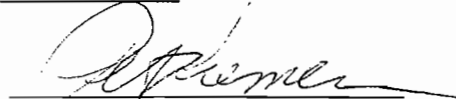
ATTEST:


Dana Brown-Davis, Council Clerk

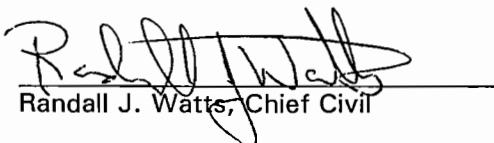
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


L. Ward Nelson, Chair

APPROVED by me this 12 day of February, 1996.


Pete Kremen
County Executive

APPROVED AS TO FORM:


Randall J. Watts, Chief Civil

Published: _____

ACCEPTED BY TCI CABLEVISION OF WASHINGTON, INC.

DATE: _____

BY: _____

David Reynolds
Vice President



RECEIVED

JUL 10 2002

WHATCOM COUNTY COUNCIL

July 8, 2002

Ms. Dana Brown-Davis
Council Clerk
Whatcom County
311 Grand Avenue, Suite 105
Bellingham, WA 98225

Re: Request for Consent to Change of Control of Franchisee to AT&T Comcast

AB 2002-148

Dear Ms. Brown-Davis:

By letter dated February 25, 2002, we informed you that AT&T Corp., the current parent company of your local cable franchisee, intends to spin-off and combine its cable systems with those of Comcast Corporation to form a new public company, AT&T Comcast Corporation. The letter also requested any consent required by franchise or applicable law to the transaction, and included an FCC Form 394 application as an enclosure.

Our records indicate that the period under the franchise and federal law for your consideration of our application has now ended. We understand that the community took no action on our request during this period. Therefore, under federal law, the community's consent was deemed to have been given. If we are incorrect and the community did take action on our application during this period, we would ask that you forward documentation of such action to our attention as soon as possible. Otherwise, no further action is required on your part, and we thank you for your consideration of our request.

We will provide further notice to you as soon as the transaction closes. In the meantime, if you have any questions or concerns about the transaction or would like any additional information, please feel free to call me at (206) 979-9109 or Kathy Nelson at (425) 398-6147.

Sincerely,

Deborah M. Luppold

Deborah M. Luppold, Vice President
Franchising and Local Government Affairs

cc: Janet L. Turpen, AT&T Broadband
Kathy Nelson, AT&T Broadband
Glenn Walker, AT&T Broadband

MARSH

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
CLE-001087430-08

PRODUCER
Marsh USA Inc.
TWO LOGAN SQUARE
PHILADELPHIA, PA 19103
D. Vargas/FAX#212-948-0360/Comcast.certs@marsh.com

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

COMPANY A	DISCOVER PROPERTY & CASUALTY INSURANCE COMPANY
COMPANY B	DISCOVER SPECIALTY INSURANCE COMPANY
COMPANY C	NATIONAL UNION FIRE INS. CO OF PA
COMPANY D	FIDELITY & GUARANTY INS. CO.

05194 -COMCA-CAS-04-05 COMCAS BOTHEL WA

INSURED
COMCAST OF WASHINGTON IV, INC.
19909 120TH AVENUE NE
SUITE 200
BOTHELL, WA 98011

COVERAGES

This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	D002Q00120	12/01/04	12/01/05	GENERAL AGGREGATE	\$ 24,900,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGG	\$ 5,900,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 1,900,000
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 1,900,000
	<input type="checkbox"/> _____				FIRE DAMAGE (Any one fire)	\$ 1,900,000
	<input checked="" type="checkbox"/> \$100,000 SIR				MED EXP (Any one person)	\$ 10,000
A A B	AUTOMOBILE LIABILITY	D002A00348 (AOS) D002A00349 (MA) D002A00350 (TX)	12/01/04	12/01/05	COMBINED SINGLE LIMIT	\$ 10,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE	\$
<input type="checkbox"/> HIRED AUTOS						
<input type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY- EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	\$
					AGGREGATE	\$
C	EXCESS LIABILITY	2979800	12/01/04	12/01/05	EACH OCCURRENCE	\$ 5,000,000
	<input checked="" type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$ 5,000,000
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM					\$
D D A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	D002W00387 (AOS) D002W00389 (OR/WI) D002W00388 (NJ)	12/01/04	12/01/05	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTH-ER
	<input type="checkbox"/> EL EACH ACCIDENT				\$ 2,000,000	
	<input type="checkbox"/> EL DISEASE-POLICY LIMIT				\$ 2,000,000	
	<input type="checkbox"/> EL DISEASE-EACH EMPLOYEE				\$ 2,000,000	
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED AS RESPECTS THE GENERAL LIABILITY POLICY WHERE REQUIRED BY WRITTEN CONTRACT WITH THE NAMED INSURED. \$100,000 PER OCCURRENCE SELF INSURED RETENTION APPLIES ONLY TO THE ABOVE GENERAL LIABILITY POLICY.

CERTIFICATE HOLDER

BOARD OF COUNTY COMMISSIONERS
WASHCOM COUNTY COURTHOUSE
INGHAM, WA 98225

CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC
BY: Mary Radaszewski

Mary Radaszewski

MM1(8/02)

VALID AS OF: 12/03/04

MARSH

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
CLE-000887227-04

PRODUCER
Marsh USA Inc.
Six PPG Place, Suite 300
Pittsburgh, PA 15222-5499
Attn: Charity Myers
(412) 552-5163

05194-1COMC-1CAS-02/03 TCIWAS

INSURED
Comcast of Washington IV, Inc.
P.O. Box C-8004
Bothell, WA 98021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

COMPANY A	DISCOVER PROP & CAS INS CO
COMPANY B	USF&G
COMPANY C	AMERICAN GUARANTEE & LIABILITY INSURANCE CO.
COMPANY D	FIDELITY & GUARANTY INS. CO.

COVERAGES

This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A B	GENERAL LIABILITY				
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	D002L00040 (AOS)	11/18/02	12/01/03	GENERAL AGGREGATE \$ 25,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	D002L00039 (MAINE)	11/18/02	12/01/03	PRODUCTS-COMP/OP AGG \$ 6,000,000
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				PERSONAL & ADV INJURY \$ 2,000,000
					EACH OCCURRENCE \$ 2,000,000
					FIRE DAMAGE (Any one fire) \$ 2,000,000
				MED EXP (Any one person) \$ 10,000	
B B	AUTOMOBILE LIABILITY				
	<input checked="" type="checkbox"/> ANY AUTO	D002A00100 (AOS)	11/18/02	12/01/03	COMBINED SINGLE LIMIT \$ 10,000,000
	<input type="checkbox"/> ALL OWNED AUTOS	D002A00101 (MASS)	11/18/02	12/01/03	BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (per accident) \$
	<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE \$
	<input type="checkbox"/> NON-OWNED AUTOS				
	<input type="checkbox"/> POLICY # D002A00102 (TX)				
	<input type="checkbox"/> USF&G SPECIALTY				
	GARAGE LIABILITY				
	<input type="checkbox"/> ANY AUTO				AUTO ONLY- EA ACCIDENT \$
					OTHER THAN AUTO ONLY: \$
					EACH ACCIDENT \$
				AGGREGATE \$	
C	EXCESS LIABILITY				
	<input checked="" type="checkbox"/> UMBRELLA FORM	AUC8384714-07	11/18/02	12/01/03	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE \$ 5,000,000
					\$
D D B	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY				
	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	D002W00132 (AOS)	11/18/02	12/01/03	EL EACH ACCIDENT \$ 2,000,000
	<input type="checkbox"/> INCL	D002W00134 (OR, WI)	11/18/02	12/01/03	EL DISEASE-POLICY LIMIT \$ 2,000,000
	<input type="checkbox"/> EXCL	D002W00133 (NJ)	11/18/02	12/01/03	EL DISEASE-EACH EMPLOYEE \$ 2,000,000
	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE:				
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Certificate Holder is included as Additional Insured as respects the General Liability policy where required by written contract with the Named Insured.

CERTIFICATE HOLDER

BOARD OF COUNTY COMMISSIONERS
WACOM COUNTY COURTHOUSE
Bellingham, WA 98225

CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC
BY: Paul Hoyt

Paul Hoyt