

CLEARANCES	Date	Date Received in Council Office	Agenda Date	Assigned To
Orig. Dept.: Public Works	8/10/99		8/10/99	Introduction
Division Head:				
Dept. Head:				
Prosecutor:				
Budget:				
Executive:				

**SUBJECT:**

Ordinance granting franchise to Black Rock Cable, Inc. for open video system

**ATTACHMENTS**

Franchise Ordinance

**SUMMARY STATEMENT:**

Related County Contract #:	Should the Clerk schedule a hearing? (Y/N Y Requested Date: 9/21/99
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This ordinance allows Black Rock Cable, Inc. to operate and maintain an open video system in Whatcom County, with various terms and conditions.

**RECOMMENDED MOTION (for final action):**

**COUNCIL ACTION TAKEN:**

1999 - 319 8/10/99: Introduced  
 9/21/99: Adopted 4-1, Dawson, Nelson absent, Hoag  
 opposed Ord. #99-046

Related File Numbers:

Ordinance or Resolution Number (this item only):

Ord. #99 - 046

SPONSORED BY: \_\_\_\_\_  
PROPOSED BY: PUBLIC WORKS  
INTRODUCTION DATE: 8/10/99

ORDINANCE NO. 99-046

AN ORDINANCE GRANTING A FRANCHISE TO BLACK ROCK CABLE, INC. TO OPERATE AND MAINTAIN AN OPEN VIDEO SYSTEM IN WHATCOM COUNTY AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

WHEREAS, Black Rock Cable, Inc., DBA Black Rock Cable ("Black Rock") desires to operate an open video telecommunications system in the rights-of-way of Whatcom County; and

WHEREAS, negotiations between Black Rock and the County have been completed and the franchise process followed in accordance with the guidelines established by the County Code and applicable Federal law; 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 the 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, Black Rock Cable, Inc., hereinafter referred to as "Black Rock", 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 21 and 28 days of August, 1999, and on the 4 and 11 days of September, 1999, in the official newspaper for Whatcom County, and 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

NOW, THEREFORE, THE WHATCOM COUNTY COUNCIL DOES ORDAIN

THAT a franchise is hereby granted to Black Rock Cable, Inc. to operate and maintain an open video 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

Black Rock Cable  
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1 "will" are mandatory and the word "may" is permissive. Where a term in the Franchise is not  
2 defined in this section and there is a definition for the term in the Cable Communications Policy  
3 Act of 1984 or the Cable Television Consumer Protection and Competition Act of 1992 or the  
4 Telecommunications Act of 1996 (hereinafter collectively referred to as the Cable Act), the  
5 Cable Act definition shall apply. Other terms in the Franchise, which are not defined in this  
6 section, shall be given their common and ordinary meaning.

7  
8 1.1 "Access Channel" or "Public Educational or Government Access (PEG) Channel" means any  
9 channel or portion of a channel utilized for programming, whether by Black Rock or in  
10 cooperation with, by or through the County, where any resident of the County or any non-  
11 commercial organization whose members reside in the County may be a programmer, either  
12 without charge or in a non-profit manner, on a non-discriminatory basis. The term  
13 "programming" as used in this section shall include video, voice, and data transmission.

14  
15  
16 1.2 "Basic Service" or "Basic Cable Service" means any tier of service regularly provided to all  
17 subscribers. It includes, but is not specifically limited to, the retransmission of local broadcast  
18 television signals and the cablecasting of public, educational, or governmental access channels.  
19 Nothing in this definition shall be deemed to limit the rights of Black Rock or the County with  
20 respect to the regulation of rates and charges as permitted by applicable law.

21  
22 1.3 "Open Video System", or "System," shall have the meaning specified for "Open Video  
23 System" in the Cable Act. Unless otherwise specified it shall in this document refer to the open  
24 video system constructed and operated in Whatcom County under this Franchise.

25  
26 1.4 "County" shall mean the County of Whatcom of the State of Washington and all the territory  
27 within its present and future boundaries outside of the boundaries of incorporated cities and  
28 including any area over which the County exercises jurisdiction.

29  
30 1.5 "Gross Revenues" means any and all gross revenues an Open Video System Operator or its  
31 affiliates derives directly or indirectly from operation of the Open Video System, including  
32 revenue from sales, rental, or installation of equipment, from advertising revenues, from  
33 subscribers, and from all carriage revenues received from unaffiliated video programming  
34 providers. Gross revenues shall not include any taxes on services which taxes are imposed  
35 directly on a subscriber or user by a city, county, state or other governmental unit and collected  
36 by a Person subject to this chapter for such taxing entity. Gross revenue shall not include  
37 amounts which cannot be collected and are identified as bad debt: provided, that amounts  
38 previously identified as bad debt which are eventually collected shall be reported for the period in  
39 which that occurs.

40  
41 1.6 "Pay Service" or "Premium Service" means programming (such as non-advertiser-supported  
42 movie channels or pay-per-view programs) offered individually to subscribers on a per-channel,  
43 per-program or per-event basis.

1 1.7 "Person" means any individual, corporation, partnership, association, joint venture or  
2 organization of any kind and the lawful trustee, successor, assignee, transferee or personal  
3 representative thereof.  
4

5 1.8 "Public Agency Network" (PAN) is a cable communications network designed principally for  
6 the provision of non-entertainment two-way services to schools, public agencies or other non-  
7 profit agencies for use in connection with the on-going operations of such institutions.  
8

9 1.9 "Road" shall mean the surface of and the space above and below the right of way of any  
10 public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or  
11 driveway now or hereafter existing as such within all unincorporated areas of Whatcom County.  
12

13 1.10 "Subscriber" means any person who legally receives any one or more of the services  
14 provided by the Open Video System.  
15

16 1.11 "Black Rock" shall mean Black Rock Cable, Inc. DBA Black Rock Cable, its agents and  
17 assignees.  
18

## 19 Section 2. FRANCHISE. 20

21 2.1 Grant of Franchise. The County hereby grants to Black Rock a nonexclusive franchise  
22 which authorizes Black Rock, subject to the terms of this Ordinance, to construct and operate an  
23 open video system and offer such services as permitted by Federal, State or Local law to be  
24 provided by open video system operators in, along, among, upon, across, above, over, under, or  
25 in any matter connected with the roads located in the County and for that purpose to erect, install,  
26 construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across or  
27 along any road or extensions thereof and additions thereto, such poles, wires, cables, conductors,  
28 ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other  
29 related property or equipment as may be necessary or appurtenant to the system.  
30

31 2.2 Franchise Term. The term of the Franchise shall be 15 years, unless terminated sooner in  
32 accordance with this Franchise agreement.  
33

34 2.3 Franchise Area. The Franchise Area shall be that area within the present or future  
35 corporate limits of the County, outside of the limits of incorporated cities that are situated within  
36 the County.  
37

38 2.4 Franchise Nonexclusive. The Franchise granted herein shall be nonexclusive. The County  
39 specifically reserves the right to grant, at any time, such additional franchises for other similar  
40 systems as it deems appropriate provided, however, such additional grants shall not operate to  
41 materially modify, revoke, or terminate any rights previously granted to Black Rock. The grant of  
42 any additional franchise shall not of itself be deemed to constitute a modification, revocation, or  
43 termination of rights previously granted to Black Rock.  
44

1           The County agrees to grant additional franchises upon terms and conditions which, in its  
2 sole discretion, it in good faith believes will enhance service and not grant an unfair competitive  
3 advantage to one franchisee over another.  
4

5 2.5 Franchise Renewal or New Franchise. The County may establish appropriate  
6 requirements for new franchises or franchise renewals consistent with federal, state and local  
7 law.  
8

9 2.6 Periodic Public Review of Franchise. The County may at approximately three-year  
10 intervals during the term of the Franchise, and at such other times as the County deems  
11 appropriate, conduct a public review of the Franchise. The purpose of the review shall be to  
12 ensure, with the benefit of full opportunity for public comment, that Black Rock is complying  
13 with all franchise requirements and local laws concerning the use of the rights-of-way.  
14 Additionally, the public review can be used as a forum to publicly discuss Black Rock's service  
15 policies and practices although the OVS regulation under the Cable Act may require complaints  
16 be filed with the Federal Communications Commission. Both the County and Black Rock agree  
17 to make a full and good faith effort to participate in the review in a manner that accomplishes this  
18 end. It is not intended that the Franchise be modified as a result of such review, except as a last  
19 resort for achieving the purpose of the review. The County shall establish a procedure for  
20 ensuring orderly review, full discussion of any proposed policy changes between the County and  
21 Black Rock, and full public hearing regarding all matters discussed during the review.  
22

23           Matters appropriate for discussion at the public reviews in accordance with this section  
24 include without limitation:  
25

26           (a) Black Rock's overall compliance with the Franchise;  
27

28           (b) Policies and practices necessary to ensure continued support for public,  
29 educational and government access at substantially the same level provided for in the  
30 Franchise:  
31

32           The periodic public reviews described in this section may be but need not be made  
33 coincident with public reviews involved in the consideration of Black Rock requests for  
34 franchise renewal, franchise extension, or approval of transfer of system ownership.  
35

36 2.7 Transfer of Ownership. This Franchise shall not be sold, leased, mortgaged, assigned or  
37 otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be  
38 leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto,  
39 either legal or equitable, or any right, interest or property herein pass to or vest in any person  
40 except Black Rock, either by act of Black Rock or by operation of law, without the prior consent  
41 of the County expressed in writing. The granting of such prior consent in one instance shall not  
42 render unnecessary any subsequent prior consent in another instance. Any transfer of ownership  
43 shall make this Franchise subject to revocation unless and until the County shall have given  
44 written prior consent thereto.  
45

1           Within 30 days of receiving a request to consent to transfer, the County shall notify Black  
2 Rock in writing of information it requires to make its decision whether to consent. When the  
3 County has received such information, it shall have 120 days within which to act. If the County  
4 has not taken action on Black Rock's request for consent to transfer within this 120-day period, it  
5 shall be deemed to have consented.

6  
7           This section shall not prohibit the use of Black Rock's property as collateral for security  
8 in financing the construction or acquisition of all or part of the open video system franchised  
9 hereunder. However, such financing shall be subject to the provisions of this Franchise.

10  
11 2.8   Change in Control. Black Rock shall promptly notify the County through the County  
12 Council of any proposed change in, transfer of, or acquisition by any other party of control of  
13 Black Rock. Except as long as Black Rock retains Sub-S status and otherwise applying to  
14 successors and assigns, if beneficial ownership of 10% or more of the stock of Black Rock or of  
15 any entity now owning or later acquiring such a beneficial interest is acquired by a single entity  
16 or by several entities under common control, if such entity or agent of common control is other  
17 than an organization a) whose primary business is cable system operation, and b) is more than 50  
18 percent owned by Black Rock or a parent of Black Rock, then a change in control will be deemed  
19 to have taken place unless the County, upon request of Black Rock, finds otherwise. Such change  
20 in control shall make this Franchise subject to revocation unless and until the County shall have  
21 given written consent thereto. For purpose of determining whether it will consent to such  
22 change, transfer or acquisition of control, the prospective controlling party to perform the  
23 obligations of Black Rock under the Franchise Agreement must have been certified by the  
24 Federal Communications Commission to operate as an OVS. The County may condition its  
25 consent upon such terms and conditions as it deems appropriate. Consent to the transfer shall not  
26 be unreasonably withheld.

27  
28 2.9   Receivership. The County shall have the right to declare a forfeiture or otherwise revoke  
29 this Franchise 120 days after the appointment of a receiver or trustee to take over and conduct the  
30 business of Black Rock whether in receivership, reorganization, bankruptcy, or other action or  
31 proceeding unless such receivership or trusteeship shall have vacated prior to the expiration of  
32 said 120 days, or unless

33  
34           (a)   within 120 days after his election or appointment, such receiver or trustee shall  
35 have been approved by the County and shall fully have complied with all the provisions of the  
36 Franchise and remedied all defaults thereunder; and,

37  
38           (b)   such receiver or trustee within said 120 days shall have executed an agreement,  
39 duly approved by the County as well as the court having jurisdiction in the premises, whereby  
40 such receiver or trustee assumes and agrees to be bound by each and every provision of the  
41 Franchise.

42  
43 2.10   Expiration. Upon expiration of the Franchise, the County shall have the right to:  
44

- 1 (a) extend the Franchise, though nothing in this provision shall be construed to  
2 require such extension;  
3  
4 (b) renew the Franchise, in accordance with applicable valid law;  
5  
6 (c) invite additional franchise applications or proposals;  
7  
8 (d) terminate the Franchise without further action; or  
9  
10 (e) take such other action as the County deems appropriate.

11  
12 **2.11 Right to Purchase the System.**  
13

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

31 Under this section, if a franchise renewal is denied, the County shall have an option to  
32 acquire Black Rock's system at fair market value, determined on the basis of the open video  
33 system valued as a going concern but with no value allocated to the Franchise itself. If a  
34 franchise is revoked for cause, the County shall have an option to acquire Black Rock's system at  
35 an equitable price.  
36

37 (b) In the event the County purchases, acquires, takes over, or holds all or parts of the  
38 system pursuant to Subsection (a) above, the County shall have the right without limitation to  
39 assign, sell, lease, or otherwise transfer its interest in all or parts of the system to any other  
40 persons, including any other grantee of a CATV or telecommunications franchise, on whatever  
41 terms the County deems appropriate.  
42

43 **2.12 Right to Require Removal of Property.** At the expiration of the term for which the  
44 Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as  
45 provided for herein, the County shall have the right to require Black Rock to remove at Black

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1 Rock's own expense all or any part of the open video system from all roads and public ways  
2 within the Franchise area. If Black Rock fails to do so, the County may perform the work and  
3 collect the cost thereof from Black Rock. The actual cost thereof, including direct and indirect  
4 administrative costs, shall be a lien upon all plant and property of Black Rock effective upon  
5 filing of the lien with the Whatcom County Auditor.

6  
7 2.13 Continuity of Service. In any event, Black Rock shall use its best effort to ensure that all  
8 subscribers receive continuous uninterrupted service, regardless of the circumstances, during the  
9 lifetime of the Franchise. In the event of expiration, purchase, lease-purchase, condemnation,  
10 acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any  
11 other person, including any other grantee of a cable communications franchise, the current  
12 grantee shall cooperate to the best of its ability to operate the system in accordance with the terms  
13 and conditions of this agreement for a temporary period sufficient in length to maintain  
14 continuity of service to all subscribers.

### 15 16 17 Section 3. OPERATION IN ROADS AND RIGHTS-OF-WAY

18  
19 3.1 Use of Roads. Black Rock may, subject to the terms of this Franchise, erect, install,  
20 construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the  
21 roads within the County such lines, cables, conductors, ducts, conduits, vaults, manholes,  
22 amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary  
23 and appurtenant to the operation of a Open Video System within the County.

24  
25 3.2 Construction or Alteration. Black Rock shall in all cases comply with all lawful County  
26 laws, resolutions and regulations regarding the acquisition of permits and/or such other items as  
27 may be reasonably required in order to construct, alter or maintain the open video system.

28  
29 3.3 Non-Interference. Black Rock shall exert its best efforts to construct and maintain an  
30 Open Video System so as not to interfere with other use of roads. Black Rock shall, where  
31 possible in the case of above ground lines, make use of existing poles and other facilities  
32 available to Black Rock. When residents receiving underground service or who will be receiving  
33 underground service will be affected by proposed construction or alteration, Black Rock shall  
34 provide at least two weeks' advance notice of the same to such affected residents.

35  
36 3.4 Consistency with Designated Use. Notwithstanding the above grant to use roads, no road  
37 shall be used by Black Rock if the County, in its sole opinion, determines that such use is  
38 inconsistent with the terms, conditions or provisions by which such road was created or  
39 dedicated, or presently used under County, State or local laws.

40  
41 3.5 Undergrounding. Black Rock shall place underground all of its transmission lines, which  
42 are located or are to be located above or within the streets of the County in the following cases:

43  
44 (a) all other existing utilities are required to be placed underground by statute,  
45 resolution, policy or other regulation;

- 1  
2 (b) Black Rock is unable to get pole clearance;  
3  
4 (c) underground easements are obtained from developers of new residential areas; or  
5  
6 (d) utilities are overhead but residents prefer underground (service provided at cost).  
7

8 If an ordinance is passed creating a local improvement district which involves placing  
9 underground certain utilities including Black Rock's plant which is then located overhead, Black  
10 Rock shall participate in such underground project and shall remove poles, cables and overhead  
11 wires within such district if requested to do so and place facilities underground. If such  
12 undergrounding of Black Rock facilities is part of such a project, the costs thereof shall be  
13 included in such local improvement district.  
14

15 Black Rock may use conduit or its functional equivalent to the greatest extent possible for  
16 under-grounding, except for drops from pedestals to subscribers' homes and for cable on other  
17 private property where the owner requests that conduit not be used. Cable and conduit that is  
18 utilized shall meet the highest industry standards for electronic performance and resistance to  
19 interference or damage from environmental factors. Black Rock shall use, in conjunction with  
20 other utility companies or providers, common trenches for underground construction wherever  
21 available.  
22

### 23 3.6 Maintenance and Restoration. 24

25 (a) Restoration. In case of disturbance of any road, public way, paved area or public  
26 improvement, Black Rock shall, at its own cost and expense and in accordance with the  
27 requirements of local law, restore such road, public way, paved area or public improvement to  
28 substantially the same condition as existed before the work involving such disturbance took  
29 place. All requirements of this section pertaining to public property shall also apply to the  
30 restoration of private easements and other private property. Black Rock shall perform all  
31 restoration work promptly. If Black Rock fails, neglects or refuses to make restorations as  
32 required under this section, then the County may do such work or cause it to be done, and Black  
33 Rock shall pay the cost thereof to the County. If Black Rock causes any damage to private  
34 property in the process of restoring facilities, Black Rock shall repair such damage.  
35

36 (b) Maintenance. Black Rock shall maintain all above ground improvements that it  
37 places on County right-of-way pursuant to this franchise. In order to avoid interference with the  
38 County's ability to maintain the right-of-way Black Rock shall provide a clear zone of five feet  
39 on all sides of such improvements. If Black Rock fails to comply with this provision, and by its  
40 failure, property is damaged, then Black Rock shall be responsible for all damages caused  
41 thereby.  
42

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

1  
2 3.7 Work on Private Property. Black Rock, with the consent of property owners, shall have  
3 the authority to trim trees upon and overhanging roads, alleys, sidewalks, and public ways so as  
4 to prevent the branches of such trees from coming in contact with the wires and cables of Black  
5 Rock, except that at the option of the County, such trimming may be done by it or under its  
6 supervision and direction at the reasonable expense of Black Rock.

7  
8 3.8 Relocation.

9  
10 3.8.1 County Property. If during the term of the Franchise the County or any  
11 government entity elects or requires a third party to alter, repair, realign, abandon, improve,  
12 vacate, reroute or change the grade of any road, public way or other public property; or to  
13 construct, maintain or repair any public improvement; or to replace, repair install, maintain, or  
14 otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other  
15 facility, including a facility used for the provision of utility or other services or transportation of  
16 drainage, sewage or other liquids, Black Rock shall, upon request, except as otherwise  
17 hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables,  
18 underground conduits, vaults, pedestals, manholes and any other facilities which it has installed.

19  
20 3.8.2 Utilities and Other Franchisees. If during the term of the Franchise another entity  
21 which holds a franchise or any utility requests Black Rock to remove or relocate such facilities to  
22 accommodate the construction, maintenance or repair of the requesting party's facilities, or their  
23 more efficient use, or to "make ready" the requesting party's facilities for use by others, or  
24 because Black Rock is using a facility which the requesting party has a right or duty to remove,  
25 Black Rock shall do so. The companies involved may decide among themselves who is to bear  
26 the cost of removal or relocation, provided that the County shall not be liable for such costs.

27  
28 3.8.3 Notice to remove or relocate. Any utility, other franchisee, or the County  
29 requesting Black Rock to remove or relocate its facilities shall give Black Rock no less than 45  
30 days' advance written notice to Black Rock advising Black Rock of the date or dates removal or  
31 relocation is to be undertaken; provided, that no advance written notice shall be required in  
32 emergencies or in cases where public health and safety or property is endangered.

33  
34 3.8.4 Failure by Black Rock to remove or relocate. If Black Rock fails, neglects or  
35 refuses to remove or relocate its facilities as directed by the County; or in emergencies or where  
36 public health and safety or property is endangered, the County may do such work or cause it to be  
37 done, and the cost thereof to the County shall be paid by Black Rock. If Black Rock fails,  
38 neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility,  
39 that franchisee or utility may do such work or cause it to be done, and if Black Rock would have  
40 been liable for the cost of performing such work, the cost thereof to the party performing the  
41 work or having the work performed shall be paid by Black Rock.

42  
43 3.8.5 Procedure for removal of cable. Black Rock shall not remove any underground  
44 cable or conduit which requires trenching or other opening of the roads along the extension of  
45 cable to be removed, except as hereinafter provided. Black Rock may remove any underground

1 cable from the roads which has been installed in such a manner that it can be removed without  
2 trenching or other opening of the roads along the extension of cable to be removed. Subject to  
3 applicable law, Black Rock shall remove, at its sole cost and expense, any underground cable or  
4 conduit by trenching or opening of the roads along the extension thereof or otherwise which is  
5 ordered to be removed by the County based upon a determination, in the sole discretion of the  
6 County, that removal is required in order to eliminate or prevent a hazardous condition.  
7 Underground cable and conduit in the roads that is not removed shall be deemed abandoned and  
8 title thereto shall be vested in the County.  
9

10 3.9 Movement of Buildings. Black Rock shall, upon request by any person holding a building  
11 moving permit, franchise or other approval issued by the County, temporarily remove, raise or  
12 lower its wire to permit the movement of buildings. The expense of such removal, raising or  
13 lowering shall be paid by the person requesting same, and Black Rock shall be authorized to  
14 require such payment in advance. The County shall require all building movers to provide not  
15 less than 15 days' notice to the Black Rock to arrange for such temporary wire changes.  
16

#### 17 Section 4. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

##### 18 4.1 Access Channels.

19 Black Rock shall satisfy the same public, educational and governmental access obligations as the  
20 local cable operator by providing the same amount of channel capacity for public, educational  
21 and governmental access as the local cable operator operating in the franchise area.  
22

23 4.2 PEG Capital Contributions and Facilities. Black Rock and any of its cable television  
24 providers using Black Rock's OVS may attach a separate line item charge to its residential and  
25 common carrier customers for PEG but, regardless, Black Rock shall remit the same amount, on  
26 a per customer basis, as TCI charges its customers, on a separate line item, for PEG Capital  
27 Contributions and Facilities. These per customer charges and payments shall be of the same  
28 duration as TCI's charges and payments although they may not be time coincident. Black Rock  
29 shall remit said amounts to the County pursuant to the terms and conditions described in  
30 Section 4.3.  
31

32 4.2.1 PEG Operating Expenses. Within 30 days, Black Rock shall adjust its percentage  
33 of gross revenue fee to match TCI's franchise fee in the event TCI's franchise fee is raised or  
34 lowered for the purposes of PEG Operating Expenses. Black Rock shall remit said amounts to  
35 the County pursuant to the terms and conditions described in Section 4.3.  
36

37 4.3 Payment of PEG. Black Rock shall pay its PEG contributions quarterly, not later than  
38 May 15, August 15, November 15, and February 15 for the preceding three-month period ending,  
39 respectively, March 31, June 30, September 30, and December 31. Not later than the date of each  
40 payment, Black Rock shall file with the County a written statement signed by an officer of Black  
41 Rock which identifies the amounts Black Rock and TCI charge their respective residential and  
42 common carrier customers for PEG capital contributions, facilities and operating expenses to  
43 ensure a level playing field. No acceptance of payment shall be construed as an accord that the  
44

1 amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as  
2 a release of any claim which the County may have for further or additional sums payable under  
3 the provision of this section.

4  
5 4.4 PEG Channel Capacity. Black Rock shall allocate the same amount of channel  
6 capacity that would be required of TCI for PEG compliance in accordance with Section 6.1 of  
7 TCI's renewal franchise. If TCI shall increase its PEG capacity, Black Rock shall increase its  
8 capacity to equal TCI's PEG capacity not later than ninety (90) days from the date TCI  
9 implements its increased PEG capacity.

10  
11  
12  
13 4.5 Public Agency Network. Black Rock grants the County a connectivity option for a  
14 minimum of four (4) single-mode fibers between buildings chosen by the County. If the County  
15 exercises this option, the parties will be bound by the terms and conditions contained herein and  
16 covenant to negotiate in good faith for this option and any other requirements at the time the  
17 County exercises its option.

18  
19 4.5.1 PAN Terms and Conditions. The following conditions will be the basis for good  
20 faith negotiations between the County and Black Rock:

21  
22 (a) In the event the County desires its own facility, separate from Black  
23 Rock's facility, the following conditions should apply, (1) The County's facility will be built by  
24 Black Rock primarily on existing wooden utility poles and the County will be responsible for the  
25 actual and reasonable costs of materials, labor and operating expenses; (2) The County will  
26 determine the routing and construction schedule; and, (3) Black Rock will provide maintenance  
27 at fair market rates.

28  
29 (b) In the event the County desires to share facilities with Black Rock, the  
30 following conditions should apply, (1) the County will be responsible for a pro-rata share of  
31 actual and reasonable costs of materials, labor and operating expenses; (2) Black Rock will  
32 determine the routing and construction schedule; and, (3) Black Rock will provide maintenance  
33 at no cost to the County.

34  
35 (c) In either event, the County will be responsible for all electronics  
36 equipment that would be connected to the fiber.

37  
38 4.6 Upon request, Black Rock shall provide, without installation charge;

39  
40 (1) One outlet of Basic Service to the Whatcom County  
41 Courthouse, the County facilities at the Northwest Annex, the Whatcom County Health  
42 Department facilities, and any public fire station passed by the Cable System; and  
43

1 (2) One outlet containing all signals, excluding premium channels, to all  
2 educational buildings and facilities of accredited educational institutions, and all government  
3 buildings and facilities that are passed by the Cable System.  
4

5 Notwithstanding anything to the contrary set forth in this section, Black Rock  
6 shall not be required to provide an outlet to such buildings unless it is technically feasible. Said  
7 outlets and maintenance of said outlets shall be provided free of fees and charges.  
8  
9

10  
11  
12  
13 Section 5. REGULATORY PROVISIONS.  
14

15 5.1 Intent. In accordance with the provisions of the Whatcom County Code, the County  
16 shall have the right to administer and regulate activities under the Franchise up to the full extent  
17 permitted by applicable federal, state, and local law.  
18

19 5.2 Delegation of Authority to Regulate. The County reserves the right to delegate its  
20 regulatory authority wholly or in part to agents of the County including, but not limited to, an  
21 agency which may be formed to regulate several franchises in the Whatcom County region.  
22

23 5.3 Areas of Administrative Authority. In addition to any other regulatory authority granted to  
24 the County by law or franchise and subject to federal law regarding regulation of open video  
25 systems, the County shall have administrative authority in the following areas:  
26

27 (a) Administering and enforcing the provisions of this Franchise agreement, including  
28 the adoption of administrative rules and regulations to carry out this responsibility.  
29

30 (b) Coordinating the operation of public, government and educational channels.  
31

32 (c) Coordinating Black Rock's technical, programming and operational assistance and  
33 support to public agency users.  
34

35 (d) Establishing procedures and standards for making use of Black Rock's support of  
36 public institutional operations and services, provision of dedicated channels, assistance to public  
37 facilities, support for community access, and the interconnection of the system with other area  
38 systems.  
39

40 (e) Planning expansion and growth of public cable services;  
41

42 (f) Formulating and recommending long-range cable communications policy for the  
43 Franchise area.  
44

45 (g) Disbursing and utilizing any and all Franchise revenues paid to the County.

1  
2 (h) Administering the regulation of rates, to the extent permitted by law.  
3

4 Black Rock shall cooperate fully in facilitating the County's discharge of its  
5 administrative authority.  
6

7 5.4 Franchise Violations, Remedies, and Revocation.  
8

9 5.4.1 Remedies. The County shall have the right to assert the remedies set out below in  
10 the event Black Rock violates any provision of this Franchise agreement. These remedies are  
11 intended to embody the County's and/or the public's rights under The Whatcom County Home  
12 Rule Charter to the extent permitted by law.  
13

14 (a) To the extent the County deems necessary to remedy the default, proceeding  
15 against all or any part of any security provided under the County Code or this Franchise,  
16 including without limitation, any bonds, security funds, or other surety. Should the County take  
17 this action, Black Rock shall be responsible for all direct and actual costs related to the  
18 foreclosure action including, but not limited to, legal and administrative costs;  
19

20 (b) Commencing an action at law for monetary damages or seeking equitable relief,  
21 including specific performance;  
22

23 (c) In the case of a Black Rock's default as to a material provision of the Franchise,  
24 proceeding to revoke the Franchise; or,  
25

26 (d) Requiring Black Rock to correct or otherwise remedy the violation prior to  
27 considering the approval of any proposed rate increase if rate regulation is authorized by law and  
28 is in effect.  
29

30 In determining which remedy or remedies for Black Rock's violation are appropriate, the  
31 County shall take into consideration the nature and extent of the violation, the remedy needed to  
32 prevent such violations in the future, whether Black Rock has a history of previous violations of  
33 the same or similar kind, and such other considerations as are appropriate under the  
34 circumstances.  
35

36 5.4.2 Revocation. The County has the right to declare a forfeiture or otherwise revoke  
37 this Franchise, and all rights and privileges pertaining thereto, in the event that:  
38

39 (a) Black Rock is in violation of any material provision of the Franchise agreement  
40 and fails to correct the violation after written notice of the violation and proposed forfeiture and a  
41 reasonable opportunity thereafter to correct the violation; or  
42

43 (b) Black Rock becomes insolvent, unable or unwilling to pay its debts, or is  
44 adjudged a bankrupt; or  
45

1 (c) Black Rock is found to have engaged in any actual or attempted fraud or deceit  
2 upon the County, persons or subscribers; or  
3

4 (d) Black Rock fails to obtain and maintain any permit required by any federal or  
5 state regulatory body; or  
6

7 (e) Black Rock fails to maintain the full amount of its security fund or to post a  
8 performance bond as required under the terms of this Franchise.  
9

10 5.4.3 Procedure.  
11

12 5.4.3.1 Summary forfeiture. Upon the occurrence of one of the events set out in  
13 subparagraphs (b) through (e), of section 5.4.2, above, following 14 days' written notice to Black  
14 Rock of the occurrence and the proposed forfeiture and an opportunity for Black Rock to be  
15 heard by the County Council, the County may by resolution or other appropriate document,  
16 declare a forfeiture. If Black Rock requests a hearing, it shall be afforded the right to question  
17 witnesses and to require that all testimony be on the record. Findings from the hearing shall be  
18 written, and shall stipulate the reasons for the County's decision. If a forfeiture is lawfully  
19 declared, all rights of Black Rock shall immediately be divested without a further act upon the  
20 part of the County.  
21

22 5.4.3.2 Forfeiture for breach of material provision.  
23

24 (a) In the event that the County believes that Black Rock has not complied with the  
25 terms of the Franchise (other than those in subsections (b) through (e) of section 5.4.2), the  
26 County shall notify Black Rock in writing of the exact nature of the alleged noncompliance.  
27

28 (b) Black Rock shall have 30 days from receipt of the notice described above to (1)  
29 respond to the County contesting the assertion of noncompliance, or (2) to cure such default or,  
30 in the event that by the nature of default such default cannot be cured within the 30 day period,  
31 initiate reasonable steps to remedy such default and notify the County of the steps being taken  
32 and the projected date that they will be completed.  
33

34 (c) In the event that Black Rock fails to respond to the notice described herein or cure  
35 the default pursuant to the procedures set forth above, or in the event that Black Rock contests  
36 the assertion of non-compliance, the County shall schedule a public meeting to investigate the  
37 non-compliance. The County shall give Black Rock 14 calendar days' notice of the time and  
38 place of such meeting and provide Black Rock with an opportunity to be heard.  
39

40 (d) In the event the County, after such meeting, determines that Black Rock is in non-  
41 compliance with any provision of the Franchise, the County may impose any of the remedies set  
42 out in section 5.4.1, above.  
43

44 5.4.3.3 Removal of cable following expiration of franchise. Any order by the County to  
45 remove cable or conduit shall be mailed to Black Rock not later than thirty (30) calendar days

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1 following the date of expiration of the Franchise. Black Rock shall file written notice with the  
2 Public Works Director not later than 30 calendar days following the date of expiration or  
3 termination of the Franchise of its intention to remove cable intended to be removed and a  
4 schedule for removal by location. The schedule and timing of removal shall be subject to  
5 approval and regulation by the County. Removal shall be completed not later than 12 months  
6 following the date of expiration of the Franchise.

7  
8 5.5 Failure to Enforce. Black Rock shall not be relieved of any of its obligations to comply  
9 promptly with any provision of the Franchise by reason of any failure of the County to enforce  
10 prompt compliance, and County's failure to enforce shall not constitute a waiver of rights or  
11 acquiescence in Black Rock's conduct.

12  
13 5.6 Acts of Nature. Black Rock shall not be held in default or non-compliance with the  
14 provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such  
15 non-compliance or alleged defaults are caused by acts of nature, power outages, or other events  
16 reasonably beyond its ability to control. However, Black Rock shall take all reasonable steps  
17 necessary to provide service despite such occurrences.

18  
19 5.7 Alternative Remedies.

20  
21 (a) As an alternative to the remedy set forth herein, the parties may mutually agree to  
22 submit any alleged violation of the provisions of this franchise to arbitration. The matter shall be  
23 determined by a board of three arbitrators, all of whom shall be citizens and taxpayers of the  
24 State of Washington, and shall be selected as follows: one by the County Council, one by the  
25 Franchisee, and one by the two so appointed. Should the two arbitrators be unable to name a  
26 third, such third arbitrator shall be named by a judge of the Superior Court for Whatcom County.  
27 Said board shall make its decision in writing and file its decision with the parties within 60 days  
28 from the date of the appointment of the final arbitrator. The decision of the board shall be by a  
29 majority vote and signed by at least two arbitrators. The written decision shall be final and  
30 binding upon the parties.

31  
32 (b) No provision of this Franchise shall be deemed to bar the right of the County to  
33 seek or obtain judicial relief from a violation of any provision of the Franchise or any rule,  
34 regulation, requirement or directive promulgated thereunder. Neither the existence of other  
35 remedies identified in the Franchise nor the exercise thereof shall be deemed to bar or otherwise  
36 limit the right of the County to recover monetary damages (except where liquidated damages are  
37 otherwise prescribed) for such violation by Black Rock, or to seek and obtain judicial  
38 enforcement of Black Rocks obligations by means of specific performance, injunctive relief or  
39 mandate, or any other judicial remedy at law or in equity.

40  
41 5.8 Compliance with the Laws; eminent domain. Black Rock shall comply with all federal  
42 and state laws and regulations, including regulations of any administrative agency thereof, as  
43 well as all general ordinances, resolutions, rules and regulations of the County heretofore or  
44 hereafter adopted or established during the entire term of this Franchise. Nothing in the Franchise  
45 shall limit the County's right of eminent domain under state law. Nothing in the Franchise shall

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1 be deemed to waive the requirements of any lawful code, ordinance or resolution of the County  
2 requiring permits, fees to be paid, or regulation of construction.

3  
4  
5  
6  
7  
8  
9 Section 6. REPORTING REQUIREMENTS.

10  
11 6.1 Quarterly Reports. If Black Rock should obtain \$100,000.00 per month in gross revenue,  
12 Black Rock shall comply with the following quarterly reporting requirements. So long as Black  
13 Rock does not obtain \$100,000.00 in gross revenue, it shall not have a quarterly reporting  
14 requirement. If a quarterly report is required, Black Rock shall:

15  
16 (a) Within 45 calendar days after the end of each fiscal quarter of Black Rock, Black  
17 Rock shall submit to the County along with its franchise fee payment a financial report showing  
18 the basis for computation of such fees. This report shall separately indicate revenues received by  
19 Black Rock within the County from such items as basic service, pay TV service, and other  
20 sources of revenue.

21  
22 (b) Within 60 days after the end of each of Black Rock's fiscal quarters, Black Rock  
23 shall submit a written report to the County, verified by an officer of Black Rock, which shall  
24 contain:

25  
26 (1) A statement of all revenues earned by Black Rock or any parent or affiliate  
27 (other than a programming affiliate), related to operation of the cable system in the Franchise  
28 area, identified by source or type, e.g., basic, premium, pay per view, installation, advertising,  
29 etc. The statement shall be signed by an officer of Black Rock with an explicit certification by  
30 the officer that the reported amounts are an accurate reflection of the books and records of Black  
31 Rock and are consistent with the requirements of this Franchise;

32  
33 (2) An identification and explanation of any adjustment in the amount of gross  
34 revenues made in determining the Franchise fee calculation base; and

35  
36 (3) A calculation establishing the Franchise fee due and owing.

37  
38 6.2 Annual Report. Black Rock shall, no later than five months following the end of Black  
39 Rock's fiscal year, present a written report to the County, which shall include:

40  
41 (a) A summary of gross revenue calculations for the previous year.

42  
43 (b) A signed copy of the previous year's tax return for Black Rock, with a compiled  
44 financial statement for Black Rock.

1 (c) A summary of the previous year's activities for the Franchise area served by Black  
2 Rock including, but not limited to, the total number of subscribers for each category of service,  
3 the number of homes passed, miles of overhead and underground cable plant.  
4

5 6.3 Additional Reports. Black Rock shall prepare and furnish to the County, at the times and  
6 in the form prescribed, such additional reports with respect to its operation, affairs, transactions,  
7 or property, as may be reasonably necessary to ensure compliance with the terms of this  
8 Agreement.  
9

10 6.4 Communications with Regulatory Agencies. Upon request by the County, a summary of,  
11 or if the County requests, actual copies of, all petitions, applications, communications, and  
12 reports submitted by Black Rock to the FCC or any other federal or state regulatory commission  
13 or agency having jurisdiction with respect to any matter affecting construction or operation of the  
14 Open Video System Franchised hereunder or services provided through such system. Such  
15 information shall be filed with the County no later than 10 days from the date of the request.  
16 Upon request, copies of responses or any other communications from the regulatory agencies to  
17 Black Rock or any affiliate pertaining to the system likewise shall be filed.  
18

19 In addition, Black Rock and its affiliates shall within 10 days of any communication to or  
20 from any judicial or regulatory agency regarding any alleged or actual violation of a law,  
21 regulation or other requirement relating to the system, provide the County a copy of the  
22 communication, whether specifically requested by the County to do so or not.  
23

## 24 Section 7. COMPENSATION AND FINANCIAL PROVISIONS. 25

26 7.1 Gross Revenue Fees. During the term of the Franchise, Black Rock shall pay to the  
27 County an amount equal to 4 % of annual gross revenues derived from subscriptions within  
28 unincorporated Whatcom County, until or unless the provisions of Section 4 are implemented.  
29 At the time those provisions are implemented, the fee shall be increased to 5 % of annual gross  
30 revenues. The 1 % increase shall be dedicated to PEG use. If any law, regulation or valid rule  
31 alters the 5% ceiling, the County shall have the authority to, but shall not be required to, increase  
32 the gross revenue fees accordingly, provided such increase is for purposes not inconsistent with  
33 Federal law.  
34

35 (a) Gross revenue fees shall be paid quarterly, not later than May 15, August 15,  
36 November 15, and February 15 for the preceding three-month period ending, respectively, March  
37 31, June 30, September 30, and December 31. Not later than the date of each payment, Black  
38 Rock shall file with the County, a written statement signed by an officer of Black Rock, which  
39 identifies in detail the sources and amounts of gross revenues earned by Black Rock during the  
40 period for which payment is made. No acceptance of any payment shall be construed as an accord  
41 that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be  
42 construed as a release of any claim which the County may have for further or additional sums  
43 payable under the provisions of this section.  
44

1 (b) Neither current nor previously paid gross revenue fees shall be subtracted from the  
2 gross revenue amount upon which gross revenue fees are calculated and due for any period,  
3 unless otherwise required by applicable law. Nor shall copyright fees or other license fees paid by  
4 Black Rock be subtracted from gross revenues for purposes of calculating gross revenue fees.  
5

6 (c) Any gross revenue fees owing pursuant to this Franchise which remain unpaid  
7 more than 45 days after the dates specified herein shall be delinquent and shall thereafter accrue  
8 interest at 12% per annum or 2% above prime lending rate as quoted by major Seattle banks,  
9 whichever is greater.  
10

11 7.2 Auditing and Financial Records. Black Rock shall manage all of its operations in  
12 accordance with a policy of keeping books and records open and accessible to the County. The  
13 County shall have the right as necessary or desirable for effectively administering and enforcing  
14 the Franchise, to inspect at any time during normal business hours upon reasonable notice, all  
15 books, records, maps, plans, financial statements, service complaint logs, performance test  
16 results, records required to be kept by Black Rock and any parent company pursuant to the rules  
17 and regulations of the FCC and other regulatory agencies, and other like materials of Black Rock  
18 and any parent company which relate to the operation of the Franchise. Black Rock shall not  
19 deny access to the aforementioned records to representatives of the County on the basis that said  
20 records contain "proprietary" information. However, to the extent allowed by Washington law,  
21 the County shall protect the trade secrets and other confidential information of Black Rock and  
22 any parent company. All books and records relating to Black Rock's activities under the  
23 Franchise shall be, or upon request be made, available in the City of Bellingham.  
24

25 Black Rock agrees to meet with representatives of the County upon request to review its  
26 methodology of record-keeping, financial reporting, computing gross revenue fee obligations,  
27 and other procedures the understanding of which the County deems necessary for understanding  
28 the meaning of reports and records.  
29

30 The County or its authorized agent may at any time and at the County's own expense  
31 conduct an independent audit of the revenues of Black Rock in order to verify the accuracy of  
32 gross revenue fees paid to the County. Black Rock and each parent company of Black Rock shall  
33 cooperate fully in the conduct of such audit. In the event it is determined through such audit that  
34 Black Rock has paid franchise fees in a lesser amount of more than 2% than was due the County,  
35 then Black Rock shall reimburse the County for the entire cost of the audit within 30 days of the  
36 completion and acceptance of the audit by the County.  
37

38 The County agrees to request access to only those books and records, in exercising its  
39 rights under this section, which it deems reasonably necessary for the enforcement and  
40 administration of the Franchise.  
41

42 7.3 Performance Bond. Within 30 days after the award of this Franchise, but in no event  
43 sooner than the final reading of the Franchise ordinance, Black Rock shall submit to the  
44 Prosecuting Attorney, which shall be filed with the Director of Public Works, a performance  
45 bond running to the County, with good and sufficient surety licensed to do business in the State

1 of Washington and approved by the County in the amount of \$10,000.00, conditioned that Black  
2 Rock shall well and truly observe, fulfill, and perform each term and condition of the Franchise.  
3 This bond shall be conditioned that in the event Black Rock shall fail to comply with any one or  
4 more of the provisions of this Franchise, then there shall be recoverable jointly and severally  
5 from the principal and surety of such bond, any damages suffered by the County as a result  
6 thereof, including the full amount of any compensation, indemnification, or cost of removal or  
7 abandonment of property as prescribed; said condition to be a continuing obligation for the  
8 duration of the Franchise and thereafter until Black Rock has liquidated all of its obligations with  
9 the County that may have arisen from the acceptance of the Franchise by Black Rock or from its  
10 exercise of any privilege herein granted. Written evidence of payment of required premiums shall  
11 be filed and maintained with the County. In lieu of the bond, Black Rock may provide for a letter  
12 of credit or similar arrangement to be established giving the County rights substantially the same  
13 as the rights of the County in relation to the bond, the provisions of which letter of credit or other  
14 arrangement shall be subject to the approval of legal counsel for the County.

15  
16 Neither the provisions of this section, any bond accepted by the County pursuant thereto,  
17 nor any damages recovered by the County thereunder shall be construed to excuse faithful  
18 performance by Black Rock or to limit liability of Black Rock under the Franchise or for  
19 damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

20  
21 7.4 Validity of Bond. It at any time during the term of the Franchise, the condition of the  
22 entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the  
23 County, Black Rock shall replace such bond by a bond of like amount and similarly conditioned,  
24 issued by an entity satisfactory to the County. The County Council, from time to time, may  
25 authorize or require appropriate and reasonable adjustments in the amount of the bond; provided,  
26 however, that prior to any required increase in the amount of the bond, the County shall give  
27 Black Rock at least 60 days prior notice thereof stating the exact reason for the requirement.  
28 Such reasons must demonstrate a change in Black Rock's business practices, which would  
29 materially prohibit or impair its ability to comply with the terms of the Franchise or afford  
30 compliance therewith.

31  
32 7.5 Security Fund.

33  
34 (a) Within 30 days after the effective date of this Franchise, Black Rock shall deposit  
35 into a bank account, established by the County, and maintained through the term of this  
36 Franchise with interest running to Black Rock, the sum of \$25,000, as security for the  
37 compliance with all orders, permits and directions of any agency of the County, and for the  
38 payment of any claims, liens and taxes due the County or liquidated damages imposed by the  
39 County which arise by reason of the construction, operation or maintenance of the system or  
40 pursuant to the terms of this agreement.

41  
42 (b) Within 30 days after notice to it that any amount has been withdrawn by the  
43 County from the security fund pursuant to subdivision (a) of this section, Black Rock shall  
44 deposit a sum of money sufficient to restore such security fund to the original amount in the  
45 account at the time of withdrawal.

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1  
2 (c) If Black Rock fails, after 10 days' notice to pay the County any delinquent fees,  
3 taxes or other amounts due and unpaid according to the terms of this Franchise; or, fails to repay  
4 to the County, after such 10 days' notice, any damages, costs or expenses which the County shall  
5 be compelled to pay by reason of any act or default of Black Rock in connection with this  
6 Franchise: or fails, after 45 days' notice of such failure by the County to comply with any  
7 provision of the Franchise which the County reasonably determines can be remedied by an  
8 expenditure of the security, the County may immediately withdraw the amount thereof, with  
9 interest and any penalties, from the security fund. Upon such withdrawal, the County shall notify  
10 Black Rock of the amount and date thereof.

11  
12 (d) The security fund deposited pursuant to this section shall become the property of  
13 the County in the event that the Franchise is canceled by reason of the default of Black Rock or  
14 revoked for cause. Black Rock, however, shall be entitled to the return of such security fund, or  
15 portion thereof as remains on deposit at the expiration of the term of the Franchise, or upon  
16 termination of the Franchise at an earlier date, upon payment of all sums then due from Black  
17 Rock to the County hereunder.

18  
19 (e) The rights reserved to the County with respect to the security fund are in addition to  
20 all other rights of the County whether reserved by this agreement or authorized by law, and no  
21 action, proceeding or exercise of a right with respect to such security fund shall affect any other  
22 right the County may have.

23  
24 (f) In lieu of the security fund provided for herein, Black Rock may provide for a letter of  
25 credit or similar arrangement to be established giving the County rights substantially the same as  
26 the rights of the County in relation to the security fund, the provisions of which letter of credit or  
27 other arrangement shall be subject to the approval of legal counsel for the County.

28  
29 7.6 Indemnification by Black Rock. Black Rock shall, at its sole expense, fully indemnify,  
30 defend and hold harmless the County, and in their capacity as such, the officers and employees  
31 thereof, from and against any and all claims, suits, actions, liability and judgments for damage or  
32 otherwise except those arising wholly from negligence on the part of the County or its  
33 employees; for actual or alleged injury to persons or property, including loss of use of property  
34 due to an occurrence, whether or not such property is physically damaged or destroyed, in any  
35 way arising out of or through or alleged to arise out of or through the acts or omissions of Black  
36 Rock or its officers, agents, employees, or contractors or to which Black Rock's or its officers,  
37 agents, employees or contractors acts or omissions in any way contribute, and whether or not  
38 such acts or omissions were authorized or contemplated by this Franchise or applicable law;  
39 arising out of or alleged to arise out of any claim for damages for Black Rock's invasion of the  
40 right of privacy, defamation of any person, firm or corporation, or the violation of infringement  
41 of any copyright, trademark, trade name, service mark or patent, or of any other right of any  
42 person, firm or corporation; arising out of or alleged to arise out of Black Rock's failure to  
43 comply with the provisions of any statute, regulation or Resolution of the United States, State of  
44 Washington or any local agency applicable to Black Rock in its business. Nothing herein shall be  
45 deemed to prevent the County, its officers, or its employees from participating in the defense of

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1 any litigation by their own counsel at such parties' expense. Such participation shall not under  
2 any circumstances relieve Black Rock from its duty of defense against liability or of paying any  
3 judgment entered against the County, its officers, or its employees.  
4

5 7.7 Black Rock Insurance. Black Rock shall maintain, throughout the term of the Franchise,  
6 liability insurance insuring the County and Black Rock, their respective officers, employees and  
7 agents, with regard to all claims and damages specified herein, in the minimum amounts of:  
8

9 (a) \$1,000,000 for personal injury or death to any one person and \$3,000,000  
10 aggregate for personal injury or death per single accident or occurrence.  
11

12 (b) \$1,000,000 for property damage to any one person and \$3,000,000 aggregate for  
13 property damage per single accident or occurrence.  
14

15 (c) \$1,000,000 for all other types of liability.  
16

17 Such insurance shall specifically name as additional insured Whatcom County, its  
18 officers, and employees, and shall further provide that the policy shall not be modified or  
19 canceled during the life of this Franchise without giving 30 days' written notice to the County.  
20

21 Black Rock shall file with the County copies of all certificates of insurance showing up-  
22 to-date coverage, additional insured coverage, and evidence of payment of premiums as set forth  
23 above. Coverage shall not be changed or canceled without approval of the County, and failure to  
24 maintain required insurance may be considered a breach of this agreement. The County may, at  
25 its option, review all insurance coverage. If the County determines that circumstances require  
26 and that it is reasonable and necessary to increase insurance coverage and liability limits to  
27 adequately cover the risks of the County and Black Rock, the County may require additional  
28 insurance to be acquired by Black Rock. The County shall provide Black Rock written notice  
29 should the County exercise its right to require additional insurance. All insurance shall provide  
30 30 days' prior written notice to the County in the event of modification or cancellation. Black  
31 Rock shall provide written notice to the County within 30 days after any approved reduction in  
32 the general annual aggregate limit.  
33

#### 34 Section 8. MISCELLANEOUS PROVISIONS. 35

36 8.1 Posting and Publication. Black Rock shall assume the cost of posting and publication of this  
37 Franchise Ordinance as such posting and publication is required by law and such is payable upon  
38 Black Rock's filing of acceptance of this Franchise.  
39

40 8.2 Guarantee of Performance. Black Rock agrees that it enters into this Franchise Ordinance  
41 voluntarily in order to secure and in consideration of the grant from the County of a 15 year  
42 Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is  
43 guaranteed by Black Rock.  
44

1 8.3 Entire Agreement. This Franchise agreement contains the entire agreement between the  
2 parties, supersedes all prior agreements or proposals except as specifically set forth herein, and  
3 cannot be changed orally but only by an instrument in writing executed by the parties. This  
4 Franchise is intended to comply with all requirements set forth herein. In the event of a conflict  
5 between the provisions of this Franchise and the provisions of the Whatcom County Code, the  
6 provisions of the Whatcom County Code shall take precedence. To the extent that the Whatcom  
7 County Code changes materially affect this agreement, the parties will mutually agree upon  
8 appropriate amendments to this agreement.

9  
10 8.4 Consent. Wherever the consent or approval of either Black Rock or the County is  
11 specifically required in this agreement, such consent or approval shall not be unreasonably  
12 withheld.

13  
14 8.5 Franchise Acceptance. Black Rock shall execute and return to the County three original  
15 franchise agreements. The executed agreements shall be returned to the County accompanied by  
16 performance bonds, security funds, and evidence of insurance, all as provided in this Franchise  
17 agreement. In the event Black Rock fails to accept this Franchise agreement, or fails to provide  
18 the required documents, this Franchise shall be null and void.

19  
20 8.6 Effective Date. This Ordinance shall be effective Oct. 8, 1999; provided, however,  
21 that if Black Rock does not accept this Franchise and comply with all conditions for such  
22 acceptance set forth herein prior to the effective date, this Ordinance shall be null and void.

23  
24 8.7 Force Majeure. In the event that either party is prevented or delayed in the performance  
25 of any of its obligations, under this Agreement by reason of acts of God, floods, fire, hurricanes,  
26 tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism,  
27 strikes, sabotage, boycotts, lockouts, labor disputes, shortage of qualified labor, freight  
28 embargoes, shortages or unavailability of materials or supplies, unusually severe weather  
29 conditions, acts or omissions of the other party, or any other similar event beyond the reasonable  
30 control of that party, it shall have a reasonable time under the circumstances to perform such  
31 obligation under this Agreement, or to procure a substitute for such obligation to the reasonable  
32 satisfaction of the other party.


33  
34 8.8 Best Efforts. While the Cable Act may not allow the regulation of certain aspects of an  
35 OVS operator, Black Rock nevertheless agrees to use its best efforts to ensure the following:

36  
37 8.8.1 Emergency Alert Capability. While the FCC has not required OVS operators to  
38 provide an emergency alert capability at this time, Black Rock will use its best efforts to provide  
39 said emergency alert capability to its subscribers at its soonest opportunity.


40  
41 8.8.2 Obscenity. Black Rock will exercise its best efforts to prevent the transmission  
42 of programming which is obscene or otherwise unprotected by the United States Constitution;  
43 provided, however, Black Rock shall in no way be responsible for programming over which it  
44 has no editorial control, including public, educational and governmental access programming.

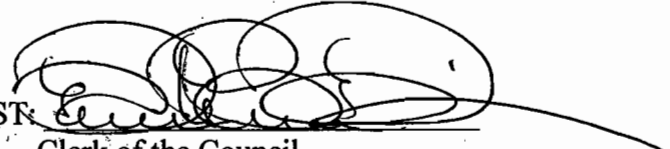
1 8.8.3 Parental Control Device. Upon a subscriber's request, Black Rock shall use  
2 its best efforts to make available a parental control device that will enable the subscriber to block  
3 all access to any and all channels without affecting those not blocked.  
4

5 PASSED by Council this 21 day of September, 1999.

6  
7  
8   
9 Council Chair, Acting Tom Brown

10  
11  
12 APPROVED by me this 24 day of September, 1999.

13  
14   
15  
16 County Executive

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18  
19  
20 ATTEST:   
21 Clerk of the Council

22  
23  
24 APPROVED AS TO FORM:

25  
26   
27  
28 Whatcom County Prosecuting Attorney's Office

29  
30  
31 Published: \_\_\_\_\_

32  
33  
34  
35 ACCEPTED BY BLACK ROCK CABLE INC.

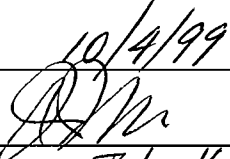
36  
37  
38 DATE: 10/4/99  
39  
40 BY:   
41 Name: John Kehres  
42 Title: President

1 GUARANTEE OF PERFORMANCE. On behalf of Black Rock Cable, Inc., the Franchisee  
2 herein, and a corporation duly authorized to do business in Washington State, I represent as  
3 follows:  
4

5 (1) That I am an officer of Black Rock Cable, Inc., duly authorized to make the following  
6 representation:  
7

8 (2) That I have read and understand this Ordinance granting the franchise  
9 herein; and,  
10

11 (3) That Black Rock Cable, Inc., hereby unconditionally guarantees performance of each and  
12 every obligation of Black Rock Cable, Inc., set forth herein, and will timely provide to Whatcom  
13 County a duly executed Guarantee in Lieu of Security Fund acceptable to the County.  
14

15  
16 DATE: 10/4/99  
17  
18 BY:   
19 Name: John Kehres  
20 Title: President.  
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