

**Ordinance No. 3245**

**AN ORDINANCE OF THE CITY OF PORT TOWNSEND, WASHINGTON,  
AUTHORIZING AND GRANTING A TELEVISION CABLE FRANCHISE TO WAVE  
DIVISION III, LLC**

**WHEREAS**, cable television is an important service to many in the City of Port Townsend; and

**WHEREAS**, the City of Port Townsend and WAVE Division III, LLC have agreed on terms, conditions, and provisions for a new cable television franchise to replace the existing franchise; and

**WHEREAS**, the terms, conditions, and provisions for a new television cable franchise are set forth, in full, in the Franchise agreement, which is attached hereto, marked as “Exhibit A” and incorporated by this reference; and

**WHEREAS**, the City Council finds that the terms, conditions, and provisions for a new television cable franchise are in the best interests of the citizens of Port Townsend; and

**NOW THEREFORE**, the City Council of the City of Port Townsend does ordain as follows:

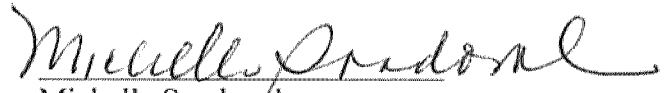
Section 1. Adoption. The City of Port Townsend approves and adopts the Franchise Agreement dated February 18, 2020, which is attached hereto as “Exhibit A” and is incorporated into this ordinance as if set out in full.

Section 2 Execution. The City Manager of the City of Port Townsend is authorized and directed to execute the Franchise Agreement with WAVE Division III LLC.


Section 3. Severability. If any clause, sentence, paragraph, section or part of this Ordinance or its application to any person or circumstance is held to be invalid or unconstitutional by a court of competent jurisdiction, such order or judgment shall not affect the validity or constitutionality of the remainder of any part of this Ordinance. To this end, the provisions of each clause, sentence, paragraph, section or part of this Ordinance is declared severable.

Section 4. Effective Date. This Ordinance shall be effective five days following publication of this Ordinance or a summary thereof.


**ADOPTED** by the City Council of the City of Port Townsend, Washington, at a regular meeting thereof, held this 2nd day of March 2020.

  
Michelle Sandoval  
Mayor

**Attest:**

  
Joanna Sanders, MMC  
City Clerk

**Approved as to Form:**

  
Heidi Greenwood  
City Attorney

**Franchise Agreement  
Between The City of Port  
Townsend and Wave  
Division III LLC.**

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## SECTION 1. GRANT OF FRANCHISE

1.1 Grant. The City of Port Townsend, Washington (hereinafter "City") enters into this agreement with Wave Division III, LLC. (hereinafter "Franchisee") for the provision of cable service within its boundaries. The City hereby grants to Franchisee a non-exclusive Franchise to operate a Cable System to provide Cable Service in the City, and to use the streets and public ways to install, construct, repair, reconstruct, maintain in, on, over, under, upon, across and along any street or highway, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the Cable System for that purpose, subject to the terms and conditions of this agreement, and applicable law.

1.2 Term. The Franchise granted hereby shall expire ten (10) years after its Effective Date (as defined in Section 1.3) unless lawfully terminated in accordance with its terms or other applicable law.

1.3 Effective Date. This Franchise shall become effective on the 31st day following its adoption ("Effective Date"), provided that prior to that date the Franchisee: (a) accepts in writing this Franchise; and (b) provides all documents required by the Franchise. If Franchisee has not satisfied these conditions prior to the 31st day following its adoption, then the City may, at its option, declare the Franchise forfeited, and of no force or effect.

1.4 Franchise Area. The Franchise area for which this Franchise is granted consists of all areas located within the Port Townsend City limits as they are constituted on the Effective Date of the Franchise or may in the future be constituted.

1.5 Effect of Acceptance. By accepting the Franchise, the Franchisee: (a) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (b) agrees that it will not oppose intervention by the City in any proceeding affecting the enforcement of its rights under this franchise; (c) accepts and agrees to all provisions contained herein; and (d) agrees that the Franchise was granted pursuant to processes and procedures consistent with Federal and State law, and agrees that it will not raise any claim or defense to the contrary.

1.6 Rights Reserved. The rights granted in this Franchise are subject to the City's exercise of its police powers and nothing in this Franchise shall be read to limit the exercise of those powers. The City, among other things, does not waive requirements of various codes, ordinances, and resolutions, including zoning codes and codes regarding building permits and fees, or time or manner of construction, all of which shall apply. Any generally applicable fees or charges assessed by the City, so long as they are consistent with applicable law, shall be paid in addition to the Franchise Fee required under this Franchise.

### 1.7 Franchisee Compliance and Relationship to Other Laws.

A. Franchisee's Franchise is subject to all lawful terms, conditions, and provisions of this Franchise; of Port Townsend Municipal Code Chapters 5.1 and 5.15 ("Port Townsend Master Cable Television Ordinance" and "Cable Television Service Regulation") as the same is now or hereafter amended by lawful exercise of the City's police powers; and of the Communications Act of 1934, as amended by the Cable Consumer Protection Act of 1984, the Cable Communications Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as the same is now or hereafter amended.

B. Franchisee's rights hereunder are subject to the lawful exercise of the City's police power. Nothing in this Franchise shall preclude or prohibit the City from enacting any ordinance in the interest of public health, safety and welfare, which may impact the Franchisee in its operation of the Cable System, as a proper exercise of the City's police power. Franchisee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of the Franchise.

C. Franchisee reserves all rights it may have to challenge the lawfulness of any City Code provision or modification whether such rights arise in contract or at law. The City reserves all its rights and defenses to such challenges whether arising in contract or at law.

D. It is the intent of both parties that each party shall enjoy all rights and be subject to all obligations of this Franchise for the entire term of the Franchise and to the extent any provisions have continuing effect, after its expiration. However, both parties recognize that the technology of cable television and related technologies are in a state of flux and that regulatory conditions and franchise rights and powers, may change drastically during the term of this Franchise. Should such changes occur, the City and Franchisee shall negotiate in good faith to amend the Franchise to preserve the rights and obligations of the City and Franchisee hereunder to the fullest extent consistent with such changes.

1.8 Affiliates Must Comply. Any affiliate or joint venture or partner of the Franchisee involved in the management or operation of the Cable System in the City that would constitute a Cable Operator of the Cable System is subject to the limitations of and shall comply with the terms and conditions of this Franchise. The Franchisee shall be fully liable for any act or omission of an affiliate that controls the Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of this Agreement or a violation of the Port Townsend Municipal Code, as if the act or omission was the Franchisee's act or omission.

1.9 Legal Qualifications. The Franchisee affirms that it meets all of the legal qualifications set forth in PTMC 5.14.040(A)(5), and in 47 U.S.C. § 533.

1.10 Competitive Equity.

A. The City reserves the right to grant additional franchises or similar authorizations to provide Video Programming services via Cable Systems or similar wireline systems located in the Right of Way. The City intends to treat wireline competitors in a nondiscriminatory manner in keeping with Federal law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to use the Right of Way to provide such services and Franchisee believes the City has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this subsection 1.10 will apply.

B. As part of this Franchise, the City and Franchisee have mutually agreed upon the following terms as a condition of granting the Franchise, which terms may place the Franchisee at a competitive disadvantage if not required of a wireline competitor: Franchise Fees, PEG funding, PEG Access Channels, service availability requirements, records and reports, and customer service obligations (hereinafter "Material Obligations"). The City and Franchisee agree that these Material Obligations bear no relationship to the technology employed by the Franchisee or a wireline competitor and as such can reasonably be expected to be applied fairly across all wireline competitors. The City and Franchisee further agree that this provision shall not require a word for word identical franchise or authorization for

competitive equity so long as the regulatory and financial burdens on each entity are generally equivalent.

C. Within one hundred and eighty (180) days of City codification of a wireline competitor's franchise or similar authorization, Franchisee must notify the City in writing of the Material Obligations in this Franchise that exceed the Material Obligations of the wireline competitor's franchise or similar authorization. Within sixty (60) days of receiving such notice, the City and the Franchisee shall meet to discuss the franchise modifications sought by the Franchisee. The City shall have one hundred (120) days to reach agreement with the Franchisee or dispute the claims made by the Franchisee. In the event the City disputes that the Material Obligations are different, Franchisee may bring an action in Federal or State court for a determination as to whether the Material Obligations are different and as to what franchise amendments would be necessary to remedy the disparity. Alternatively, Franchisee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.

D. Nothing in this subsection 1.10 is intended to alter the rights or obligations of either party under applicable Federal or State law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

E. This provision does not apply if the City is ordered or required to issue a franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Cable Operator actually commencing provision of service in the market to its first customer. Should the new Cable Operator fail to continuously provide service for a period of six (6) months, the City has the right to implement this Franchise with its original terms upon one hundred eighty (180) days' notice to Franchisee.

F. This Section does not apply to open video systems, nor does it apply to common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. § 571; or to systems that serve less than five percent (5%) of the geographic area of the City; or to systems that only provide video services via the public Internet.

## SECTION 2. SHORT TITLE AND DEFINITIONS

2.1 This Franchise shall be known and be cited as the "City of Port Townsend and Wave Division III, LLC Franchise Agreement." The definitions set forth in Port Townsend Municipal Code Chapter 5.14 ("Port Townsend Master Cable Television Ordinance") pertain to this Franchise Agreement and shall be relevant to the purposes and meaning of this Franchise Agreement. In addition, the following terms, phrases, words and their derivations have the meaning given herein.

"**Cable Act**" shall refer to the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and as it may be further amended during the term of the Franchise.



"City," when used to refer to a geographic area, means the City of Port Townsend, a political subdivision of the State of Washington, in its present incorporated form or in any later recognized, consolidated, enlarged, or reincorporated form; when used to refer to an action taken by an entity, the term refers to the governing body of the City of Port Townsend or any entity authorized to act on its behalf.

"Enabling Ordinance" or "PTMC" means the Ordinance of the City Council of the City of Port Townsend known as Port Townsend City Municipal Chapter 5.14 ("Port Townsend Master Cable Television Ordinance").

"Franchise Agreement" or "Franchise" shall refer to this contract between the City and the Franchisee, entered into in accordance with the terms of the Port Townsend Municipal Code.

"Franchisee" means Wave Division III, LLC, the entity to which this Cable Franchise is granted by the Port Townsend City Council, and its lawful and permitted successors, assigns, and transferees.

"Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one (1) night per week and some weekend hours.

2.2 All words appearing in this Franchise that are identical to the words defined in Section 2.1 shall have the meanings set forth in Section 2.1. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meanings set forth in the Cable Act, or if not defined therein, the meaning set forth in the PTMC Section 5.14.020, and, if not defined therein, shall be given their common and ordinary meaning.

### SECTION 3. FRANCHISE – LIMITATIONS

3.1 The Franchise does not confer rights other than as provided by this Franchise Agreement, or as mandated by Federal or State law.

3.2 No privilege or exemption is granted or conferred except those specifically prescribed herein.

3.3 The City may delegate its authority except as prohibited by State law, except the City Council shall have sole authority to conduct any required hearings regarding any alleged violations of this Franchise by Franchisee and may not delegate any authority to issue any decision regarding such alleged violations to any other person or entity.

3.4 In addition to any immunities that the City may have under Federal or State law, and except as otherwise required by applicable law, the Franchisee shall have no recourse against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this Franchise Agreement or Enabling Ordinance, or because of their

enforcement or nonenforcement, except for claims arising from: (a) the City's breach of the Franchise Agreement; or (b) the gross negligence or willful misconduct of the City or its representatives.

3.5 The Franchisee shall at all times be subject to the lawful exercise of the police power of the City, and its other lawful authority.

3.6 This Franchise concerns the provision of Cable Services only. Nothing in this Franchise is intended to expand or contract the City's rights to regulate non-Cable Services nor the Franchisee's right to provide lawful services over its Cable System.

3.7 Nothing in this Franchise Agreement shall be read to create an expectancy of renewal or to in any respect entitle the Franchisee to renewal or extension of this Franchise, except as may be expressly required by applicable law.

3.8 Any privilege claimed under any Franchise by the Franchisee in any street or other public property shall be subordinate to any lawful occupancy of the streets or other public property prior to March 2, 2020 subject to the Port Townsend Municipal Code.

#### SECTION 4. NON-EXCLUSIVE FRANCHISE AND COMPETITION ENCOURAGED

4.1 This Franchise and the right it grants to use and occupy the public right of way is not exclusive and does not explicitly or implicitly: (a) preclude the issuance of other franchises to operate Cable Systems within the City; (b) affect the City's right to authorize use of the public right of way by other persons to operate Cable Systems; or (c) affect the City's right to itself construct, operate or maintain a Cable System.

#### SECTION 5. NO WAIVER

5.1 The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

5.2 Waiver of a breach of this Franchise or the Enabling Ordinance is not a waiver of any similar or different breach. Neither the granting of this Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

#### SECTION 6. CUSTOMER PROTECTION

6.1 Customer Protection. The Franchisee hereby represents and warrants that it meets or exceeds the requirements for customer protection established by the City and

attached hereto as Appendix C. The Franchisee agrees that it shall abide by the terms and conditions therein, as the same may be lawfully amended or supplemented from time to time and be subject to the remedies set forth in Sections 14 through 16 of this Agreement for violations of the customer protection standards, as amended or supplemented.

6.2 Privacy. The City and the Franchisee shall comply with applicable law regarding subscriber privacy and the collection and use of subscriber information.

6.3 Maintenance and Complaints.

A. The Franchisee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

B. Complaints from customers regarding cable service provided by Franchisee or regarding Franchisee's operations under the terms of the Franchise which are made or escalated to Franchisee's customer service center shall be logged. The Franchisee will maintain a summary of complaints for three (3) years. Summaries of the complaints shall be provided to the City on request.

C. The Franchisee shall maintain and repair its facilities sufficiently to comply with this Franchise and the City's Customer Service Standards under normal operating conditions and to respond to subscriber complaints, loss of service, or requests for service.

D. All subscribers and members of the general public in the City may direct complaints and inquiries regarding the Franchisee's service or performance to the City. After the date of this Franchise, the City may establish a Cable Commission as a duly authorized City agency. In such event, subscribers and members of the general public in the City may direct complaints and inquiries to such Cable Commission. Franchisee will, in good faith, work with the Cable Commission to respond to such inquiries and complaints.

6.4 Non-Discrimination and Equal Employment Opportunity

A. Throughout the term of this Franchise, the Franchisee shall fully comply with applicable law regarding equal employment opportunity. In the event the Franchisee is at any time determined by the FCC not to be in compliance with the FCC rules or regulations, the Franchisee shall notify the City within 15 days of its notice of such noncompliance from the FCC.

B. The Franchisee shall not, in its rates or charges, or in the availability of the services or facilities of its Cable System, or in any other respect, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers on the basis of age, race, creed, religion, color, sex, national origin, marital status, sexual orientation, physical or mental disability, or political affiliation, nor shall the Franchisee subject any such persons or group of persons to any undue prejudice or any disadvantage. The Franchisee may offer promotional discounts to attract or maintain subscribers provided that such discounts are offered on a non-discriminatory basis to similar classes or types of subscribers throughout the Franchise Area. Subject to FCC rules and regulations, this section shall not prohibit the Franchisee from publishing different rates for different classes of subscribers, so long as the rates are identical for every subscriber in each class. Different rates may be offered to commercial or bulk rate subscribers.

C. The Franchisee shall not deny cable service to any group of potential subscribers because of the income of the residents of the area in which the group resides.

D. The Franchisee shall comply with all applicable federal, state, and local laws concerning the accessibility of its services to people with disabilities. All programming received by the Franchisee with closed-captioning shall be retransmitted by the Cable System including the closed-caption signal.

6.5 Parental Control Device. Upon request, the Franchisee shall provide parental control capability to any subscriber.

## SECTION 7. SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

### 7.1 Cable System Design and Functionality

A. As of the effective date of this Agreement, the Franchisee operates, maintains and makes available to all residents of the City its existing 750 MHz Cable System fed by means of fiber optic cable deployed from the Franchisee's Headend to Franchisee's fiber optic nodes, tying into Franchisee's coaxial Cable System serving subscribers.

B. The Franchisee shall transmit all its Signals to Subscribers in stereo, provided that such Signals are furnished to the Franchisee in stereo.

C. Two-way activated capacity supporting interactive services, which may include but not be limited to digital video recorders, shall be operated and maintained in the Cable System.

D. The Headend has 24-hour backup power supply. Each node power supply has a minimum three-hour backup and hub sites and optical transfer nodes have three-hour backup power supplies. Such equipment has been constructed and will be maintained so as to cut in automatically upon failure of the commercial utility power, and to revert automatically to a standby mode when alternating current power returns and complies with all utility and other safety regulations to prevent the alternate power supply from powering a "dead" utility line in order to prevent injury to any person.

E. The Cable System delivers and shall continue to deliver throughout the term of this Agreement high definition ("HD") Signals.

F. Franchisee shall install and maintain necessary equipment to ensure that all closed captioning programming received by the Cable System shall include the closed caption signal as long as the closed caption signal is provided consistent with FCC standards.

G. Franchisee agrees to maintain the Cable System with sufficient capability and technical quality to comply with the requirements of this Franchise and which meets or exceeds current and future FCC technical quality standards at 47 C.F.R. § 76 Subpart K, or any future section so designed by the FCC.

H. The Franchisee shall comply with all applicable laws, as they may from time to time be amended, concerning system compatibility with Subscribers' consumer electronics equipment.

## 7.2 Interconnection

A. Interconnection of Franchisee's System. On the effective date of this Agreement, the Cable System operated by the Franchisee serving the City of Port Townsend receives a PEG feed from the City's designated Access Provider at a hub facility and sends the PEG feed to Port Townsend and other areas served by Franchisee in Jefferson County. The Franchisee agrees that it shall at minimum maintain the level of interconnectivity described herein throughout the life of this Franchise. The interconnection shall be capable of receiving and delivering PEG access programming to the interconnected communities. There shall be no charge for the interconnection for PEG access programming.

B. Cooperation. The City understands that interconnection requires cooperation from other Cable System Operators. The City shall make every reasonable effort to assist Franchisee in achieving the cooperation necessary to realize interconnection.

C. Franchisee Not a Common Carrier. Nothing in this Agreement shall be deemed to require the Franchisee to assume the status of a common carrier as defined under applicable law.

## 7.3 Reserved

## 7.4 Cable System Upgrade

Franchisee shall comply with City permitting processes and regulations during any future construction, rebuild, or upgrade of any portion of the Cable System.

## 7.5 Performance Testing

A. Franchisee shall perform the following tests on its Cable System:

1. All tests required by the FCC; and
2. All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise.

B. Franchisee shall maintain records documenting the results of its Cable System tests described above, performed by or for the Franchisee. Such test results shall be available for inspection by the City upon request with reasonable prior notice.

C. Tests may be witnessed by representatives of the City, and Franchisee shall provide the City reasonable notice of the time and place of each test. The City may conduct independent tests of the system for which the Franchisee shall give its fullest cooperation. Franchisee shall be required to take prompt corrective measures to correct any system deficiencies and to prevent their recurrence.

7.6 System Inspections. The City may inspect the Franchisee's Cable System and any construction or installation work performed under this Franchise at City expense.

7.7 Other Construction Procedures. The Franchisee shall comply with federal, state, and local laws with regard to the construction and operation of the Cable System.

A. The Franchisee shall provide a semi-annual construction report to the City in a form reasonably acceptable to the City when major construction projects -- such as a Cable System upgrades, rebuilds, plant extensions of one mile or more, or interconnection projects -- are being undertaken.

B. The Franchisee shall notify City residents in any construction area at least one day in advance before first entering onto such resident's property to perform any work in conjunction with Cable System construction and shall additionally notify affected residents in advance of any work which will involve excavation, replacement of poles, or tree trimming.

C. The Franchisee shall ensure that any contractor or subcontractor used by the Franchisee for work and construction, operation, or repair of Cable System equipment must be properly licensed under laws of the State and all applicable local ordinances.

D. The Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Franchise Agreement and applicable laws, shall be responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed. This section is not meant to alter tort liability of Franchisee to third parties.

E. The Franchisee shall make available as-built and design maps in an electronic format commonly used by the industry for the City's review at the local office of the Franchisee after the completion of system construction in any geographic area.

F. Within thirty (30) days of completion of Cable System construction in any geographic area, the Franchisee shall make available to the City upon reasonable request maps showing the actual location of additions or extensions to its lines.

7.8 System Maintenance.

A. Interruptions to be Minimized. Whenever possible, the Franchisee shall schedule planned maintenance so that activities likely to result in an interruption of service are performed during periods of minimum subscriber use of the Cable System. The Franchisee shall make best efforts to minimize interruptions of service consistent with reasonable and customary construction practices.

B. Maintenance Practices. In addition to its other obligations, the Franchisee shall use components of good and durable quality and follow high quality industry maintenance standards.

7.9 System Performance. The Cable System shall meet or exceed the standards set forth in 47 C.F.R. 76 subpart K ("FCC Standards"), as those standards may be in effect at all times.

7.10 Future System Upgrades/Rebuilds. The Franchisee shall throughout the Franchise term incorporate improvements in technology to reasonably meet the needs and interests of the community in light of the costs thereof.

7.11 Service Availability.

A. The Franchisee shall construct, operate, maintain and upgrade its Cable System so that it is able to provide service to all areas located in the Franchise Area described in Section 1.4 of this Franchise, subject to Section 7.11.B.1.

B. System Extension Requirements.

Franchise Area Boundaries. The Franchisee must extend service upon request for no charge other than the then-prevailing normal installation charge and/or the long drop charge where there is the equivalent of 20 homes per linear strand mile measured from the Franchisee's closest trunk line or distribution cable location.

Cost Sharing. In the event that a new subscriber requesting service does not meet the criteria for service described in Section 7.11.B.1. above, the Franchisee will extend its Cable System at commercially reasonable rates based upon the circumstances in place at the time.

Subscriber Drops. The Franchisee shall not assess any additional cost for service drops of one hundred fifty (150) feet or less unless the Franchisee demonstrates to the City's satisfaction that extraordinary circumstances justify a higher charge. Where a drop exceeds one hundred fifty (150) feet in length, the Franchisee may charge the subscriber for the difference between the Franchisee's actual costs associated with installing a one hundred fifty (150) foot drop and the Franchisee's actual cost of installing the longer drop.

Undergrounding of Drops. In any area where the Franchisee would be entitled to install a drop above-ground, the Franchisee will provide the subscriber the option to have the drop installed underground but may charge the subscriber the difference between the actual cost of the aboveground installation and the actual cost of the underground installation.

Time for Extension. The Franchisee shall extend service as described herein to any Person who requests it:

If the person requesting service is located in the Franchise area and service can be provided by activating or installing a drop to that location, service shall be provided within seven (7) days of the request;

If the person requests service in an area which does not meet the criteria described in 7.11.B.1, the Franchisee shall extend service based upon mutually agreed upon terms and schedule between the person requesting service and the Franchisee.

7.12 Public, Educational and Government Use.

A. Designated /Access Provider. The City may designate another government entity, or a nonprofit organization incorporated in the State of Washington as a PEG

access provider ("Designated Access Provider") to control and manage the use of any or all of the access channels and/or resources provided by the Franchisee under this Agreement.

B. PEG Access Channel Capacity. On the Effective Date of this Franchise, the Franchisee provides two (2) channel for PEG Access purposes.

1. The bandwidth that is provided by the Franchisee for PEG Access purposes must be capable of transmitting signals in any commercially standard format and can be used to transmit video and audio signals and other information (including, by way of example and not limitation, any secondary audio, closed captioning, text, digital information, and high definition signals). The PEG Access Channels must be viewable by all subscribers regardless of the tier of service to which they subscribe without the need for any equipment other than the equipment that a subscriber requires to receive their chosen service tier. The PEG Access Channels shall have the same quality level and capacity, the same functionality, and in the same format as provided to the Franchisee by the City or its DAP without material degradation.

2. The City or its DAP shall provide the PEG Access Channel(s) in an HD format or any commercially available format. Franchisee shall transport and distribute the Access Programming without degradation to Subscribers. Franchisee shall provide all necessary equipment from: (1) the demarcation point at the origination location of the PEG Access Channel(s); (2) at its Headend and/or hub sites; and (3) throughout its distribution system to deliver the PEG Access Channel(s) to Subscribers.

3. Franchisee shall ensure that any PEG Access Channels can also be viewed by Subscribers in the signal format provided by the City/DAP to the Franchisee, regardless of the tier of service received by the Subscriber. PEG Access Channels shall have the same quality and functionality as local broadcast channels provided to Subscribers in that same format.

C. Requirements Regarding Rules and Procedures for Use of PEG Access Channels.

1. The Franchisee may not exercise any editorial control over the content of programming on the designated PEG Access Channels (except for such programming the Franchisee may produce and cablecast on the same basis as other PEG Access Channel users).

2. All programming transmitted over PEG Access Channels shall be noncommercial in nature. Program materials to be distributed on PEG Access Channels shall contain no advertising or commercial content for which consideration is received by the City or the DAP. The City and Franchisee agree that the City, the DAP, or an access program provider may include acknowledgements for persons or entities which sponsor or underwrite a program in a manner similar to the sponsorship information provided on the Public Broadcasting System.

D. PEG Channel Promotion. The Franchisee shall, throughout the term of this Franchise, provide the following promotional services, free of any charges:

1. Program schedule information for each PEG access channel shall be listed in all print program guides provided by the Franchisee to subscribers, in the same manner as the program schedule information for local broadcast cable channels are listed.



2. The parties acknowledge that the Franchisee contracts with a third-party electronic programming guide vendor ("EPG provider") to provide on-screen and on-line program listings. The Franchisee shall make available to the City or its DAP the contact information for that EPG provider. Franchisee shall inform the EPG provider that the City and its DAP are authorized to provide programming information for the PEG access channels. The City or its DAP shall be responsible for providing programming information to the EPG provider.

3. Once annually, the Franchisee shall allow the City or its DAP to submit a bill stuffer, created at the DAP's expense, to be inserted into all customer statements within the Franchisee's Cable System in the City. Franchisee may establish reasonable size restrictions for insertion in customer statements for use by the City or the DAP. In consideration of regulatory notification requirements, the Franchisee has final approval on the dates for insertion.

E. PEG Channel Locations.

1. The PEG Access Channels shall be located on Franchisee's Local Broadcast Service tier within reasonable proximity to each other and to local broadcast channels in the Cable System's channel lineup and available at no charge to the City and its DAP.

2. PEG Channel Relocation. In the event Franchisee is required by Federal law or regulation to change the channel number of the PEG Access Channels., Franchisee shall provide thirty (30) days advance notice to the City, the DAP, and its subscribers. Should Franchisee decide to change the channel number for any other reason, Franchisee shall notify the City, the DAP, and subscribers of such a discretionary change at least sixty (60) days prior to the date of the proposed change. The Franchisee shall use notification techniques such as inserts in subscriber billings, display advertisements in local newspapers and the customer messaging function of its set-top units to provide customers the new channel assignments. If the notification provided to the City and the DAP with regard to a discretionary move is consistent with the deadline listed above, the Franchisee shall pay a fee of one thousand dollars (\$1,000) to the entity designated by the City to manage the PEG access channel(s) being moved. If the Franchisee fails to provide notice consistent with the discretionary move deadline listed above, the Franchisee shall pay a fee of two thousand dollars (\$2,000). The channel relocation fee paid to the DAP shall be used to replace print materials, channel ID's, and other promotional materials (as well as other video materials) containing the old channel number(s), and to otherwise promote the new location of the channel. Franchisee will not move any of the PEG access channels more than once in a three-year period, unless required to by law or regulation.

F. PEG Access Grants and Support for Access Channels.

1. Franchisee shall make contributions to the City to establish a fund to purchase equipment for PEG capital equipment ("PEG Grant"). The contributions shall be in the amount of \$ .45 per customer per month, to be adjusted upwards for inflation every five (5) years based on the Gross National Product Price Index (GNP-PI) published by the U. S. Department of Commerce or three percent (3%), whichever is less. The contributions shall be paid to the City quarterly, on or before the 30th day of each January, April, July and October, for the preceding three (3) calendar months. Such payment is not in lieu of franchise fees or other

taxes which may lawfully be assessed by the City and shall not be deducted from any such payments. Franchisee may, but is not required to, pass all contributions through to subscribers on a pro-rata basis.

2. The Franchisee shall submit to the City a late fee on PEG Grant payments that are submitted after the due date as described above. Late fees for late payment of the PEG Grant shall be computed in the same manner as late fees for the late payment of Franchise Fees as described in Section 10.3 of this Agreement.

3. The PEG Grant shall be paid in addition to any other fees, charges, or assessments required by the City. Franchisee agrees that the PEG Grant made pursuant to this Section 7.12.F. does not fall within the definition of Franchise Fees and shall not be offset against Franchise Fees that the Franchisee owes under this Agreement.

4. If Franchisee makes changes to its Cable System that necessitate modifications to PEG Channel transmission facilities and equipment (including but not limited to the upstream paths), Franchisee shall provide thirty (30) days advance notice of such changes to the City and its Designated Access Providers. In addition, Franchisee shall provide any additional or modified facilities or equipment necessary to implement such modifications within sixty (60) days of the date that the system changes are to be made, so that PEG signal transmission facilities and equipment may be used and operated as intended and without interruption, including, among other things, transmission of live and taped communications to subscribers.

5. The parties agree that all payments and costs of services provided by the Franchisee to the City in support of PEG Access and other in-kind commitments shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. 542). Any PEG Access grants, support fees, or any in-kind services required by this Franchise are intended to conform to provisions of Section 611 of the Cable Communications Policy Act of 1984 as amended, and are not to be or to constitute Franchise Fees.

#### G. General

7.13 No City Control. During the term of this Franchise, the City may not prohibit the Franchisee from providing any program or class of programs, or otherwise censor communications over the Cable System, except that nothing in this section shall be read to authorize the Franchisee to engage in communications which are prohibited by law.

#### 7.14 Emergency Alert System.

A. Franchisee shall, at all times during the term of the Franchise, provide and maintain an Emergency Alert system ("EAS"), consistent with applicable Federal laws and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert Plan requirements.

## SECTION 8. CONSTRUCTION STANDARDS

8.1 This Franchise does not confer the right to place or maintain facilities in any particular location, or in any particular manner, or at all times in the rights of way or any other property occupied pursuant to this Franchise.

8.2. Without limiting the provisions of Sections 1-3:

A. Franchisee agrees that its occupation of the rights of way and such property is subject to the supervision and control of the City.

B. Franchisee agrees to move, relocate or remove its facilities as directed by the City upon reasonable notice. If the Franchisee fails to relocate or remove its facilities as directed by the City within the time agreed, the City may perform the work required and Franchisee shall pay the reasonable cost thereof. In the case of an emergency, the City may move, relocate or remove Franchisee's facilities without notice to Franchisee. Except as specifically stated, any action that the Franchisee may be required to take shall be at Franchisee's reasonable expense.

C. The construction, installation, operation, and maintenance of the Cable System and all parts thereof shall be performed in an orderly and workmanlike manner. All such work shall be performed in and comply with all federal, state, and local laws, regulations and safety requirements, including but not limited to the regulations of the FCC, the Federal Aviation Administration, and the National Electrical Safety Code.

In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standards, if followed, would result in a Cable System that could not meet requirements of federal, state, or local laws; and except for such minor modifications as are typical in the industry). The City may adopt reasonable additional standards after consultation with the Franchisee as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards that may occur during the Franchise term.

## SECTION 9. RATE REGULATION

9.1 For rates subject to rate regulation by the City, all charges to subscribers and users shall be uniform throughout the franchise area with a written schedule of fees for all services offered available upon request. Notwithstanding the foregoing, nothing in this Franchise shall be construed to prohibit Franchisee from reducing or waiving rates and charges in conjunction with marketing and promotional campaigns, retention efforts or discounted rates and charges for the provision of services on a bulk subscription or similar basis. The Franchisee hereby agrees to provide each new subscriber with prices and options for programming services and conditions of subscription to programming and other services.

9.2 The City may regulate Franchisee's rates and charges, except to the extent that it is prohibited from doing so by Federal or State law.

9.3 The Franchisee will notify subscribers and the City of any proposed increase at least thirty (30) days before any increase is to become effective. The notice will list the FCC

community identifier for the Cable System and the name, address, and phone number of a contact person or department at the City.

9.4 The City reserves the right to prescribe reasonable rates and order refunds, to the extent permitted by applicable Federal or State law.

## SECTION 10. FRANCHISE FEES

10.1 The Franchisee shall pay to the City an amount equal to five percent (5%) of the gross revenues derived from the operation of its Cable System to provide cable services in the City, or the maximum amount permitted by Federal law, if larger.

10.2 If Cable Services subject to the Franchise Fee required under this Section 10 are provided to Subscribers in conjunction with non-cable services, Grantee shall allocate revenue for such bundled services between Cable Services and non-cable services in a fair and reasonable manner and not in any manner whose purpose is to evade or substantially reduce Grantee's Franchise Fee obligations to the City.

10.3 Franchise Fee payments due the City under this provision shall be computed at the end of each calendar quarter and shall be due and payable no later than forty-five (45) days after the end of the calendar quarter. Each payment shall be accompanied by a statement of gross revenue for the quarter in a format to be agreed upon by the City and the Franchisee.

10.4 No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the Franchise by the Franchisee.

10.5 The Franchisee shall submit to the City a late fee on Franchise Fee payments which are received after the due dates as described in Section 10.3. For each day after the due date in Section 10.3, the late fee shall be total franchise fee amount that is considered late, times an interest rate, times the number of days late up to the date of payment to the City. The interest rate will be determined based upon the Wall Street Journal Prime Rate +3%, divided by 365, to be updated for each 90-day period that the payment is late. The total payment to the City will be the underpaid franchise fees plus late fees computed in accordance with the section. Any unpaid late franchise fees will continue to accrue interest in accordance with this section until such fees plus the appropriate interest are paid to the City.

10.6 The Franchise Fee shall be paid in addition to fees, charges, or assessments required by the City. The parties agree that all payments and costs of services provided by the Franchisee to the City in support of PEG Access capital commitments shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. 542) and shall not be offset against Franchise Fees that Franchisee owes under this Agreement.

10.7 The City may, no more frequently than once in any twelve (12) month period, conduct a financial review to verify Franchise Fee payments made by the Franchisee. The City may use an independent auditor provided that the auditor is subject to a nondisclosure agreement that is reasonably acceptable to the Franchisee. The Franchisee will provide the

records required by the City in reasonably sufficient detail to conduct the financial review to the City, electronically or at a location directed by the City.

10.8 When the Franchise terminates for any reason (other than through the issuance of a renewal or superseding Franchise), the Franchisee shall file with the City within ninety (90) calendar days of the date its operations in the City cease, a financial statement certified by a certified public accountant or the Franchisee's chief financial officer, showing the gross revenues received by the Franchisee since the end of the previous fiscal year. Adjustments will be made at that time for Franchise Fees due to the date that the Franchisee's operations under the terminated Franchise ceased.

### SECTION 11. PROTECTION OF CITY AND ENFORCEMENT – PERFORMANCE BOND

11.1 The Franchisee shall establish in the City's favor a performance bond in the amount of \$250,000 to secure the faithful performance of its responsibilities under this Franchise and to include an amount necessary to cover the removal of facilities and/or restoration of City facilities within the right-of-way. The performance bond shall be issued by a corporate surety authorized to transact a surety business in Washington.

11.2 In the event the Franchisee fails to comply with its obligations under this Franchise, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the Cable System construction, upgrade, rebuild, or other work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

11.3 The performance bond shall contain the following endorsement or a similar endorsement acceptable to the City:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

11.4 The performance bond required by this Section is in addition to, and not in lieu of, any bonds required consistent with the City's normal practices for similar construction projects.

### SECTION 12. PROTECTION OF CITY AND ENFORCEMENT – APPROVAL OF SURETIES: RELATION TO OTHER REMEDIES

12.1 Any insurance, bonds, security fund, and letter of credit required by this Franchise and the Chapter 5.14 PTMC shall be issued, respectively, by an admitted insurer in Washington, acceptable to the City, and by a financial institution located in Washington acceptable to the City.

12.2 The provision and maintenance of any insurance, bonds, security fund and letter of credit shall not in any respect limit the Franchisee's duty to indemnify the City nor shall recovery of any amounts in any respect prevent the City from exercising any other right or remedy it may have under law or in equity.

### SECTION 13. TERMINATION, REVOCATION, FORFEITURE

13.1 In addition to all other rights, powers, and remedies reserved by the City, the City shall have the additional, separate, and distinct rights to revoke the Franchise, or to shorten the term of the Franchise to a period not shorter than thirty (30) months from the date of the City's action shortening the term, or if the remaining term is thirty-six (36) months or less, half the remaining Franchise term, if:

A. the Franchisee defrauds or attempts to defraud the City or subscribers, or submits materially misleading or incomplete information to the City;

B. the Franchisee attempts to evade any material provision of the Enabling Ordinance and the Port Townsend Municipal Code or applicable law relating to the construction, operation, or repair of its Cable System;

C. the Franchisee violates any material provision of the Franchise or any material rule, order, or regulation enacted by the City Council in accordance with this Franchise;

D. the Franchisee abandons its Franchise (the Franchisee shall be deemed to have abandoned its Franchise if it willfully refuses to operate the Cable System as required by its Franchise, when there is no event beyond the Franchisee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property).

13.2 In the event that the City believes that grounds exist for revocation, termination, or forfeiture of the Franchise, the City shall notify the Franchisee in writing and follow the process described in PTMC 5.14.230.

13.3 Upon revocation of the Franchise, or upon any other termination of the Franchise by passage of time or otherwise, the City shall have the right to require the Franchisee to remove, at the Franchisee's expense, its Cable System from streets, public property, and any private property occupied pursuant to the revoked, canceled, or terminated Franchise. The City shall notify the Franchisee in writing that the Cable System should be removed and identify any period during which the Franchisee will be required to continue to operate the Cable System as provided in Section 16. In removing its Cable System, the Franchisee shall refill and compact, at its expense, any excavation that shall be made and shall leave all streets, public property, and private property in as good a condition as that prevailing prior to the Franchisee's removal of the Cable System. The provisions of Section 14 of this Franchise Agreement and applicable sections of the Port Townsend Municipal Code shall remain in full force and effect until the Cable System is removed.

13.4 Upon revocation or termination of the Franchise, the Franchisee may, if the City declines to acquire ownership of the Cable System pursuant to the Enabling Ordinance, sell or transfer the ownership of the Cable System, subject to the Port Townsend Municipal Code, so

long as such transfer of ownership is completed within one hundred twenty (120) days of the date of termination or revocation.

#### SECTION 14. REMEDIES – LIQUIDATED DAMAGES

14.1 Because the Franchisee's failure to comply with certain provisions of this Franchise will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and the Franchisee hereby agree to the following liquidated damages, which represent both parties' best estimate of the damages resulting from the specified injury. Damage amounts may be adjusted throughout term of Franchise by the City by resolution to take into account increases in the consumer price index. Franchisee waives any claim or defense that the liquidated damages provisions in this Agreement are unenforceable as a penalty or on the basis that they do not fairly approximate the actual damages caused by the breach. Prior to assessing liquidated damages, the City shall follow the "Notice on Noncompliance" procedures contained in PTMC 5.14.230(A). Franchisee agrees that the liquidated damage amounts represent the damages to the City and are collectible by and payable to the City.

14.2 For failure to complete construction or extend service in accordance with the Franchise: \$1,500/day for each day the violation continues;

14.3 For failure to comply with material requirements for PEG Access use of the Cable System: \$750/day for each day the violation continues;

14.4 For repeated, willful, or continuing failure to submit reports, maintain records, provide documents or information: \$500/day for each day the violation continues;

14.5 For violation of customer service standards: \$500 per violation per day;

14.6 For failure to comply with transfer provisions: \$1,500/day from the date of any unlawful transfer; and

14.7 For all other material violations for which actual monetary damages are not readily ascertainable: \$500/day for each day the violation continues.

14.8 The total amount of liquidated damages due in any twelve (12) month period shall not exceed \$25,000.

#### SECTION 15. REMEDIES – CUMULATIVE

15.1 If the City elects to pursue liquidated damages under Section 14 above for a particular event, the liquidated damages shall be the sole and exclusive remedy of the City for that particular event. With respect to any event or cause for which the City does not pursue liquidated damages, the City reserves all remedies it may have under this Franchise Agreement, the Enabling Ordinance, law, and in equity. All remedies provided under this Franchise Agreement or the Enabling Ordinance shall be cumulative, unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall it

relieve the Franchisee of its obligations to comply with the Franchise. Remedies may be used singly or in combination. PROVIDED HOWEVER, the parties do not intend that the City be entitled to multiple monetary recoveries for a single damage or loss. Therefore, notwithstanding the number or nature of the remedies asserted with respect to monetary damage, the City is entitled to be made whole only once.

## SECTION 16. REMEDIES CONTINUITY OF SERVICE

16.1 Subscribers in the Franchise Area may receive all available services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.

16.2 In the event of the termination or transfer of the Franchise, the Franchisee shall ensure that all subscribers receive continuous, uninterrupted service regardless of circumstances in accordance with this Section 16. At the City's request, the Franchisee shall cooperate with the City to operate its Cable System for a 12-month temporary period (the "Transition Period") following termination or transfer of the Franchise as necessary to maintain continuity of service to all subscribers and shall cooperate in the development of plans required to ensure an orderly transition from one operator to another. During such Transition Period, the Cable System shall be operated consistent with the terms and conditions of this Franchise. During the Transition Period, the Franchisee shall be entitled to continue to charge and collect amounts from subscribers for the services provided.

16.3 Except for outages caused by a Force Majeure event, if the Franchisee fails to operate the Cable System for ninety-six (96) hours during any seven (7) day period without prior approval of the City, or if the System is abandoned as defined in Section 13.1.D, the City may, at its option, commence enforcement or termination proceedings pursuant to this Franchise.

16.4 Franchisee shall comply with applicable law regarding any removal of the Cable System. Notwithstanding anything to the contrary set forth in this Franchise, Franchisee may, with the consent of the City, abandon any underground Cable System property in place so long as it does not materially interfere with the use of the public rights-of-way in which such property is located or with the use thereof by a public utility or other Cable Operator.

## SECTION 17. BOOKS AND RECORDS – INSPECTION

17.1 The City may request information in the control or possession of the Franchisee, or its affiliates: (1) to enforce the City's rights or assess compliance with the Franchise and applicable law, other than subject matter addressed by the City's audit rights under Section 10.7 above; (2) in the exercise of any power the City may have under this Franchise or applicable law; or (3) as may be necessary in connection with any proceeding the City may or must conduct under applicable law with respect to the Franchisee's Cable System. Franchisee shall provide materials in response to such requests that are reasonably necessary to determine the matter at issue. Franchisee may provide these materials in electronic format.

17.2 Subject to PTMC 5.14.210, any applicable privacy provisions of the Cable Act, and Washington Public Records Act RCW 42.56, the Franchisee shall provide books and



records for the purposes described above in Section 17.1 and the City shall keep such materials confidential to the fullest extent permitted by applicable law. Material that the City requires the Franchisee to produce under this section shall be produced upon reasonable notice, no later than 30 days after a written request for production or 45 days after such request if the request is made during the two-week period following the end of a calendar quarter. Requests for extensions of time to respond shall not be unreasonably denied. Franchisee shall provide all materials requested by the City electronically or in a manner and location to be agreed upon by the parties.

17.3 The Franchisee may request that the City treat records containing trade secrets or proprietary information as confidential under the Washington Public Records Act RCW 42.56. The Public Records Act and other applicable Federal and State laws shall govern the City's treatment of any such request.

## SECTION 18. PERFORMANCE MONITORING

### 18.1 Triennial Review

A. During the years which commence on the third and/or sixth anniversaries of the effective date of the Franchise, and every third year thereafter, the City may commence a review of the Franchisee's performance under the Franchise. As part of this review, the City may consider: (1) whether the Franchisee has complied with its obligations under the Franchise and applicable law; (2) whether customer service standards, technical standards, or bond or security fund requirements are adequate, inadequate, or excessive; and (3) other issues as may be raised by the Franchisee, the City, or the public.

B. The City shall conduct at least one public hearing at a lawfully noticed City Council meeting to provide the Franchisee and the public the opportunity to comment on the Franchisee's performance and other issues considered as part of this review.

## SECTION 19. MISCELLANEOUS

19.1 Time of Essence. In determining whether the Franchisee has substantially complied with the Franchise, the City and the Franchisee agree that time is of essence.

19.2 Effect of Preemption; Federal and State Law. If the City's ability to enforce any provisions of this Franchise is finally and conclusively preempted by Federal or State law, then the provision shall be deemed preempted but only to the extent and for the period the preemption is required by law. If, as a result of a subsequent change in law or the interpretation of that law, the provision of this Franchise would again be enforceable, it shall be enforceable, and the Franchisee will comply with all obligations thereunder after receipt of notice from the City.

19.3 Force Majeure. The Franchisee shall not be deemed in default or non-compliance with provisions of its Franchise where such non-compliance was due to causes beyond Franchisee's control such as war, riots, civil disturbance, floods, other natural

catastrophes, or similar events beyond the Franchisee's control, fire, vandalism, inability to obtain equipment, materials or other supplies due to strike, lockout, or work stoppage or any law, order regulation, direction, action or request of any civil or military governmental authority. Franchisee shall notify the City of the occurrence or existence of any of these events and the cessation of such event. The Franchisee agrees to take prompt and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, streets, public property, or private property.

19.4 Written Notice. Notices shall be given as follows:

To the City:

City Manager  
City Hall  
250 Madison Street  
Port Townsend, Washington 98368

To Franchisee:

Legal Department  
WAVE Broadband  
3700 Monte Villa Parkway  
Bothell, WA 98021

Notice shall be deemed given three (3) business days after posting with pre-paid postage, first class mail, or immediately upon hand-delivery to the person identified above, at the address specified above.

19.7 Indemnification.

A. Franchisee shall be responsible to the City for all damages, costs, losses, or expenses for the repair, replacement, or restoration of City's property, equipment, materials, structure and facilities if and to the extent damaged, destroyed or found to be defective as a result of Franchisee's negligence, willful misconduct, or strict liability.

B. Franchisee, hereby releases, waives, covenants not to bring suit against the City, its subcontractors, agents, representatives, assigns, officers, employees, and elected officials on any claim, demands, or causes of action, and judgements for: (1) damage to or loss of property of any person, (including, but not limited to Franchisee, its agents, officers, employees, directors and subcontractors, City's agents, officers and employees, and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income to any person except to the extent such damage loss death or bodily injury is caused by the sole and exclusive negligence or wrongdoing of the City.

C. Franchisee, for itself and its agents, employees, directors, officers, contractors and subcontractors, hereby agrees to defend, indemnify, and hold the City, agents, representatives, employees, officers, elected officials, assigns, contractors and subcontractors,

harmless from and against any and all claims, demands, suits, causes of action and judgements, losses, damages, and costs, including without limitation, attorney's fees and the costs of litigation, for: (1) damage to or loss of property and/or (2) death, bodily injury, illness, disease, worker's compensation injury, loss of services, or loss of income to any person, to the extent the claims arise out of or result from the negligent acts or omissions, willful misconduct, or strict liability activity of the Franchisee, its agents, employees, directors, officers, contractors and subcontractors, and the agents and employees of any contractors or subcontractors as the proximate cause. The Franchisee further agrees to indemnify, defend, and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards or liability to the Franchisee's own officers and employees, including those claims to which the Franchisee might otherwise have immunity under title 51 RCW.

D. In the event that any claim or loss is found by a court of competent jurisdiction or administrative tribunal to be caused by the concurrent fault of both Franchisee and City, then each party shall be responsible to the extent found by such court or administrative tribunal.

E. Franchisee shall use its commercially reasonable efforts to ensure that the terms of each contract awarded to a contractor by the Franchisee for work in the public-rights of way or on City property to be undertaken pursuant to this Franchise shall contain indemnity and insurance provisions whereby the contractor shall indemnify City and provide insurance coverage to the same extent as described in PTMC 5.14.090.

F. The City shall be responsible to the Franchisee for all damages, costs, losses, or expenses for the repair, replacement, or restoration of Franchisee's property, equipment, materials, structured and facilities, if and to the extent damaged, destroyed or found to be defective as a result of the City's negligence, willful conduct, or strict liability.

G. The City, for itself and its agents, employees, officers, elected officials, contractors and subcontractors hereby agree to defend, indemnify, and hold Franchisee, its successors, agents, representatives, assigns, officers, employees, and contractors and subcontractors harmless from and against any and all claims, demands, suits, causes of action, and judgements losses, damages and costs, including without limitation attorney's fees and costs of litigation for: (1) damage to or loss of the property of any person; and/or (2) death, bodily injury, illness, disease, worker's compensations, . loss of services, or loss of income to any persons to the extent the claims arise out of or result from negligence acts or omissions, willful misconduct or strict liability of the City, its agents, employees, directors, officers, contractors or subcontractors and the agents and employees of the contractors and subcontractors as the proximate cause.

H. Either party shall give the other party prompt written notice of any claims or suits. Either party shall, at its sole cost and expense, have the right to investigate and defend same to the extent of its own interest.

19.8 Benefit to City. This Franchise shall be subject to the provisions of the Port Townsend Municipal Code. In the event of a conflict between this Franchise and the City Code, the provisions which afford the greatest benefit to the City shall apply.

19.9 Third Party Right of Action. This Franchise does not confer any contractual rights of action on any persons or entity other than City and Franchisee. No third party has standing to enforce or sue under this Franchise.

19.10 Washington Law Applies. Except as to matters that are governed solely by Federal law, this Franchise will be governed by and construed in accordance with the laws of the State of Washington.

PASSED & APPROVED by the City of Port Townsend, Washington and approved by the City Council on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

THE CITY OF PORT TOWNSEND, WASHINGTON

BY:

\_\_\_\_\_  
John Mauro, City Manager

ATTEST:

\_\_\_\_\_  
Joanna Sanders, City Clerk

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Heidi Greenwood, City Attorney

## **APPENDICES**

**A. PEG links**

**B. Complimentary Cable Drops and Service**

**C. Customer Service Standards**

**APPENDIX A**

**PEG Links**

<b>Location</b>	<b>Address</b>

**APPENDIX B**

**Complimentary Cable Drops and Service**

<b>Location</b>	<b>Address</b>

## APPENDIX C

### Customer Service Standards

The Franchisee shall comply with the following Customer Service and reporting requirements. These requirements include, but are not limited to, the requirements set forth in FCC regulations, including 47 C.F.R. §76.309, 47 C.F.R. §76.1602, and other applicable federal and state laws. To the extent the provisions of these Customer Service Standards differ from applicable FCC regulations or any applicable law, the provision or provisions that impose the highest standard or greatest legal duties or obligations upon the Franchisee shall take precedence, unless a different order of precedence is expressly set herein.

### DEFINITIONS

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below:

"Cable Operator" shall have the meaning set forth in Section 602(5) of the federal Communications Act, 47 U.S.C. 522(5).

"Cable Services" shall mean (a) the one-way transmission to Customers of video programming, or other programming service, and (b) Customer interaction, if any, which is required for the selection and use of such video programming or other programming service.

"Cable System" shall have the meaning set forth in Section 602(7) of the federal Communications Act, 47 U.S.C. § 522(7).

"City" means the City of Port Townsend, Washington.

"Complaint" shall mean any issue raised by a Customer that is a violation of the Customer Service Standards notification of which has been made to the Cable Operator either through the Franchisee's Customer Service Center (as described in Section 2.1 below), Franchisee's customer support call center (as described in Section 3.2 below) or in writing sent to Franchisee's headquarters address.

"Customer" means any person who lawfully receives Cable Services or Other Services from the Cable Operator.



“Customer Service Representative” (“CSR”) means any person employed by the Franchisee to assist, or provide service to Customers, whether by answering public telephone lines, writing service or installation orders, answering Customers’ questions, receiving and processing payments, or performing other Customer service-related tasks.

“Escalated Complaint” means a Complaint that is referred to a Cable Operator by the City.

“Franchisee” shall mean a Cable Operator who has been granted a franchise by the City of Port Townsend to provide Cable Services.

“Other Service” means any wire or radio communications service, including, but not limited to, any interactive television or Internet Service, provided through the use of any of the facilities of a Franchisee that are used in the provision of a Cable Service.

“Normal Business Hours” means the hours of 8:00 a.m. to 8:00 p.m. on Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday, excluding legal holidays.

“Normal Operating Conditions” means service conditions within the control of a Franchisee. Those conditions that are not within the control of a Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of a Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

1. Customer Service.

1.1. All officers, agents, and employees of the Franchisee, its contractors and subcontractors who are in contact with Customers by telephone, in writing, or in person shall:

1.1.1. be courteous, knowledgeable and helpful; provide complete and accurate information; and deliver effective, timely and satisfactory service in all contacts with Customers;

1.1.2. be fluent in English and able to communicate clearly with Customers in English; and

1.1.3. (for those who are in personal contact with Customers at the Customer's premises) have visible identification cards bearing their name and photograph. The Franchisee shall account for all identification cards at all times. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. Every vehicle of the Franchisee used for providing services to Customers shall be clearly visually identified to the public as working for the Franchisee.

1.2. The Franchisee shall use its best efforts to make all customer services available in Spanish and other languages, in addition to English.

1.3. Trees and shrubs or other landscaping on a Customer's property that are damaged by Franchisee, or any employee or agent during installation or construction for the Customer or in the process of serving adjacent structures, shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner of the property on which they are located.

1.4. The Franchisee shall, at its own cost and expense, and in a manner approved by the property owner and the City, restore any property to as good condition as before the work causing such disturbance was initiated. The Franchisee shall repair, replace or compensate all property owners for damages resulting from the Franchisee's installation, construction, service or repair activities for a Customer.

1.5. The Franchisee shall clean all areas surrounding any work site of debris caused by the Franchisee's activities and ensure that all cable materials are disposed of properly.

1.6. Satisfaction Guaranteed. The Franchisee shall guarantee Customer satisfaction for every Customer who requests new installation of Cable Services or Other Services or adds any additional programming service to the Customer's cable subscription by allowing for a risk-free discontinuation of unsatisfactory services. Any such Customer who adds Cable Services or Other Services to his or her account, and then requests discontinuation of such service within thirty (30) days due to dissatisfaction with the service, shall receive a credit to his/her account in an amount equal to the pro rata charge for the remaining days of service following the request to disconnect. If a Customer subscribes to a service under a promotion that provides free service and chooses to disconnect during the promotion window, there shall be no charge of any kind for the service or for disconnection of the service. Upon a Customer's request, a Franchisee will promptly downgrade or disconnect the Customer from the Franchisee's Cable system.

2. Office Availability.

2.1. Franchisee will maintain a Customer Service Center within or near the City limits. The Customer Service Center will be open for walk-in traffic at least nine (9) hours per day (except legal holidays) Monday through Friday, with some evening hours, and at least six (6) hours on Saturday to allow Subscribers to pay bills, drop off equipment and to pick up equipment.

2.2. Each Franchisee will perform service calls, installations, and disconnects at least twelve (12) hours per day Monday through Saturday, except legal holidays, provided that a Franchisee will respond to outages twenty-four (24) hours a day, seven (7) days a week.

3. Telephones. All Call Response statistics shall be measured on the basis of call response statistics for all call centers that serve Subscribers. If the call centers serve Subscribers located in other communities, the Franchisee shall insure that call center representatives do not give priority or preferential treatment to Subscribers located in other communities.

3.1. Definitions of Call Response terms.

3.1.1. "Answer Time" is the interval between when the Franchisee receives a call and when an interactive voice response (IVR) or agent answers.

3.1.2. "Speed of Answer" is the amount of time between when the Customer is transferred into the agent queue from either an IVR or an agent and the time an agent answers.

3.1.3. "Calls Abandoned" is the percentage of calls in any agent queue that are abandoned, disconnected or dropped for any reason.

3.2. Each Franchisee shall establish a publicly listed local toll-free telephone number. The phone will be answered by a CSR twenty-four (24) hours per day, seven (7) days per week, so that the Franchisee can respond to requests for service, complaints, inquiries and outages as required herein.

3.3. Standards for Call Response.

3.3.1. Answer Time will not exceed thirty (30) seconds. Under Normal Operating Conditions, the Franchisee shall meet this requirement at least ninety (90) percent of the time measured on a quarterly basis.

3.3.2. The average Speed of Answer shall not exceed thirty (30) seconds. Under Normal Operating Conditions, the Franchisee shall meet this requirement at least ninety (80) percent of the time measured on a quarterly basis...

3.3.3. The percentage of Calls Abandoned shall not exceed three (3) percent under Normal Operating Conditions.

3.4. Customer Service Reports.

3.4.1. At the request of the City, a Franchisee shall submit reports on all Customer Service Standards identified herein during each successive calendar quarter for the term of the Franchise, except as otherwise might be provided herein. If a Franchisee's reports for two (2) quarters within a calendar year fail to demonstrate that the Franchisee has complied with any Customer Service Standard, the Franchisee shall thereafter submit monthly reports about performance of each such requirement until it reports three (3) consecutive months with less than five (5) percent deviation from any minimum required standard, unless the Franchisee demonstrates to the City's satisfaction that the deviation occurred when it was not operating under Normal Operating Conditions as defined in 47 C.F.R. §76.309, and the Franchisee submits a report to the City regarding the nature and duration of such non-Normal Operating Conditions.

3.4.2. Timing. A Franchisee shall submit quarterly reports if requested by the City within thirty (30) days after the close of the applicable reporting period. Each report shall include data from the applicable reporting period.

3.4.3. Compliance. If a quarterly report indicated that a Franchisee has failed to meet any of the minimum required standards, the Franchisee shall provide a written explanation of the deviation within ten (10) business days of the report, including steps being taken to cure the deviation, and the time expected to implement the cure. A Franchisee must cure within thirty (30) days unless a longer period is agreed to in writing by the City, which agreement shall not be unreasonably withheld.

4. Confirmation of Initial Service Request, Change in Service, or Disconnection. Promptly after a Subscriber request for initial service, for service changes/upgrades/downgrades, and/or for scheduling of service call, a Franchisee shall send electronically clear and concise written confirmation to the Subscriber. This confirmation should include the services chosen by the Subscriber including any up upfront costs, and a reasonable summary of the subscribers' regular bill including taxes and fees.

5. Scheduling Work.

5.1. All appointments for service, installation, or disconnection will be specified by date. Each Franchisee will set a specific time at which the work will be done, or offer a choice of time blocks, which will not exceed four (4) hours in length. A Franchisee may also, upon request, schedule service installation calls outside normal business hours, for the express convenience of the Customer.

5.2. If at any time an installer or technician is late for an appointment and/or believes a scheduled appointment time will be missed, an attempt to contact the Customer will be made before the end of the appointment window and the appointment rescheduled at a time convenient to the Customer.

5.3. Franchisee will offer to Subscribers who have experienced a missed appointment (where the missed appointment was due to the fault of the Franchisee) a credit on the Subscriber's bill in the amount of twenty dollars (\$20) or a substantially similar benefit.

5.4. If the Franchisee makes reasonable and no less than three (3) attempts to confirm an appointment during the scheduled appointment time or appointment window and is unsuccessful in obtaining such confirmation, the Franchisee may assume that the Customer has cancelled the appointment.

5.5. Under normal operating conditions, the service standards set forth in Sections 4.1-4.4 will be met at least ninety-five percent (95%) of the time, measured on a quarterly basis.

6. Service Standards.

6.1. Under Normal Operating Conditions, requests for service, repair, and maintenance must be acknowledged by a trained Customer Service Representative within twenty-four (24) hours, or before the end of the next business day, whichever is earlier.

6.2. A Franchisee will respond to all other customer inquiries (including billing inquiries) within twenty-four (24) hours of the inquiry or Complaint.

6.3. Under Normal Operating Conditions, repairs and maintenance for outages or service interruptions that are caused by Franchisee's equipment and that involve a loss reception on all channels or affect five (5) or more customers must be completed within

twenty-four (24) hours after the outage or interruption becomes known to Franchisee, where the Franchisee has adequate access to facilities to which it must have access in order to remedy the problem.

6.4. Under Normal Operating Conditions, work to correct all other service problems must be begun by the next business day after notification of the service problem, and must be completed within five (5) business days from the date of the initial notification of a problem.

6.5. When Normal Operating Conditions do not exist, a Franchisee will complete the work in the shortest time possible.

6.6. A Franchisee will not cancel a service or installation appointment with a Customer after the close of business on the business day preceding the scheduled appointment, whichever is earlier.

6.7. Under Normal Operating Conditions, the service standards set forth in Sections 5.1 - 5.7 will be met at least ninety-five percent (95%) of the time, measured on a quarterly basis.

7. Disabled Services. With regard to Subscribers with verified disabilities that would prevent them from picking up or delivery equipment, upon Subscriber request, each Franchisee will arrange for pickup and/or replacement of converters or other Franchisee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer) at no charge to the Subscriber.

8. Notice to Subscribers regarding Service. A Franchisee will provide each Subscriber at the time service is installed, and annually thereafter in correspondence in a manner consistent with federal law, clear and accurate written information with regard to:

8.1. Products and services offered by a Franchisee, including its channel lineup;

8.2. Process and procedures for a service call, filing a Complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);

8.3. The telephone number and address of the City office responsible for administering the Cable Television Franchise;

8.4. Information regarding the current rates and charges for all services, products, and equipment provided by the Franchisee, Channel positions, delinquent Subscriber disconnect and reconnect procedures; information regarding the availability of parental control devices, the conditions under which they will be provided, and the cost (if any) to be charged;

8.5. Descriptions of any discounts, services, or specialized equipment available to Subscribers who are seniors or with disabilities; explaining how to obtain them; and explaining how to use any accessibility features;

8.6. Installation and service maintenance policies, including the Customer responsibilities for equipment;

8.7. Instruction on the use of cable TV service, remote control, and all other equipment provided by a Franchisee; and

8.8. Days, hours of operation, and locations of the Customer Service Centers.

9. Changes in Noticed Information. Franchisee will provide to the City (or designee) at least thirty (30) days in advance, and to all Subscribers at least thirty (30) days in advance, written notice of any material changes in the information required to be provided under these Customer Service Standards, except that, if federal law establishes a shorter notice period and preempts this requirement, the federal requirement will apply.

10. Truth in Advertising. Each Franchisee will take appropriate steps to ensure that all written Franchisee promotional materials, announcements, and advertising of residential Cable Services to Subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms and is in compliance with FCC Section 76.946. In the case of telephone orders, a Franchisee will take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential Customers in advance of taking the order.

11. Interruptions of Service. A Franchisee shall inform Subscribers and the City three (3) days prior to any scheduled or planned interruption of service for planned maintenance or construction; provided, however, that planned maintenance that does not require more than one (1) hour interruption of service and/or that occurs between the hours of 12:00 a.m. and 6:00 a.m. will not require such notice to Subscribers. Notification to Customers of a planned outage may take the form of a door hanger, a message or insert into the monthly bill, or a telephone call, supplemented with on-screen messages announcing the planned outage. The Franchisee's Internet Service Customers may receive notification by e-mail to the address specified by the Customer.

12. Billing Statement.

12.1. A Franchisee's monthly billing statement must be clear, concise, and understandable; must itemize each category of service and equipment provided to the Subscriber; and must state clearly the charges therefor. The Franchisee shall provide a due date on each bill that is at least 30 days from the beginning date of the applicable billing cycle. A monthly bill shall be issued to all customers regardless of balance due. The customer shall retain the option of whether to receive bills by mail or electronically.

12.2. The Franchisee shall respond to a customer's billing inquiry, general question, or comment made by telephone or e-mail within 48 business hours after receipt.

12.3. If a Customer's service bill is not paid by the due date the Franchisee may apply an administrative/late fee to the Customer's account. If the Customer's bill is not paid within 45 days of the beginning date of the applicable service period, the Franchisee may perform a "soft" disconnect of the Customer's service. If the Customer's service bill is not paid within 52 days of the beginning of the applicable service period, the Franchisee may disconnect the Customer's service, but only upon showing that it provided ten days' notice to the Customer that such disconnection may result.

12.4. An administrative/late fee may not be imposed unless the outstanding balance exceeds \$10.00 and late fees may not exceed \$10.00 per incident.

12.5. Subscribers will not be charged a late fee or otherwise penalized for any failure by a Franchisee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made. Payments will be considered timely if postmarked on the due date.

12.6. A Franchisee's bill must permit a Subscriber to remit payment by mail, electronically, or in Person at the Franchisee's local office or at a listed drop-off location.

13. Credit for Service Impairment.

13.1. A Subscriber's account will be credited a prorated share of the monthly charge for the service upon Subscriber request if a Subscriber is without service or if service is substantially impaired for any reason for a period exceeding four (4) hours during any twenty-four (24) hour period.



13.2. A Franchisee need not credit Subscriber where it establishes that a Subscriber will obtain a refund for a loss of service or impairment caused by the Subscriber or by Subscriber owned equipment (not including, for purposes of this Section 13.2, in-home wiring installed by Franchisee).

14. Billing Complaints. Franchisee shall provide an initial response or acknowledgement to all written billing Complaints from Subscribers within 48 hours of receipt of the Complaint and a final written response within thirty (15) days of receipt of the Complaint.

15. Billing Refunds. Refunds to Subscribers will be issued no later than:

15.1. The later of the Subscriber's next billing cycle following resolution of the refund request, or thirty (30) days; or

15.2. The date of return of all Equipment to Franchisee, if Cable Service has been terminated.

16. Credits for Cable Service. Credits for Cable service will be issued no later than the Subscriber's next billing cycle after the determination that the credit is warranted.

17. Disconnection/Downgrades.

17.1. A Subscriber may terminate service at any time.

17.2. If a Customer requests cancellation of any or all services, billing for affected services shall end on the same day, or on the future date for which the cancellation is requested. After the requested, cancellation date, the Customer shall not be responsible for cable services delivered. The Franchisee must refund any credit balance owed the Customer, less any owed or disputed amounts, within 30 days after the close of the Customer's billing cycle following the return of the equipment and request for cancellation. No period of notice before voluntary termination or downgrade of Cable service may be required of Subscribers by any Franchisee. There will be no charge for disconnection and any downgrade charges will conform to applicable law.

18. Security Deposit. Any security deposit and/or other funds due a Subscriber that disconnects or downgrades service will be returned to the Subscriber within thirty (30) days or in the next billing cycle, whichever is later, from the date disconnection or downgrade was requested except in cases where the Subscriber does not permit the Franchisee to recover its

equipment, in which case the amounts owed will be paid to Subscribers within thirty (30) days of the date the equipment was recovered, or in the next billing cycle, whichever is later.

19. Disconnection due to Nonpayment.

19.1. A Franchisee may not disconnect a Subscriber's Cable service for non-payment unless:

19.1.1. The Subscriber is delinquent in payment for Cable service;

19.1.2. The Subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and

19.1.3. Franchisee has responded in writing to any pending written inquiry regarding the bill at issue.

19.2. If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the Franchisee will not disconnect service. Service may only be terminated on days in which the Customer can reach a representative of the Franchisee either in person or by telephone.

19.3. The Franchisee will promptly reinstate service after disconnection (except as noted below) upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any.

20. Immediate Disconnection. A Franchisee may immediately disconnect a Subscriber for any lawful reasons, including but not limited to:

20.1. The Subscriber is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the Franchisee's Cable System;

20.2. The Subscriber is not authorized to receive a service, and is facilitating, aiding or abetting the unauthorized receipt of service by others; or

20.3. Subscriber-installed or attached equipment is resulting in signal leakage that is in violation of FCC rules.

20.4. Abusive behavior by Customer toward a Franchisee or a Franchisee's employee.

21. Deposits. A Franchisee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers. Deposits will be placed in an interest-bearing account, and the Franchisee will return the deposit, plus interest earned to the date the deposit is returned to the Subscriber, less any amount the Franchisee can demonstrate should be deducted for damage to such equipment.

22. Parental Control Option. Without limiting a Franchisee's obligations under Federal law, a Franchisee must provide parental control devices at no charge to all Subscribers who request them that enable the Subscriber to block the video and audio portion of any Channel or Channels of programming.

23. Escalated Complaint. Any Customer who is dissatisfied with any proposed disposition of a Complaint by a Franchisee or who has not received a decision within the required fifteen (15) day period shall be entitled to have the Complaint reviewed by the City.

23.1. The Customer may initiate the review either by calling the City or by filing a written Complaint, by letter or in electronic form, together with a Franchisee's written decision, if any, with the City.

23.2. The Franchisee must attempt to contact the Subscriber who is the subject of the Escalated Complaints within two business days of receiving the Escalated Complaint notice from the City.