EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance Granting a Telecommunications Franchise to Astound Broadband, LLC d/b/a Wave

	Consent
X	Action
09/14/16	First Reading
09/21/16	Second Reading
09/28/16	Third Reading
	Public Hearing

COUNCIL BILL #	CB1609-35
Originating Department	Legal
Contact Person	Katie Rathbun
Phone Number	425.257.7007
FOR AGENDA OF	Sept. 14, 2016
	Sept. 21, 2016
	Sept, 28, 2016

Initialed by:
Department Head
CAA db
Council President

Location	Preceding Action	Attachments	Department(s) Approval
	Review by Legal, Permit Services, and Information Technology	Ordinance	Legal, Permit Services, Information Technology

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Astound Broadband, LLC (Wave) requests a franchise to provide telecommunication services in Everett. Astound is the successor to Black Rock Cable which previously held an open video system franchise with the City. Initially, Astound will focus on providing services including telecommunications, high-speed Internet access, data transport and dark fiber leasing, to business customers.

Federal law allows cities to negotiate the terms of franchises, but does not allow cities to refuse to authorize a franchise. Authorization of the franchise will provide additional telecommunication services in Everett. Astound, the City Attorney's Office, Permit Services, and Information Technology staff negotiated the proposed franchise. This franchise is substantially similar to the telecommunications franchise granted to the Zayo Group, LLC in November 2012, Noel Communications in 2014, and Mobilitie Investments in 2015.

RECOMMENDATION: (Exact action requested of Council):
Adopt an Ordinance Granting a Telecommunications Franchise to Astound Broadband, LLC d/b/a Wave.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A TELECOMMUNICATIONS FRANCHISE TO ASTOUND BROADBAND, LLC D/B/A WAVE.

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1. RECITALS

WHEREAS, the City is authorized to grant franchises for the installation, operation and maintenance of telecommunications services within the City; and

WHEREAS, the Grantee, Astound Broadband, LLC d/b/a Wave, has represented to the City that it provides a telephone business as defined by RCW 82.16.010, and has applied to the City for a telecommunications services franchise to construct, operate and maintain a telecommunications service within the City; and

WHEREAS, the Grantee is willing to accept such a franchise subject to the terms and conditions stated herein and to abide by these terms and conditions; and

WHEREAS, the City Council finds that it would serve the public interest of the residents of the City to grant a non-exclusive telecommunications services franchise to the Grantee subject to the terms and conditions set forth below.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

2. DEFINITIONS

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

2.1 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

2.2 "Assurance" shall mean an irrevocable letter of credit from a financial institution satisfactory to the City, a performance bond or other form of assurance of financial responsibility reasonably acceptable to the City. All Assurances shall be in a form acceptable to the City's Risk Manager and City Attorney, and if a bond, with a surety acceptable to the City's Risk Manager and City Attorney.

2.3 "Cable Service" means (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

2.4 "City" is the City of Everett, Washington, a body politic and corporate under the laws of the State of Washington, and all of the area within its boundaries, as such may change from time to time.

2.5 "City Council" means the Everett City Council, or its successor, the governing body of the City of Everett.

2.6 "Facilities" means all of the plant, equipment, fixtures, appurtenances, antennas, and other Facilities in the public rights of way necessary to furnish and deliver Telecommunications Services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, ducts, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of Telecommunications Services.

2.7 "FCC" means the Federal Communications Commission.

2.8 "Franchise" means the document in which this definition appears, i.e., this ordinance or contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

2.9 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

2.10 "Fully Allocated Costs" means the City's proportionate share of all direct and indirect costs, including interest on debt or return on investment, of constructing, relocating or placing additional ducts, conduit or related structures by Grantee for the City alongside or together with ducts, conduit or structures by and for Grantee. If the construction, relocation, or placing of additional ducts, conduit or related structures by Grantee is performed by a third party or independent contractor, "fully allocated cost" shall be the proportional share of the amount charged by the third party or independent contractor to, and paid by, Grantee, together with a reasonable charge by Grantee for administration of the contract and work by the third party or independent contractor.

2.11 "GAAP" means generally accepted accounting principles.

2.12 "Grantee" means Astound Broadband, LLC d/b/a Wave, or its lawful successor, transferee or assignee.

2.13 "Gross Revenues" means all gross revenues received by Grantee or its affiliates from the provision of intrastate telephone business activities in the City of Everett, as described in Utility Tax below.

2.14 "Incremental Costs" means the direct and actual costs of materials, supplies and construction which would not have been incurred by Grantee but for the specific construction or placement of only additional ducts, conduit or related structures for the City. Incremental costs do not include a profit.

2.15 "Open Video System" means a facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, provided that the Federal Communications Commission has certified that such system complies with 47 CFR 76.1500 et seq.

2.16 "Person" means any individual, sole proprietorship, partnership, limited liability company, association, or corporation, or any other form of entity or organization.

2.17 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and are maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

2.18 "State" means the State of Washington.

2.19 "Subscriber" means any Person who or which purchases, leases, rents, obtains or subscribes to Telecommunications Service provided by Grantee by means of or in connection with the Grantee's Telecommunications System.

2.20 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. §153(43)).

2.21 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the Facilities used (as provided in 47 §U.S.C. 153(46)). Telecommunication Service does not include Cable Service or an Open Video System.

2.22 "Telecommunications System" shall mean Facilities used to provide Telecommunications Service.

3. GRANT OF FRANCHISE

3.1. Grant

A. The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain and reconstruct a Telecommunications System for the limited purpose of providing Telecommunications Services, subject to the terms and conditions set forth in this Franchise. In order to provide any other services over the Facilities, the Grantee shall be required to obtain any additional governmental authorization(s) required by federal, State or local law.

B. Each and every term, provision or condition herein is subject to the provisions of state law, federal law, the City Charter and City ordinances and regulations. As provided by Everett City Charter §13.4, this Franchise shall be subject to the right of the City Council, or the people of the City acting for themselves by the initiative and referendum, at any time, subsequent to the grant, to repeal, amend or modify the Franchise with due regard to the rights of the Grantee and the interest of the public; and to cancel, forfeit and abrogate any such grant if the Franchise granted hereby is not operated in full accordance with its provisions, or at all; and at any time during the grant to acquire, by purchase or condemnation, for the use of the City itself, all the property of the Grantee

within the limits of the public streets, at a fair and just value, which shall not include any valuation of the Franchise itself unless required by law, which shall thereupon terminate.

C. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Telecommunications Service.

D. No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

E. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

F. This Franchise does not authorize Grantee to provide Cable or Open Video System services. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to Cable or Open Video System services, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City separate authorization to provide Cable or Open Video System services, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

G. Grantee may not lease, rent, transfer, convey, or sell Facilities in whole or in part unless the Person to whom the Facilities will be transferred has first been granted a franchise by the City.

3.2. Use of Rights-of-Way

A. Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such Facilities as are necessary and appurtenant to the operation of Telecommunication Services within the City.

B. Grantee must follow City requirements for placement of Telecommunications Facilities in Rights-of-Way, including the specific location of Facilities in the Rights-of-Way, and must in any

event install Telecommunication Facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications Facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Telecommunication Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. With regard to its management of the Rights-of-Way, the City shall treat the Grantee and other users of the Rights-of-Way in a competitively neutral and nondiscriminatory manner in accordance with applicable law.

3.3. Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect thirty days after adoption by City Council (the "Effective Date"), and shall terminate five years later on the fifth anniversary of the Effective Date, unless terminated sooner as hereinafter provided.

3.4. Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Telecommunications Systems as the City deems appropriate.

3.5. Police Powers

A. Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power.

B. The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

4. FEE PAYMENT AND FINANCIAL CONTROLS

4.1. Fees

4.1.1. FRANCHISE FEE

Notwithstanding the provisions of Section 13.8 of the City Charter, the parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the right of way for service providers, including for telephone business purposes. Based on the representations of Grantee, it is the City's understanding that Grantee will use the right of way for telephone business purposes as defined by RCW 82.16.010. If this prohibition is removed or does not apply, Grantee agrees the City will assess a reasonable franchise fee in accordance with the City Charter, so long as local, State or federal law does not otherwise prohibit such fee.

4.1.2. UTILITY TAX

The parties further understand that RCW 35.21.870 currently limits the rate of City tax upon telephone business activities to six percent (6%) of Gross Receipts, unless a higher rate is approved by vote of the people. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation, as now or may hereafter exist. Grantee stipulates that all of its business activities in the City of Everett as identified herein that are a telephone business shall be specifically taxable as a telephone business at six percent (6.0%) gross receipts tax rate, as imposed under the City's telephone business tax, adopted in Everett Municipal Code Chapter 3.28. This provision does not limit the City's power to amend Everett Municipal Code Chapter 3.28 as may be permitted by law, including increases to the tax rate. This provision is subject to the exemptions and exceptions identified in Everett Municipal Code §3.28.055.

4.1.3. PERMIT AND ADMINISTRATIVE FEES

City shall charge, and Grantee shall pay, permit fees according to the schedule of permit fees in existence at the time Grantee applies for each Right-of-Way permit provided that such fees are reasonably related to City's costs. The rate charged shall be that rate that the City in good faith determines most closely matches the work to be performed. By way of example only and not limitation, Grantee would be charged the rate for trenching where Grantee intends to install conduit by directional drilling or boring. Where the City incurs reasonable costs and expenses for which a fee is not established, including but not limited to attorneys, consultants, City Staff and City Attorney's Office, in connection with the preparation, review, approval, and enforcement of this Franchise, or review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject, the Grantee shall reimburse the City directly for any and all costs after receiving an invoice documenting said costs and expenses in sufficient detail to demonstrate that they were reasonably necessary to perform the aforementioned actions. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis.

4.1.4 OTHER FEES

This Franchise shall not be construed to prohibit the City from imposing any fee now or hereinafter authorized by law, including, without limitation, fees authorized pursuant to RCW 35.21.860.

4.2. Payments

Grantee's fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

4.3. Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

4.4. Quarterly Fee Reports

Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Telecommunications System and shall be drafted in accordance with GAAP.

4.5. Annual Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

4.6. Audits

On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that fee payments have been underpaid by three percent (3%) or more, Grantee shall pay the total cost of the audit.

4.7. Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due at the rate of one percent (1%) per month, compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

4.8. Tax Liability

The fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City.

4.9. Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the irrevocable letter of credit or performance bond provided by the Grantee.

5. ADMINISTRATION AND REGULATION

5.1. Authority

A. The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under law to any agent in its sole discretion.

B. Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

5.2. Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

6. FINANCIAL AND INSURANCE REQUIREMENTS

6.1. Indemnification

6.1.1. GENERAL INDEMNIFICATION

Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, employees, agents, representatives, and volunteers, harmless from any action or claim for injury, damage, loss, liability, cost, or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of Grantee's conduct. Grantee shall consult and cooperate with the City while conducting its defense of the City. This indemnity provision shall survive the expiration, revocation, or termination of this Franchise.

6.1.2. INDEMNIFICATION FOR RELOCATION

Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its Facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City. This indemnity provision shall survive the expiration, revocation, or termination of this Franchise.

6.1.3. RCW 4.24.115

With regard to any indemnification obligation in this Franchise, if (1) RCW 4.24.115 applies to a particular claim for injury, damage, loss, liability, cost, or expense, and (2) such claim for injury, damage, loss, liability, cost, or expense is caused by or results from the concurrent negligence of (a) the Grantee, its agents, or its employees, and (b) the City, then the Grantee's obligations under this Section shall apply only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City, the Grantee specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Grantee recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. This indemnity provision shall survive the expiration, revocation, or termination of this Franchise.

6.1.4. PROCEDURES AND DEFENSE

If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval.

6.1.5. NON-WAIVER

The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

6.1.6. EXPENSES

Grantee shall pay all expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The City's expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents.

6.2. Insurance

A. Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) 1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than $1,000,000 per occurrence. If the City authorizes sublet work, the Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Service Provider covers such employees.

(2) Commercial General Liability Insurance on an occurrence basis in an amount not less than $2,000,000 per occurrence and at least $2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

(3) Business Automobile Liability Insurance in an amount not less than $1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

B. Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without Grantee providing thirty (30) days' written notice to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

C. Self-insurance is not permitted for this Franchise, unless approved in advance and in writing by the City's Risk Administrator.

6.3. Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

6.3.1. ENDORSEMENTS

All policies shall contain, or shall be endorsed so that:

A. The City, its officers, officials, boards, commissions, employees, agents, representatives, and volunteers are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, replacement or repair, or ownership of the Telecommunications Facilities;

B. Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees, agents, representatives, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees, agents, representatives, and volunteers shall be in excess of the Grantee's insurance and shall not contribute to it; and

C. Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

6.3.2. ACCEPTABILITY OF INSURERS

The insurance obtained by Grantee shall be placed with insurers licensed to do business in the State of Washington with a Best's rating of no less than "A- VII."

6.3.3. VERIFICATION OF COVERAGE

The Grantee shall furnish the City with certificates of insurance (ACORD 25-S) and endorsements (ISO CG 2010) or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City must receive and approve the certificates and endorsements prior to the commencement by Grantee of activities associated with this Franchise. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise and City laws.

6.4. Financial Assurances

A. No later than the Effective Date of this Franchise, Grantee shall establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an Assurance in the amount of twenty-five thousand dollars ($25,000.00).

B. An Assurance may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee; and

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements.

C. The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the Assurance to the amount required under this Franchise. Grantee's maintenance of the Assurance shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the Assurance or otherwise to limit the City's recourse to any other remedy available at law or equity.

D. Grantee shall have the right to appeal to the Chief Financial Officer for reimbursement in the event Grantee believes that the Assurance was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the Assurance has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the Assurance shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

7. REPORTS AND RECORDS

7.1. Records Required

Grantee shall at all times maintain, and shall furnish to the City upon request:

A. A complete set of maps showing the exact location of all Telecommunications System equipment and Facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices on ten days' prior notice for inspection by the City's authorized representative(s) or agent(s) and made available to such persons during the course of inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

B. A copy of all FCC filings on behalf of Grantee which relate to the operation of the Telecommunications System in the City;

C. All construction activity in the City for the previous twelve (12) months; and

D. Any records of Grantee, its parent corporations, and affiliates reasonably related to the administration of this Franchise.

The City may request in writing copies of any records described above, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all requested records shall be furnished to the City, at the sole expense of Grantee. If the requested records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's office. If any records of Grantee are not kept in a local office and not made available as copies to the City upon written request as set forth above, and if the City determines that an examination of such records is

necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee. Grantee shall reimburse the City for any costs and expenses incurred by the City in connection therewith within sixty (60) days of the City's request for reimbursement.

Any record inspected, or viewed, and any record, a copy of which is received by the City, is a public record for the purpose of the Washington State Public Records Act (Chapter 42.56 RCW) and will be treated as such by the City.

7.2. Compliance with Public Records Act

Grantee acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used (including inspection of Grantee's records), or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Grantee. Grantee shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Grantee shall deliver to the City copies of all records relating to this Franchise that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Franchise, the City shall seek to provide notice to Grantee at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Grantee for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Franchise, Grantee shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Grantee to comply with this Section.

8. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

8.1. Right to Construct

Subject to applicable laws, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any Facility needed for the maintenance or extension of Grantee's Telecommunications System.

8.2. General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

8.3. Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose

such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the Facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

8.4. Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs immediately, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

8.5. Compliance with Applicable Codes

8.5.1. City Construction Codes

Grantee shall comply with all applicable City construction codes, including, without limitation, all building codes, zoning codes and regulations.

8.5.2. Tower Specifications

Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations. In the event that Grantee constructs antenna supporting structures (towers) in the City, such towers shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

8.5.3. Safety Codes

Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation, maintenance, and repair of its Telecommunications System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

8.5.4. One Call

Prior to placing any underground Facilities, Grantee shall join and maintain membership in good standing with the Utility Coordinating Council One Call Center or other similar or successor organization that is designated to coordinate underground equipment locations and installations.

Grantee is familiar with RCW Ch. 19.122 (Washington State's "Underground Utilities" statute) and understands, will abide by and adhere to local procedures, customs and practices relating to the one call locator service program.

8.6. GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules, regulations and policies of the City regarding geographic information systems mapping for users of the Rights-of-Way, provided that all similarly situated users of the Rights-of-Way must also accordingly comply.

8.7. Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Telecommunications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, drains, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other Facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Telecommunications System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, replacement or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

8.8. Prevent Injury/Safety

Grantee shall provide and use any equipment and Facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its Facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights. The provisions of this Section 8.8 shall survive the expiration, revocation, or termination of this Franchise.

8.9. Underground Construction and Use of Poles

A. When required by the City, consistent with general ordinances, resolutions, regulations, rules or policies of the City, or applicable State or federal law, Grantee's Telecommunications System shall be placed underground at Grantee's expense. Placing Facilities underground does not preclude the use of ground-mounted appurtenances, small cells, or associated facilities.

B. Where electric and telephone lines are installed underground at the time of Telecommunications System construction, or when all such wiring is subsequently placed underground, all Telecommunications System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Telecommunications System equipment, such as pedestals or small cells and associated facilities must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

C. The Grantee shall utilize existing poles and conduit wherever possible.

D. In the event Grantee cannot obtain the necessary poles and related Facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's Telecommunications System. All poles of Grantee shall be located as designated by the proper City authorities and only upon written consent of the City. Grantee shall apply for and obtain appropriate permits prior to construction or installation of poles or Facilities.

E. At its sole option, the City may require Grantee to install conduit and other underground Facilities in the same trench or location as another permittee when such other permittee is constructing or installing similar facilities at approximately the same time as Grantee. In such case, Grantee shall reimburse the other permittee for its proportional share of the cost of construction and installation. Similarly, the City may require other franchisees or permittees to install conduit and other underground Facilities in the same trench or location as Grantee when such Grantee is constructing or installing similar facilities at approximately the same time as another permittee or franchisee. In such case, the other permittee or franchisee shall reimburse Grantee for the other permittee's or franchisee's proportional share of the cost of construction and installation.

F. This Franchise does not grant, give or convey to the Grantee the right or privilege to install its Facilities in any manner on specific utility poles or equipment of the City or any other Person. Documentation showing Grantee's right to use poles, conduits or other utility Facilities must be provided upon the City's request.

8.10. Electrical Bonding

Grantee shall ensure that all drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

8.11. Repair and Restoration of Property

8.11.1. GENERAL

A. The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

B. Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense. The provisions of this Section 8.11 shall survive the expiration, revocation, or termination of this Franchise.

8.11.2. RIGHTS-OF-WAY AND OTHER PUBLIC PROPERTY

Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

8.11.3. PRIVATE PROPERTY

Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use its best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

8.12. Discontinuing Use/Abandonment of Telecommunications Facilities

Whenever Grantee intends to discontinue using any Facility within the Rights-of-Way, Grantee shall submit for the City's approval a complete description of the Facility and the date on which Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such Facility remain in place, the City may require Grantee to remove the Facility from the Right-of-Way or modify the Facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the Facility as directed by the City, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility. If Grantee abandons its Facilities, the City may choose to use such Facilities for any purpose whatsoever. Upon abandonment, with approval of the City, which approval shall be within the sole discretion of the City, Grantee may transfer ownership of the Facilities to City and, in that case, Grantee shall no longer have any ownership interest in the Facilities.

8.13. Reservation of City Use of Right-of-Way

Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Telecommunications System.

8.14. Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Telecommunications System. Grantee shall comply with any ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's Facilities from imminent danger only.

8.15. Inspection of Construction and Facilities

The City may inspect any of Grantee's Facilities or equipment in the public rights of way at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right, but not the obligation, to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefor. The provisions of this Section 8.15 shall survive the expiration, revocation, or termination of this Franchise.

8.16. Stop Work

A. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City by issuing a stop work order using the procedures established by the EMC Chapter 13.72.

8.17. Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly

and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

8.18. Construction Bond

A. Prior to commencing construction, Grantee shall provide an Assurance to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to restore City streets and other property. The amount of the Assurance shall be two hundred fifty thousand dollars ($250,000), or such lesser or greater amount as is comparable to that required of Telecommunication System providers in the City for construction projects of comparable size, cost and complexity. Normally, the amount of the Assurance shall not exceed 125% of the Permittee's estimated cost of the construction in the public rights of way of the City. Grantee shall pay all premiums or costs associated with maintaining the Assurance, and shall keep the same in full force and effect until the construction of the Telecommunications System shall have been completed and all restoration of public and private property shall have occurred regarding thereto. Thereafter, the Assurance shall be exonerated, subject to the mutual written agreement of the parties.

B. The Assurance may be drawn upon by the City for any proper purpose under this Franchise or as otherwise provided by applicable law.

C. The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the Assurance to the amount required under this Franchise. Grantee's maintenance of the Assurance shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the Assurance or otherwise to limit the City's recourse to any other remedy available at law or equity.

D. Grantee shall have the right to appeal to the Chief Financial Officer for reimbursement in the event Grantee believes that the Assurance was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the Assurance has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the Assurance shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

9. RELOCATION AND MOVEMENT OF FACILITIES

9.1. Movement of Telecommunication Facilities For City Purposes

A. The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's Facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade,

installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee the opportunity to perform such action. In the event of any capital improvement project exceeding $500,000 in expenditures by the City that requires the removal, replacement, modification or disconnection of Grantee's Facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its Facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its Facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise; provided that relocation shall not be required after the expiration of this Franchise if the City consents to the Grantee abandoning its facilities in place.

B. If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all reasonable costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Telecommunications System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

9.2. Relocation of Telecommunication Facilities for Others

If any removal, replacement, modification or disconnection of the Telecommunications System is required to accommodate the construction, operation or repair of the Facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the benefited party pay the costs associated with the removal or relocation. Nothing in the provision shall be construed to give preference or priority to one franchise holder over another with respect to placement or location of facilities.

9.3. Temporary Changes for Other Permitees

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

10. ADDITIONAL FACILITIES

10.1. Grantee to Provide Additional Facilities

Pursuant to RCW 35.99.070, the City may require Grantee, on thirty days' notice, to provide additional ducts, conduits, and related structures necessary to access the conduit when and where

requested by the City in accordance with this Section 10. The City shall only be charged for or responsible for the Incremental Costs, except as provided for in Section 10.5.

10.2. Notice of Incremental and Fully Allocated Costs

At least one hundred twenty (120) days prior to any construction, relocation, or placement of ducts, conduits or related structures in public Rights-of-Way, Grantee shall notify the City of the Incremental and Fully Allocated Costs of the Grantee of providing the City with additional duct, conduit and related structures necessary to access the conduit and of the date such construction, relocation or placement will begin; provided, however, that Grantee need not notify the City of Incremental or Fully Allocated Costs related to Facilities for which the City granted permits for construction prior to the effective date of this Franchise. At its sole option, the City may examine, inspect or audit Grantee's books and records to confirm Grantee's calculation of Incremental or Fully Allocated Costs. If Grantee and the City disagree regarding the appropriateness of Grantee's proposed Incremental or Fully Allocated Costs, the parties agree to negotiate. If the parties do not agree, the City may order Grantee to proceed with the work, and the Superior Court of Snohomish County, Washington shall determine the actual amount of Incremental or Fully Allocated Costs.

10.3. Omitted

10.4. Contract and Compliance with RCW Chap. 80.36

If the City requires Grantee to furnish additional duct, conduit or related structures pursuant to this section, the City and Grantee shall construct the facilities to the same standards as Grantee's own facilities, and shall turn such additional duct, conduit or related structures over to the City upon completion of same and satisfactory inspection thereof by the City. Grantee shall be responsible for required filings, if any, with state agencies or commissions, including, but not limited to, the Washington Utilities and Transportation Commission pursuant to RCW Chap. 80.36.

10.5. Subsequent Responsibility for Fully Allocated Costs

If the City makes the additional duct or conduit and related access structures available to any entity other than Grantee for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the City shall pay Grantee the difference between the Incremental Costs and the Fully Allocated Costs.

11. FRANCHISE VIOLATIONS, REVOCATION AND TERMINATION

11.1. Procedure for Remedying Franchise Violations

A. The City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default if:

(1) Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;

(2) Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;

(3) Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or

(4) Grantee fails to comply with all provisions of federal, state or local law pertaining to Telecommunications System operators.

B. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (C), below; or

(2) cure the default; or

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

C. If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date, or denies the default and requests a meeting in accordance, or the City orders a meeting in accordance with subsection (B), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting.

D. If, after the meeting, the City determines that default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time as the City shall determine. In the event Grantee does not cure within such time frame to the City's reasonable satisfaction, the City may:

(1) Withdraw an amount from the Assurance as monetary damages;

(2) Revoke and terminate this Franchise; and

(3) Take any other legal or equitable remedy available under this Franchise or any applicable law.

These remedies are cumulative and not exclusive.

E. The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be appealed to the Chief Financial Officer or for review by a court of competent jurisdiction under applicable law.

11.2. Termination

A. In addition to revocation or termination in accordance with other provisions of this Franchise, the City may terminate this Franchise and all rights and privileges associated with this Franchise in the procedure described in this Section 11.2.

B. If Grantee has not already had an opportunity to cure a default pursuant to subsection 11.1, the City shall give written notice to the Grantee of its intent to terminate the Franchise prior to its termination of the Franchise. The notice shall set forth the nature of the noncompliance or default. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a satisfactory response from Grantee, it may then seek a termination of the Franchise by the City Council in accordance with this subsection.

C. Any proceeding to terminate this Franchise shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

D. At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the termination, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

E. Within ninety (90) days after the hearing, the City Council shall determine whether to terminate the Franchise and declare that the Franchise is terminated and the irrevocable letter of credit or performance bond forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City Council determines that the Franchise should be terminated, the City Council shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City Council's decision to terminate the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

F. The City Council may at its sole discretion take any lawful action that it deems appropriate to enforce the City's rights under the Franchise in lieu of terminating this Franchise, including, but not limited to, declaratory judgments, injunctions and specific performance.

11.3. Procedures in the Event of Termination or Revocation

A. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may order the removal of the above-ground Telecommunication Facilities and such

underground Facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its Facilities, plant, structures and equipment, Grantee shall backfill at its own expense any excavation made by it and shall restore all Rights-of-Way, public places and private property to the same condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone wires or attachments. The indemnification and insurance provisions and the Assurance, as applicable, shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

B. If Grantee fails to complete any removal required by this subsection to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the Assurance provided by Grantee.

11.4. Alternative Remedies

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

11.5. Failure to Construct or Acquire

This Franchise terminates without further action by the City, notice of default, or opportunity to cure, if Grantee fails to apply for permits, commence construction, or acquire existing Facilities within on hundred and eighty (180) days of the effective date of this Franchise as provided in section 3.3.

12. FRANCHISE TRANSFER

A. The Franchise granted by the City and the entire Telecommunications System in the public rights of way of the City subject to the Franchise shall not be leased, assigned, or otherwise alienated without the express consent of the city by ordinance. This Section in no way prevents or prohibits Grantee from leasing portions of its dark fiber in accordance with its business plan for the provision of Telecommunications Services to the general public. No dealing with the lessee or assignee on the part of the city to require the performance of any act or payment of any compensation by the lessee or assignee shall be deemed to operate as such consent. The Grantee shall promptly notify the City of any actual or proposed lease, assignment or other alienation of the Franchise and the Telecommunications System in the public rights of way of the City. The parties to the proposed lease, assignment or other alienation of the Franchise and the Telecommunications System in the public rights of way of the Franchise shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City. Nothing

contained herein shall require the approval of the City for the provision of telecommunications services or service elements by Grantee to any customer of Grantee.

B. The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

C. Within thirty (30) days of any lease, assignment or other alienation, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other duly notarized written instrument evidencing such lease, assignment or other alienation, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law.

D. In reviewing a request for sale or transfer, the City may inquire into the financial and operational qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said lease, assignment or other alienation upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the financial and operational qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

E. Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Telecommunications System to an entity controlling, controlled by or under the same common control as Grantee, provided that that such proposed successor shall have the same or greater financial qualifications as has Grantee as of the effective date of this Franchise or at the time of such sale, assignment, or transfer, whichever financial qualifications are greater. The proposed assignee or transferee must agree in a duly notarized writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Telecommunications System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

F. Grantee may sell or issue securities to its employees, or to the public, or in a private placement to private investors, in accordance with applicable law, without the consent of the City, provided, however, that such sale or issuance of securities is not likely to adversely affect the ability of Grantee to perform all of its obligations under the Franchise.

13. MISCELLANEOUS PROVISIONS

13.1. Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective address and such notices shall be effective upon the date of mailing. The City or the

Grantee may change these addresses by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Astound Broadband, LLC
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attn: Steve Weed, CEO and Byron Springer, EVP

The City's address shall be:

City of Everett
Paul McKee
3200 Cedar St.
Everett, WA 98201
With a copy to:

City of Everett
City Attorney's Office
2930 Wetmore Avenue
Everett, WA 98201

13.2. Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

13.3. Costs and Expenses to be Borne by Grantee

Grantee shall reimburse the City for all costs and expenses of preparation and publication of this Franchise and any Ordinance related hereto.

13.4. Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

13.5. Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

13.6. No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

13.7. Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

13.8. Venue

Venue for any judicial proceeding regarding this Franchise shall be in Snohomish County.

13.9. Governing Law

This Franchise shall be governed by applicable local, Washington state and federal law. Grantee agrees to comply with all such applicable law.

13.10. Entire Agreement

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written negotiations between the parties.

13.11. Severability

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

13.12. Acceptance

After the passage and approval of this Ordinance and within thirty days after such approval, this Franchise shall be accepted by Grantee by filing with the City Clerk an unconditional, acknowledged written acceptance of all terms and conditions of this Franchise. Failure of Grantee to file such an acceptance within thirty days of approval shall be deemed a rejection by Grantee, and the rights and privileges herein granted shall cease after expiration of the thirty day period after approval, unless the thirty day period is extended by ordinance duly passed for that purpose.

_____
Ray Stephanson, Mayor

ATTEST:

Passed: _____
Valid: _____
Published: _____
Effective: _____

_____
City Clerk