

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

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

WHEREAS, negotiations between Black Rock and the City have been completed and the franchise process followed in accordance with the guidelines established by the City Code and applicable Federal law; and

WHEREAS, pursuant to Section 11.08 of the City Charter, this Franchise was filed with the Finance Director and published once a week for four successive weeks in the City's official newspaper; and

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN

THAT a franchise is hereby granted to Black Rock Cable, Inc. to operate and maintain an open video system in the City of Bellingham upon the following terms and conditions:

Section 1. DEFINITIONS. For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in the Franchise is not defined in this section and there is a definition for the term in the Cable Communications Policy Act of 1984 or the Cable Television Consumer Protection and Competition Act of 1992 or the Telecommunications Act of 1996 (hereinafter collectively referred to as the Cable Act), the Cable Act definition shall apply. Other terms in the Franchise, which are not defined in this section, shall be given their common and ordinary meaning.

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

1 1.2 "Basic Service" or "Basic Cable Service" means any tier of service regularly provided to all
2 subscribers. It includes, but is not specifically limited to, the retransmission of local broadcast
3 television signals and the cablecasting of public, educational, or governmental access channels.
4 Nothing in this definition shall be deemed to limit the rights of Black Rock or the City with
5 respect to the regulation of rates and charges as permitted by applicable law.
6

7 1.3 "Open Video System", or "System," shall have the meaning specified for "Open Video
8 System" in the Cable Act. Unless otherwise specified it shall in this document refer to the open
9 video system constructed and operated in the City of Bellingham under this Franchise.
10

11 1.4 "City" shall mean the City of Bellingham of the State of Washington and all the territory
12 within its present and future boundaries and including any area over which the City exercises
13 jurisdiction.
14

15 1.5 "Gross Revenues" means any and all gross revenues an Open Video System Operator or its
16 affiliates derives directly or indirectly from operation of the Open Video System, including
17 revenue from sales, rental, or installation of equipment, from advertising revenues, from
18 subscribers, and from all carriage revenues received from unaffiliated video programming
19 providers. Gross revenues shall not include any taxes on services which taxes are imposed
20 directly on a subscriber or user by a city, county, state or other governmental unit and collected
21 by a Person subject to this chapter for such taxing entity. Gross revenue shall not include
22 amounts which cannot be collected and are identified as bad debt: provided, that amounts
23 previously identified as bad debt which are eventually collected shall be reported for the period
24 in which that occurs.
25

26 1.6 "Pay Service" or "Premium Service" means programming (such as non-advertiser-supported
27 movie channels or pay-per-view programs) offered individually to subscribers on a per-channel,
28 per-program or per-event basis.
29

30 1.7 "Person" means any individual, corporation, partnership, association, joint venture or
31 organization of any kind and the lawful trustee, successor, assignee, transferee or personal
32 representative thereof.
33

34 1.8 "Public Agency Network" (PAN) is a cable communications network designed principally
35 for the provision of non-entertainment two-way services to schools, public agencies or other non-
36 profit agencies for use in connection with the on-going operations of such institutions.
37

38 1.9 "Subscriber" means any person who legally receives any one or more of the services
39 provided by the Open Video System.
40

41 1.10 "Street" shall mean the surface of and the space above and below the right of way of any
42 public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or
43 driveway now or hereafter existing as such within all incorporated areas of the City of
44 Bellingham.

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

Section 2. FRANCHISE.

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

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

2.3 Franchise Area. The Franchise Area shall be that area within the present or future corporate limits of the City.

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

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

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

2.6 Periodic Public Review of Franchise. The City may at approximately three-year intervals during the term of the Franchise, and at such other times as the City deems appropriate, conduct a public review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that Black Rock is complying with all franchise requirements and local laws concerning the use of the rights-of-way. Additionally, the public review can be used as a forum to publicly discuss Black Rock's service policies and practices although the OVS regulation under the Cable Act may require complaints be filed with the Federal Communications Commission. Both the City and Black Rock agree to make a full and

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1 good faith effort to participate in the review in a manner that accomplishes this end. It is not
2 intended that the Franchise be modified as a result of such review, except as a last resort for
3 achieving the purpose of the review. The City shall establish a procedure for ensuring orderly
4 review, full discussion of any proposed policy changes between the City and Black Rock, and
5 full public hearing regarding all matters discussed during the review.

6
7 Matters appropriate for discussion at the public reviews in accordance with this section
8 include without limitation:

9
10 (a) Black Rock's overall compliance with the Franchise;

11
12 (b) Policies and practices necessary to ensure continued support for public,
13 educational and government access at substantially the same level provided for in the
14 Franchise;

15
16 The periodic public reviews described in this section may be but need not be made
17 coincident with public reviews involved in the consideration of Black Rock requests for
18 franchise renewal, franchise extension, or approval of transfer of system ownership.

19
20 2.7 Transfer of Ownership. This Franchise shall not be sold, leased, mortgaged, assigned or
21 otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be
22 leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto,
23 either legal or equitable, or any right, interest or property herein pass to or vest in any person
24 except Black Rock, either by act of Black Rock or by operation of law, without the prior consent
25 of the City expressed in writing. The granting of such prior consent in one instance shall not
26 render unnecessary any subsequent prior consent in another instance. Any transfer of ownership
27 shall make this Franchise subject to revocation unless and until the City shall have given written
28 prior consent thereto.

29
30 Within 30 days of receiving a request to consent to transfer, the City shall notify Black
31 Rock in writing of information it requires to make its decision whether to consent. When the City
32 has received such information, it shall have 120 days within which to act. If the City has not
33 taken action on Black Rock's request for consent to transfer within this 120-day period, it shall be
34 deemed to have consented.

35
36 This section shall not prohibit the use of Black Rock's property as collateral for security
37 in financing the construction or acquisition of all or part of the open video system franchised
38 hereunder. However, such financing shall be subject to the provisions of this Franchise.

39
40 2.8 Change in Control. Black Rock shall promptly notify the City through the City Council
41 of any proposed change in, transfer of, or acquisition by any other party of control of Black
42 Rock. Except as long as Black Rock retains Sub-S status and otherwise applying to successors
43 and assigns, if beneficial ownership of 10% or more of the stock of Black Rock or of any entity
44 now owning or later acquiring such a beneficial interest is acquired by a single entity or by

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several entities under common control, if such entity or agent of common control is other than an organization a) whose primary business is cable system operation, and b) is more than 50 percent owned by Black Rock or a parent of Black Rock, then a change in control will be deemed to have taken place unless the City, upon request of Black Rock, finds otherwise. Such change in control shall make this Franchise subject to revocation unless and until the City shall have given written consent thereto. For purpose of determining whether it will consent to such change, transfer or acquisition of control, the prospective controlling party to perform the obligations of Black Rock under the Franchise Agreement must have been certified by the Federal Communications Commission to operate as an OVS. The City may condition its consent upon such terms and conditions as it deems appropriate. Consent to the transfer shall not be unreasonably withheld.

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

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

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

2.10 Expiration. Upon expiration of the Franchise, the City shall have the right to:

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

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

(c) invite additional franchise applications or proposals;

(d) terminate the Franchise without further action; or

(e) take such other action as the City deems appropriate.

2.11 Right to Purchase the System.

(a) In the event the City has declared a forfeiture for cause or otherwise revoked for cause this Franchise agreement as provided herein, or in the event of expiration of the initial term of this Franchise agreement without the Franchise being renewed or extended and the City Council has so ordered by resolution, Black Rock shall continue its operations for a period of

270 days after either the effective date of the resolution or expiration of the initial term of the franchise unless the resolution in either case orders termination by Black Rock of its operations at an earlier time. During this period, Black Rock shall not transfer any portion of its system to any other person, including parts of the system rented, leased, or leased purchased without prior written consent of the City. Within 30 days of the order by the City to continue operations, Black Rock shall tender to the City an inventory of its system used in the operations under this Franchise agreement. After receiving the inventory, the City may notify Black Rock that it desires to acquire by purchase all or a portion of the system used by Black Rock in its operation, exclusive of parts of the system essential to Black Rock's operation of parts of the system, or of other systems, not acquired. Such notice shall be by resolution or other appropriate writing of the City and shall state a date upon which Black Rock shall cease its operations and receive payment as described below.

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

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

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

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

1 Section 3. OPERATION IN STREETS AND RIGHTS-OF-WAY

2
3 3.1 Use of Streets. Black Rock may, subject to the terms of this Franchise, erect, install,
4 construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the
5 streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes,
6 amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary
7 and appurtenant to the operation of a Open Video System within the City.
8

9 3.2 Construction or Alteration. Black Rock shall in all cases comply with all lawful City
10 laws, resolutions and regulations regarding the acquisition of permits and/or such other items as
11 may be reasonably required in order to construct, alter or maintain the open video system.
12

13 3.3 Non-Interference. Black Rock shall exert its best efforts to construct and maintain an
14 Open Video System so as not to interfere with other use of streets. Black Rock shall, where
15 possible in the case of above ground lines, make use of existing poles and other facilities
16 available to Black Rock. When residents receiving underground service or who will be receiving
17 underground service will be affected by proposed construction or alteration, Black Rock shall
18 provide at least two weeks' advance notice of the same to such affected residents.
19

20 3.4 Consistency with Designated Use. Notwithstanding the above grant to use streets, no
21 street shall be used by Black Rock if the City, in its sole opinion, determines that such use is
22 inconsistent with the terms, conditions or provisions by which such street was created or
23 dedicated, or presently used under City, State or local laws.
24

25 3.5 Undergrounding. Black Rock shall place underground all of its transmission lines, which
26 are located or are to be located above or within the streets of the City in the following cases:
27

28 (a) all other existing utilities are required to be placed underground by statute,
29 resolution, policy or other regulation;
30

31 (b) Black Rock is unable to get pole clearance;
32

33 (c) underground easements are obtained from developers of new residential areas; or
34

35 (d) utilities are overhead but residents prefer underground (service provided at cost).
36

37 If an ordinance is passed creating a local improvement district which involves placing
38 underground certain utilities including Black Rock's plant which is then located overhead, Black
39 Rock shall participate in such underground project and shall remove poles, cables and overhead
40 wires within such district if requested to do so and place facilities underground. If such
41 undergrounding of Black Rock facilities is part of such a project, the costs thereof shall be
42 included in such local improvement district.
43

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

8 9 3.6 Maintenance and Restoration.

10
11 (a) Restoration. In case of disturbance of any street, public way, paved area or public
12 improvement, Black Rock shall, at its own cost and expense and in accordance with the
13 requirements of local law, restore such street, public way, paved area or public improvement to
14 substantially the same condition as existed before the work involving such disturbance took
15 place. All requirements of this section pertaining to public property shall also apply to the
16 restoration of private easements and other private property. Black Rock shall perform all
17 restoration work promptly. If Black Rock fails, neglects or refuses to make restorations as
18 required under this section, then the City may do such work or cause it to be done, and Black
19 Rock shall pay the cost thereof to the City. If Black Rock causes any damage to private property
20 in the process of restoring facilities, Black Rock shall repair such damage.

21
22 (b) Maintenance. Black Rock shall maintain all above ground improvements that it
23 places on City right-of-way pursuant to this franchise. In order to avoid interference with the
24 City's ability to maintain the right-of-way Black Rock shall provide a clear zone of five feet on
25 all sides of such improvements. If Black Rock fails to comply with this provision, and by its
26 failure, property is damaged, then Black Rock shall be responsible for all damages caused
27 thereby.

28
29 (c) Disputes. In any dispute over the adequacy of restoration or maintenance relative
30 to this section, final determination shall be the prerogative of the City of Bellingham Department
31 of Public Works.

32
33 3.7 Work on Private Property. Black Rock, with the consent of property owners, shall have
34 the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways so as
35 to prevent the branches of such trees from coming in contact with the wires and cables of Black
36 Rock, except that at the option of the City, such trimming may be done by it or under its
37 supervision and direction at the reasonable expense of Black Rock.

38 39 3.8 Relocation.

40
41 3.8.1 City Property. If during the term of the Franchise the City or any government
42 entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or
43 change the grade of any street, public way or other public property; or to construct, maintain or
44 repair any public improvement; or to replace, repair install, maintain, or otherwise alter any

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1 cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including
2 a facility used for the provision of utility or other services or transportation of drainage, sewage
3 or other liquids, Black Rock shall, upon request, except as otherwise hereinafter provided, at its
4 sole expense remove or relocate as necessary its poles, wires, cables, underground conduits,
5 vaults, pedestals, manholes and any other facilities which it has installed.
6

7 3.8.2 Utilities and Other Franchisees. If during the term of the Franchise another entity
8 which holds a franchise or any utility requests Black Rock to remove or relocate such facilities to
9 accommodate the construction, maintenance or repair of the requesting party's facilities, or their
10 more efficient use, or to "make ready" the requesting party's facilities for use by others, or
11 because Black Rock is using a facility which the requesting party has a right or duty to remove,
12 Black Rock shall do so. The companies involved may decide among themselves who is to bear
13 the cost of removal or relocation, provided that the City shall not be liable for such costs.
14

15 3.8.3 Notice to remove or relocate. Any utility, other franchisee, or the City requesting
16 Black Rock to remove or relocate its facilities shall give Black Rock no less than 45 days'
17 advance written notice to Black Rock advising Black Rock of the date or dates removal or
18 relocation is to be undertaken; provided, that no advance written notice shall be required in
19 emergencies or in cases where public health and safety or property is endangered.
20

21 3.8.4 Failure by Black Rock to remove or relocate. If Black Rock fails, neglects or
22 refuses to remove or relocate its facilities as directed by the City; or in emergencies or where
23 public health and safety or property is endangered, the City may do such work or cause it to be
24 done, and the cost thereof to the City shall be paid by Black Rock. If Black Rock fails, neglects
25 or refuses to remove or relocate its facilities as directed by another franchisee or utility, that
26 franchisee or utility may do such work or cause it to be done, and if Black Rock would have been
27 liable for the cost of performing such work, the cost thereof to the party performing the work or
28 having the work performed shall be paid by Black Rock.
29

30 3.8.5 Procedure for removal of cable. Black Rock shall not remove any underground
31 cable or conduit which requires trenching or other opening of the streets along the extension of
32 cable to be removed, except as hereinafter provided. Black Rock may remove any underground
33 cable from the streets which has been installed in such a manner that it can be removed without
34 trenching or other opening of the streets along the extension of cable to be removed. Subject to
35 applicable law, Black Rock shall remove, at its sole cost and expense, any underground cable or
36 conduit by trenching or opening of the streets along the extension thereof or otherwise which is
37 ordered to be removed by the City based upon a determination, in the sole discretion of the City,
38 that removal is required in order to eliminate or prevent a hazardous condition. Underground
39 cable and conduit in the streets that is not removed shall be deemed abandoned and title thereto
40 shall be vested in the City.
41

42 3.9 Movement of Buildings. Black Rock shall, upon request by any person holding a building
43 moving permit, franchise or other approval issued by the City, temporarily remove, raise or
44 lower its wire to permit the movement of buildings. The expense of such removal, raising or

lowering shall be paid by the person requesting same, and Black Rock shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than 15 days' notice to the Black Rock to arrange for such temporary wire changes.

Section 4. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

4.1 Access Channels.

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

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

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

4.3 Payment of PEG. Black Rock shall pay its PEG contributions as described herein not later than forty-five (45) days following the end of a given month. Not later than the date of each payment, Black Rock shall file with the City a written statement signed by an officer of Black Rock which identifies the amounts Black Rock and TCI charge their respective residential and common carrier customers for PEG capital contributions, facilities and operating expenses to ensure a level playing field. No acceptance of payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provision of this section.

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

1 4.5 Public Agency Network. Black Rock grants the City a connectivity option for a
2 minimum of four (4) single-mode fibers between buildings chosen by the City. If the City
3 exercises this option, the parties will be bound by the terms and conditions contained herein and
4 covenant to negotiate in good faith for this option and any other requirements at the time the City
5 exercises its option.
6

7 4.5.1 PAN Terms and Conditions. The following conditions will be the basis for good
8 faith negotiations between the City and Black Rock:
9

10 (a) In the event the City desires its own facility, separate from Black Rock's
11 facility, the following conditions should apply, (1) The City's facility will be built by Black
12 Rock primarily on existing wooden utility poles and the City will be responsible for the actual
13 and reasonable costs of materials, labor and operating expenses; (2) The City will determine the
14 routing and construction schedule; and, (3) Black Rock will provide maintenance at fair market
15 rates.
16

17 (b) In the event the City desires to share facilities with Black Rock, the
18 following conditions should apply, (1) the City will be responsible for a pro-rata share of actual
19 and reasonable costs of materials, labor and operating expenses; (2) Black Rock will determine
20 the routing and construction schedule; and, (3) Black Rock will provide maintenance at no cost
21 to the City.
22

23 (c) In either event, the City will be responsible for all electronics equipment
24 that would be connected to the fiber.
25

26 4.6 Upon request, Black Rock shall provide, without installation charge;
27

28 (1) One outlet of Basic Service to Bellingham City Hall, the Whatcom County
29 Courthouse, the Western Washington University Computing Center, the
30 Bellingham School District Headquarters, and any public fire station passed by the
31 Cable System; and
32

33 (2) One outlet containing all signals, excluding premium channels, to all
34 public educational buildings and facilities and all government buildings and facilities that are
35 passed by the Cable System.
36

37 Notwithstanding anything to the contrary set forth in this section, Black Rock
38 shall not be required to provide an outlet to such buildings unless it is technically feasible. Said
39 outlets and maintenance of said outlets shall be provided free of fees and charges.
40
41
42
43
44

1 Section 5. REGULATORY PROVISIONS.

2
3 5.1 Intent. In accordance with the provisions of Chapter 6.70 and 13.15 BMC, the City shall
4 have the right to administer and regulate activities under the Franchise up to the full extent
5 permitted by applicable federal, state, and local law.
6

7 5.2 Delegation of Authority to Regulate. The City reserves the right to delegate its regulatory
8 authority wholly or in part to agents of the City including, but not limited to, an agency which
9 may be formed to regulate several franchises in the Whatcom County region.
10

11 5.3 Areas of Administrative Authority. In addition to any other regulatory authority granted
12 to the City by law or franchise and subject to federal law regarding regulation of open video
13 systems, the City shall have administrative authority in the following areas:
14

15 (a) Administering and enforcing the provisions of this Franchise agreement, including
16 the adoption of administrative rules and regulations to carry out this responsibility.
17

18 (b) Coordinating the operation of public, government and educational channels.
19

20 (c) Coordinating Black Rock's technical, programming and operational assistance and
21 support to public agency users.
22

23 (d) Establishing procedures and standards for making use of Black Rock's support of
24 public institutional operations and services, provision of dedicated channels, assistance to public
25 facilities, support for community access, and the interconnection of the cable system with other
26 area systems.
27

28 (e) Planning expansion and growth of public cable services;
29

30 (f) Formulating and recommending long-range cable communications policy for the
31 Franchise area.
32

33 (g) Disbursing and utilizing any and all Franchise revenues paid to the City.
34

35 (h) Administering the regulation of rates, to the extent permitted by law.
36

37 Black Rock shall cooperate fully in facilitating the City's discharge of its administrative
38 authority.
39

40 5.4 Franchise Violations, Remedies, and Revocation.
41

42 5.4.1 Remedies. The City shall have the right to assert the remedies set out below in the
43 event Black Rock violates any provision of this Franchise agreement. These remedies are

1 intended to embody the City's and/or the public's rights under City Charter Article 11.04 to the
2 extent permitted by law.

3
4 (a) To the extent the City deems necessary to remedy the default, proceeding against
5 all or any part of any security provided under the Municipal Code or this Franchise, including
6 without limitation, any bonds, security funds, or other surety. Should the City take this action,
7 Black Rock shall be responsible for all direct and actual costs related to the foreclosure action
8 including, but not limited to, legal and administrative costs;

9
10 (b) Commencing an action at law for monetary damages or seeking equitable relief,
11 including specific performance:

12
13 (c) In the case of a Black Rock's default as to a material provision of the Franchise,
14 proceeding to revoke the Franchise; or,

15
16 (d) Requiring Black Rock to correct or otherwise remedy the violation prior to
17 considering the approval of any proposed rate increase if rate regulation is authorized by law and
18 is in effect.

19
20 In determining which remedy or remedies for Black Rock's violation are appropriate, the
21 City shall take into consideration the nature and extent of the violation, the remedy needed to
22 prevent such violations in the future, whether Black Rock has a history of previous violations of
23 the same or similar kind, and such other considerations as are appropriate under the
24 circumstances.

25
26 5.4.2 Revocation. The City has the right to declare a forfeiture or otherwise revoke this
27 Franchise, and all rights and privileges pertaining thereto, in the event that:

28
29 (a) Black Rock is in violation of any material provision of the Franchise agreement
30 and fails to correct the violation after written notice of the violation and proposed forfeiture and a
31 reasonable opportunity thereafter to correct the violation; or

32
33 (b) Black Rock becomes insolvent, unable or unwilling to pay its debts, or is
34 adjudged a bankrupt; or

35
36 (c) Black Rock is found to have engaged in any actual or attempted fraud or deceit
37 upon the City, persons or subscribers; or

38
39 (d) Black Rock fails to obtain and maintain any permit required by any federal or
40 state regulatory body; or

41
42 (e) Black Rock fails to maintain the full amount of its security fund or to post a
43 performance bond as required under the terms of this Franchise.

1 5.4.3 Procedure.

2
3 5.4.3.1 Summary forfeiture. Upon the occurrence of one of the events set out in
4 subparagraphs (a) through (e), of section 5.4.2, above, following 14 days' written notice to Black
5 Rock of the occurrence and the proposed forfeiture and an opportunity for Black Rock to be
6 heard by the City Council, the City may by resolution or other appropriate document, declare a
7 forfeiture. If Black Rock requests a hearing, it shall be afforded the right to question witnesses
8 and to require that all testimony be on the record. Findings from the hearing shall be written, and
9 shall stipulate the reasons for the City's decision. If a forfeiture is lawfully declared, all rights of
10 Black Rock shall immediately be divested without a further act upon the part of the City.

11
12 5.4.3.2 Forfeiture for breach of material provision.

13
14 (a) In the event that the City believes that Black Rock has not complied with the
15 terms of the Franchise (other than those in subsections (b) through (f) of section 5.3.2), the City
16 shall notify Black Rock in writing of the exact nature of the alleged noncompliance.

17
18 (b) Black Rock shall have 30 days from receipt of the notice described above to (1)
19 respond to the City contesting the assertion of noncompliance, or (2) to cure such default or, in
20 the event that by the nature of default such default cannot be cured within the 30 day period,
21 initiate reasonable steps to remedy such default and notify the City of the steps being taken and
22 the projected date that they will be completed.

23
24 (c) In the event that Black Rock fails to respond to the notice described herein or cure
25 the default pursuant to the procedures set forth above, or in the event that Black Rock contests
26 the assertion of non-compliance, the City shall schedule a public meeting to investigate the non-
27 compliance. The City shall give Black Rock 14 calendar days' notice of the time and place of
28 such meeting and provide Black Rock with an opportunity to be heard.

29
30 (d) In the event the City, after such meeting, determines that Black Rock is in non-
31 compliance with any provision of the Franchise, the City may impose any of the remedies set out
32 in section 5.4.1, above.

33
34 5.4.3.3 Removal of cable following expiration of franchise. Any order by the City to
35 remove cable or conduit shall be mailed to Black Rock not later than thirty (30) calendar days
36 following the date of expiration of the Franchise. Black Rock shall file written notice with the
37 City Finance Director not later than 30 calendar days following the date of expiration or
38 termination of the Franchise of its intention to remove cable intended to be removed and a
39 schedule for removal by location. The schedule and timing of removal shall be subject to
40 approval and regulation by the City. Removal shall be completed not later than 12 months
41 following the date of expiration of the Franchise.

42
43 5.5 Failure to Enforce. Black Rock shall not be relieved of any of its obligations to comply
44 promptly with any provision of the Franchise by reason of any failure of the City to enforce

prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Black Rock's conduct.

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

5.7 Alternative Remedies.

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

(b) No provision of this Franchise shall be deemed to bar the right of the 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 the Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by Black Rock, or to seek and obtain judicial enforcement of Black Rocks obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

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

1 Section 6. REPORTING REQUIREMENTS.

2
3 6.1 Quarterly Reports. If Black Rock should obtain \$100,000.00 per month in gross revenue,
4 Black Rock shall comply with the following quarterly reporting requirements. So long as Black
5 Rock does not obtain \$100,000.00 in gross revenue, it shall not have a quarterly reporting
6 requirement. If a quarterly report is required, Black Rock shall:

7
8 (a) Within 45 calendar days after the end of each fiscal quarter of Black Rock, Black
9 Rock shall submit to the City along with its franchise fee payment a financial report showing the
10 basis for computation of such fees. This report shall separately indicate revenues received by
11 Black Rock within the City from such items as basic service, pay TV service, and other sources
12 of revenue.

13
14 (b) Within 60 days after the end of each of Black Rock's fiscal quarters, Black Rock
15 shall submit a written report to the City, verified by an officer of Black Rock, which shall
16 contain:

17
18 (1) A statement of all revenues earned by Black Rock or any parent or affiliate
19 (other than a programming affiliate), related to operation of the cable system in the Franchise
20 area, identified by source or type, e.g., basic, premium, pay per view, installation, advertising,
21 etc. The statement shall be signed by an officer of Black Rock with an explicit certification by
22 the officer that the reported amounts are an accurate reflection of the books and records of Black
23 Rock and are consistent with the requirements of this Franchise;

24
25 (2) An identification and explanation of any adjustment in the amount of gross
26 revenues made in determining the Franchise fee calculation base; and

27
28 (3) A calculation establishing the Franchise fee due and owing.
29

30 6.2 Annual Report. Black Rock shall, no later than five months following the end of Black
31 Rock's fiscal year, present a written report to the City, which shall include:

32
33 (a) A summary of gross revenue calculations for the previous year.

34
35 (b) A signed copy of the previous year's tax return for Black Rock.

36
37 (c) A summary of the previous year's activities for the Franchise area served by Black
38 Rock including, but not limited to, the total number of subscribers for each category of service,
39 the number of homes passed, miles of overhead and underground cable plant.
40

41 6.3 Additional Reports. Black Rock shall prepare and furnish to the City, at the times and in
42 the form prescribed, such additional reports with respect to its operation, affairs, transactions, or
43 property, as may be reasonably necessary to ensure compliance with the terms of this Agreement.
44

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

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

Section 7. COMPENSATION AND FINANCIAL PROVISIONS.

7.1 Gross Revenue Fees. During the term of the Franchise, Black Rock shall pay to the City an amount equal to 3% of annual gross revenues. From time to time, the City may increase the gross revenue fee but, in no event, shall the fee be greater than 5% of annual gross revenues. If any such law, regulation or valid rule alters the 5% ceiling, the City shall have the authority to, but shall not be required to, increase the gross revenue fees accordingly, provided such increase is for purposes not inconsistent with Federal law.

(a) Gross revenue fees shall be paid monthly, not later than 45 days following the end of a given month. Not later than the date of each payment, Black Rock shall file with the City, a written statement signed by an officer of Black Rock, which identifies in detail the sources and amounts of gross revenues earned by Black Rock during the period for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

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

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

7.2 Auditing and Financial Records. Black Rock shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the City. The City

1 shall have the right as necessary or desirable for effectively administering and enforcing the
2 Franchise, to inspect at any time during normal business hours upon reasonable notice, all books,
3 records, maps, plans, financial statements, service complaint logs, performance test results,
4 records required to be kept by Black Rock and any parent company pursuant to the rules and
5 regulations of the FCC and other regulatory agencies, and other like materials of Black Rock and
6 any parent company which relate to the operation of the Franchise. Black Rock shall not deny
7 access to the aforementioned records to representatives of the City on the basis that said records
8 contain "proprietary" information. However, to the extent allowed by Washington law, the City
9 shall protect the trade secrets and other confidential information of Black Rock and any parent
10 company. All books and records relating to Black Rock's activities under the Franchise shall be,
11 or upon request be made, available in the City of Bellingham.

12
13 Black Rock agrees to meet with representatives of the City upon request to review its
14 methodology of record-keeping, financial reporting, computing gross revenue fee obligations,
15 and other procedures the understanding of which the City deems necessary for understanding the
16 meaning of reports and records.

17
18 The City or its authorized agent may at any time and at the City's own expense conduct
19 an independent audit of the revenues of Black Rock in order to verify the accuracy of gross
20 revenue fees paid to the City. Black Rock and each parent company of Black Rock shall
21 cooperate fully in the conduct of such audit. In the event it is determined through such audit that
22 Black Rock has paid franchise fees in a lesser amount of more than 2% than was due the City,
23 then Black Rock shall reimburse the City for the entire cost of the audit within 30 days of the
24 completion and acceptance of the audit by the City.

25
26 The City agrees to request access to only those books and records, in exercising its rights
27 under this section, which it deems reasonably necessary for the enforcement and administration
28 of the Franchise.

29
30 7.3 Performance Bond. Within 30 days after the award of this Franchise, but in no event
31 sooner than the final reading of the Franchise ordinance, Black Rock shall submit to the City
32 Attorney, which shall be filed with the City Finance Director, a performance bond running to the
33 City, with good and sufficient surety licensed to do business in the State of Washington and
34 approved by the City in the amount of \$10,000.00, conditioned that Black Rock shall well and
35 truly observe, fulfill, and perform each term and condition of the Franchise. This bond shall be
36 conditioned that in the event Black Rock shall fail to comply with any one or more of the
37 provisions of this Franchise, then there shall be recoverable jointly and severally from the
38 principal and surety of such bond, any damages suffered by the City as a result thereof, including
39 the full amount of any compensation, indemnification, or cost of removal or abandonment of
40 property as prescribed; said condition to be a continuing obligation for the duration of the
41 Franchise and thereafter until Black Rock has liquidated all of its obligations with the City that
42 may have arisen from the acceptance of the Franchise by Black Rock or from its exercise of any
43 privilege herein granted. Written evidence of payment of required premiums shall be filed and
44 maintained with the City. In lieu of the bond, Black Rock may provide for a letter of credit or

1 similar arrangement to be established giving the City rights substantially the same as the rights of
2 the City in relation to the bond, the provisions of which letter of credit or other arrangement shall
3 be subject to the approval of legal counsel for the City.

4
5 Neither the provisions of this section, any bond accepted by the City pursuant thereto, nor
6 any damages recovered by the City thereunder shall be construed to excuse faithful performance
7 by Black Rock or to limit liability of Black Rock under the Franchise or for damages, either to
8 the full amount of the bond or otherwise, except as otherwise provided herein.

9
10 7.4 Validity of Bond. It at any time during the term of the Franchise, the condition of the
11 entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the
12 City, Black Rock shall replace such bond by a bond of like amount and similarly conditioned,
13 issued by an entity satisfactory to the City. The City Council, from time to time, may authorize
14 or require appropriate and reasonable adjustments in the amount of the bond; provided, however,
15 that prior to any required increase in the amount of the bond, the City shall give Black Rock at
16 least 60 days prior notice thereof stating the exact reason for the requirement. Such reasons must
17 demonstrate a change in Black Rock's business practices, which would materially prohibit or
18 impair its ability to comply with the terms of the Franchise or afford compliance therewith.

19
20 7.5 Security Fund.

21
22 (a) Within 30 days after the effective date of this Franchise, Black Rock shall deposit
23 into a bank account, established by the City, and maintained through the term of this Franchise
24 with interest running to Black Rock, the sum of \$25,000, as security for the compliance with all
25 orders, permits and directions of any agency of the City, and for the payment of any claims, liens
26 and taxes due the City or liquidated damages imposed by the City which arise by reason of the
27 construction, operation or maintenance of the system or pursuant to the terms of this agreement.

28
29 (b) Within 30 days after notice to it that any amount has been withdrawn by the City
30 from the security fund pursuant to subdivision (a) of this section, Black Rock shall deposit a sum
31 of money sufficient to restore such security fund to the original amount in the account at the time
32 of withdrawal.

33
34 (c) If Black Rock fails, after 10 days' notice to pay the City any delinquent fees, taxes
35 or other amounts due and unpaid according to the terms of this Franchise; or, fails to repay to the
36 City, after such 10 days' notice, any damages, costs or expenses which the City shall be
37 compelled to pay by reason of any act or default of Black Rock in connection with this
38 Franchise; or fails, after 45 days' notice of such failure by the City to comply with any provision
39 of the Franchise which the City reasonably determines can be remedied by an expenditure of the
40 security, the City may immediately withdraw the amount thereof, with interest and any penalties,
41 from the security fund. Upon such withdrawal, the City shall notify Black Rock of the amount
42 and date thereof.

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

7
8 (e) The rights reserved to the City with respect to the security fund are in addition to all
9 other rights of the City whether reserved by this agreement or authorized by law, and no action,
10 proceeding or exercise of a right with respect to such security fund shall affect any other right the
11 City may have.

12
13 (f) In lieu of the security fund provided for herein, Black Rock may provide for a letter of
14 credit or similar arrangement to be established giving the City rights substantially the same as the
15 rights of the City in relation to the security fund, the provisions of which letter of credit or other
16 arrangement shall be subject to the approval of legal counsel for the City.

17
18 7.6 Indemnification by Black Rock. Black Rock shall, at its sole expense, fully indemnify,
19 defend and hold harmless the City, and in their capacity as such, the officers and employees
20 thereof, from and against any and all claims, suits, actions, liability and judgments for damage or
21 otherwise except those arising wholly from negligence on the part of the City or its employees;
22 for actual or alleged injury to persons or property, including loss of use of property due to an
23 occurrence, whether or not such property is physically damaged or destroyed, in any way arising
24 out of or through or alleged to arise out of or through the acts or omissions of Black Rock or its
25 officers, agents, employees, or contractors or to which Black Rock's or its officers, agents,
26 employees or contractors acts or omissions in any way contribute, and whether or not such acts
27 or omissions were authorized or contemplated by this Franchise or applicable law; arising out of
28 or alleged to arise out of any claim for damages for Black Rock's invasion of the right of privacy,
29 defamation of any person, firm or corporation, or the violation of infringement of any copyright,
30 trademark, trade name, service mark or patent, or of any other right of any person, firm or
31 corporation; arising out of or alleged to arise out of Black Rock's failure to comply with the
32 provisions of any statute, regulation or Resolution of the United States, State of Washington or
33 any local agency applicable to Black Rock in its business. Nothing herein shall be deemed to
34 prevent the City, its officers, or its employees from participating in the defense of any litigation
35 by their own counsel at such parties' expense. Such participation shall not under any
36 circumstances relieve Black Rock from its duty of defense against liability or of paying any
37 judgment entered against the City, its officers, or its employees.

38
39 7.7 Black Rock Insurance. In accordance with BMC 13.15.160, Black Rock shall maintain,
40 throughout the term of the Franchise, liability insurance insuring the City and Black Rock, their
41 respective officers, employees and agents, with regard to all claims and damages specified
42 herein, in the minimum amounts of:
43

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

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

6
7 (c) \$1,000,000 for all other types of liability.

8
9 Such insurance shall specifically name as additional insured the City of Bellingham, its
10 officers, and employees, and shall further provide that the policy shall not be modified or
11 canceled during the life of this Franchise without giving 30 days' written notice to the City.

12
13 Black Rock shall file with the City copies of all certificates of insurance showing up-to-
14 date coverage, additional insured coverage, and evidence of payment of premiums as set forth
15 above. Coverage shall not be changed or canceled without approval of the City, and failure to
16 maintain required insurance may be considered a breach of this agreement. The City may, at its
17 option, review all insurance coverage. If the City Risk Manager determines that circumstances
18 require and that it is reasonable and necessary to increase insurance coverage and liability limits
19 to adequately cover the risks of the City and Black Rock, the City may require additional
20 insurance to be acquired by Black Rock. The City shall provide Black Rock written notice
21 should the City exercise its right to require additional insurance. All insurance shall provide 30
22 days' prior written notice to the City in the event of modification or cancellation. Black Rock
23 shall provide written notice to the City within 30 days after any approved reduction in the general
24 annual aggregate limit.

25
26 Section 8. MISCELLANEOUS PROVISIONS.

27
28 8.1 Posting and Publication. Black Rock shall assume the cost of posting and publication of this
29 Franchise Ordinance as such posting and publication is required by law and such is payable upon
30 Black Rock's filing of acceptance of this Franchise.

31
32 8.2 Guarantee of Performance. Black Rock agrees that it enters into this Franchise Ordinance
33 voluntarily in order to secure and in consideration of the grant from the City of a 15 year
34 Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is
35 guaranteed by Black Rock.

36
37 8.3 Entire Agreement. This Franchise agreement contains the entire agreement between the
38 parties, supersedes all prior agreements or proposals except as specifically set forth herein, and
39 cannot be changed orally but only by an instrument in writing executed by the parties. This
40 Franchise is made pursuant to Chapter 6.70 and 13.15 BMC and is intended to comply with all
41 requirements set forth therein.

1 8.4 Consent. Wherever the consent or approval of either Black Rock or the City is
2 specifically required in this agreement, such consent or approval shall not be unreasonably
3 withheld.

4
5 8.5 Franchise Acceptance. Black Rock shall execute and return to the City three original
6 franchise agreements. The executed agreements shall be returned to the City accompanied by
7 performance bonds, security funds, and evidence of insurance, all as provided in this Franchise
8 agreement. In the event Black Rock fails to accept this Franchise agreement, or fails to provide
9 the required documents, this Franchise shall be null and void.

10
11 8.6 Effective Date. This Ordinance shall be effective June 1 1999; provided, however,
12 that if Black Rock does not accept this Franchise and comply with all conditions for such
13 acceptance set forth herein prior to the effective date, this Ordinance shall be null and void.

14
15 8.7 Force Majeure. In the event that either party is prevented or delayed in the performance
16 of any of its obligations, under this Agreement by reason of acts of God, floods, fire, hurricanes,
17 tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism,
18 strikes, sabotage, boycotts, lockouts, labor disputes, shortage of qualified labor, freight
19 embargoes, shortages or unavailability of materials or supplies, unusually severe weather
20 conditions, acts or omissions of the other party, or any other similar event beyond the reasonable
21 control of that party, it shall have a reasonable time under the circumstances to perform such
22 obligation under this Agreement, or to procure a substitute for such obligation to the reasonable
23 satisfaction of the other party.

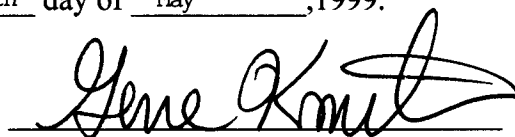
24
25 8.8 Best Efforts. While the Cable Act may not allow the regulation of certain aspects of an
26 OVS operator, Black Rock nevertheless agrees to use its best efforts to ensure the following:

27
28 8.8.1 Emergency Alert Capability. While the FCC has not required OVS operators to
29 provide an emergency alert capability at this time, Black Rock will use its best efforts to provide
30 said emergency alert capability to its subscribers at its soonest opportunity.

31
32 8.8.2 Obscenity. Black Rock will exercise its best efforts to prevent the transmission
33 of programming which is obscene or otherwise unprotected by the United States Constitution;
34 provided, however, Black Rock shall in no way be responsible for programming over which it
35 has no editorial control, including public, educational and governmental access programming.


36
37 8.8.3 Parental Control Device. Upon a subscriber's request, Black Rock shall use
38 its best efforts to make available a parental control device that will enable the subscriber to block
39 all access to any and all channels without affecting those not blocked.

40
41 PASSED by Council this 17th day of May, 1999.

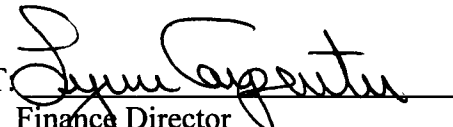
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Council President

APPROVED by me this 25th day of May, 1999.

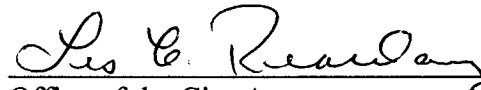


Mayor

ATTEST: 

Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published: 5/20/99

ACCEPTED BY BLACK ROCK CABLE INC.

DATE: 19 May 1999

BY: 

Name: John Kehres

Title: President


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

4
5 (1) That I am an officer of Black Rock Cable, Inc., duly authorized to make the following
6 representation:

7
8 (2) That I have read and understand this Ordinance granting the franchise
9 herein; and,

10
11 (3) That Black Rock Cable, Inc., hereby unconditionally guarantees performance of each and
12 every obligation of Black Rock Cable, Inc., set forth herein, and will timely provide to the City
13 of Bellingham a duly executed Guarantee in Lieu of Security Fund acceptable to the City.
14

15
16 DATE: 5/19/1999

17
18 BY: 

19 Name: John Kehres

20 Title: President.
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GUARANTY IN LIEU OF SECURITY FUND**FOR****BLACK ROCK CABLE, INC.**

THIS GUARANTY IN LIEU OF SECURITY FUND is made and executed this 2nd day of November 1999 by Black Rock Cable, Inc. (hereinafter Black Rock).

WHEREAS, the City of Bellingham (hereinafter "City") granted Black Rock an Open Video System Franchise under Ordinance No. 1999-05-032 (hereinafter the "Franchise"); and,

WHEREAS, the Franchise Section 7.5 requires that Black Rock maintain a \$25,000 security fund; and,

WHEREAS, the Franchise authorizes Black Rock to duly execute a Guaranty in Lieu of Security Fund;

NOW, THEREFORE, THE FOLLOWING GUARANTY IS HEREBY PROVIDED BY BLACK ROCK TO THE CITY:

1. As covenanted by Black Rock in the Section 7.5 of the Franchise and the Franchise's Guarantee of Performance, Black Rock hereby guaranties and promises to the City that Black Rock shall continually maintain through the entire term of the franchise a continuous balance of the sum of \$25,000 available to pay to the City, upon demand by the City, for compliance with all orders, permits, and directions of any City agency and for the payment of claims, liens and taxes due the City or liquidated damages imposed by the City which arise by reason of the construction, operation or maintenance of the system or pursuant to the terms of the Franchise, which is attached hereto and expressly incorporated herein by this reference.

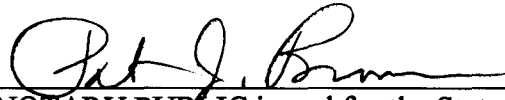
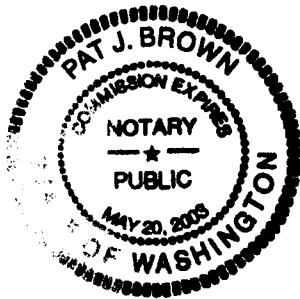
2. The \$25,000 guaranty by Black Rock shall be deemed the City's property in the event that the Franchise is canceled by reason of Black Rock's default or if the Franchise is revoked for cause and shall become immediately due and payable. However, Black Rock shall be entitled to such a portion of the security fund as remains at the expiration of the Franchise's term or upon the Franchise's termination at an earlier date, upon payment of all sums then due from Black Rock to the City.

3. In consideration of the credit extended on this guaranty, Black Rock guaranties, covenants and promises this Guaranty in Lieu of Security Fund along with all costs, expenses and attorneys' fees incurred in its collection and enforcement.



John Kehres
President, Black Rock Cable, Inc.
Payment Guaranteed

SUBSCRIBED AND SWORN to before me this 2nd day of November 1999.



NOTARY PUBLIC in and for the State
of Washington, residing at Bellingham.
My appointment expires May 20, 2003

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Black Rock Cable

(Legal name and address)

2544 Mt. Baker Highway, Bellingham, WA 98226-9566

as Principal, and National Farmers Union Standard Insurance Company, as Surety, are held and firmly bound unto

City of Bellingham, 210 Lottie Street, Bellingham, WA 98225

(Legal name and address)

as Owner, in the sum of Ten Thousand Dollars

(\$ 10,000) for the payment of which we bind ourselves, our legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a written agreement, dated September 29, 1999, setting forth the terms and conditions under which Principal shall:

install and maintain cable/internet system

which written agreement (hereinafter "Contract") is by reference made a part hereof.

NOW THEREFORE, the condition of this obligation is such that,

1) If Principal, its successors or assigns shall promptly and faithfully perform the Contract, or if the Contract terminates, expires or is cancelled in accordance with its terms, then this obligation shall be null and void. Otherwise, this Bond shall remain in full force and effect.

2) Surety agrees that the Contract may be modified, amended or supplemented by Owner and Principal without the consent of or notice to Surety, and that modification, amendment or supplementation shall not release or affect Surety's obligations under this Bond. The maximum liability of the Surety for all costs including, but not limited to, any modification, amendment or supplementation shall be the penal sum of this bond.

3) Whenever Principal, its successor or assigns shall be declared by Owner to be in default of the Contract:

a. Owner shall give Surety prompt written notice of Principal's default within ninety (90) days after Owner learns of the default. The notice shall be delivered personally to Surety or by mail to Surety at 11900 East Cornell Avenue, Aurora, Colorado 80014-3194.

b. Surety may promptly remedy the default by i) completing the contract in accordance with its terms and conditions, or ii) obtaining a bid or bids for completion of the contract in accordance with its terms and conditions, or iii) paying to Owner the amount for which Surety is liable under this Bond.

4) No claim, suit or action under this Bond shall be brought against Surety unless the action is commenced within twenty-four (24) months after the effective date of termination or cancellation of the Bond.

5) This Bond may not be terminated or cancelled by Surety unless Surety provides ninety (90) days' prior written notice to Principal and to Owner. The termination or cancellation of this Bond shall not affect the obligations of either Principal or Surety with respect to any right or cause of action that accrued or may have been accruing prior to termination or cancellation.

6) No right of action shall accrue on this Bond in favor of any person or corporation other than Owner as named herein, or its heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Principal and Surety executed this Bond by affixing the signatures of their duly authorized representatives.

PRINCIPAL

By:  John J. Kehres

Title: President

Date: 11/1/99

SURETY

By:  Gloria Sutton

Title: Processing Manager

Date: 10-25-99

POWER OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That National Farmers Union Standard Insurance Company, a corporation organized and existing under the laws of the State of Colorado, does hereby constitute and appoint Malcolm Wentling, Gary Hahn, John A. Fusie, and Gloria Ireton

of Aurora, Colorado, its true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed, at any place within the United States, or, if the following line be completed, only within the area therein designated,

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof and the Company hereby ratifies and confirms all and whatsoever the Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents.

This appointment is made under and by authority of the following Resolution passed by the Board of Directors of the Company at a meeting held on the 18th day of November, 1987, a quorum being present and voting, which Resolution is still in effect:

"RESOLVED, that the President, or any Senior Vice President, or the Secretary of the Company is hereby authorized and empowered to appoint Attorney(s)-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorney(s)-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons."

IN WITNESS WHEREOF, National Farmers Union Standard Insurance Company has caused this instrument to be signed by its President and its corporate seal to be hereto affixed this 1st day of July, 1996.

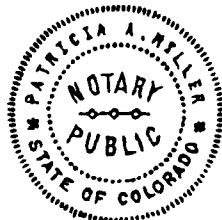
State of Colorado)
County of Arapahoe) ss.



National Farmers Union
Standard Insurance Company

By Jacob J. Krull
President

On this 1st day of July, 1996, before me personally came Jacob J. Krull, to me known, who, being by me duly sworn, did depose and say: that he is President of National Farmers Union Standard Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the corporation; that the seal affixed to the instrument is such corporate seal; and that he executed the instrument on behalf of the corporation by authority of his office under the standing Resolution thereof.



Patricia A. Miller
Notary Public

I, the undersigned Secretary of National Farmers Union Standard Insurance Company, hereby certify that the above and foregoing is a full, true and correct copy of the original Power of Attorney issued by the Company, and do hereby further certify that the Power of Attorney is still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following Resolution passed by the Board of Directors of National Farmers Union Standard Insurance Company at a meeting held on the 18th day of November, 1987:

"RESOLVED, that any and all Powers of Attorney, and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President, or Senior Vice President, or Secretary of the Company, shall be binding on the Company to the same extent as if all signatures thereon were manually affixed even though one or more of any such signatures thereon may be a facsimile."

Given under my hand and the seal of the Company at Aurora, Colorado this 1st day of July 1996.



Willie B. Stevenson
Secretary