

upgrades from Subscribers in the Franchise Area in accordance with Applicable Law and that in so doing the PEG Contribution does not exceed fifty (\$.50) cents in total. If such costs result in exceeding fifty (\$.50) cents then the Grantor shall reduce the existing PEG Contribution amount so as to allow for the recoupment of all upgrade costs without exceeding the cap of fifty (\$.50) cents over a period of three (3) years. Grantee shall continuously maintain these return lines throughout the term of the Franchise, unless any of these locations are no longer used in the future to originate Access programming or are not upgraded as part of the HD conversion. The existing return line facilities are noted as "exterior" to reflect a return line on the physical property but not extending into the building, or "interior" where the return line connection extends into the building itself. The cost to convert facilities from exterior to interior shall be paid by the Grantor. The Access origination sites are:

Thurston County courthouse campus, 2000 Lakeridge Drive SW, Olympia WA  
(exterior)

TCOMM 911, 2703 Pacific Avenue SE, Olympia, WA

(B) Within eighteen (18) months of written request by the Grantor, Grantee shall construct and maintain additional return lines to other locations within the Franchise Area; provided however, that all Grantee's construction costs shall be paid by the Grantor or its Designated Access Provider(s).

#### **9.12 Promotion of PEG Access Schedule**

The Grantee shall include appropriate designation of the PEG channels on channel cards and other channel listings provided to Subscribers in a manner comparable to commercial channels on the Cable System.

### **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

#### **10.1 Right to Construct**

Subject to Applicable Law, generally applicable County Code, Right-of-Way Construction Standards, 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 Cable System.

#### **10.2 Joint Trenching/Boring Meetings**

Grantee will regularly attend and participate in planning meetings of Grantor, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts which Grantee needs to occupy within the Franchise Area.

### **10.3 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 consistent with applicable permit requirements.

### **10.4 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 Grantor. As part of the permitting process, Grantor 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 Grantor permits received by Grantee.

### **10.5 Emergency Permits**

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

### **10.6 Compliance with Applicable Codes**

(A) Grantor Construction Codes. Grantee shall comply with all applicable industry, State and Grantor construction codes and standards.

(B) Safety Codes. Grantee shall comply with all federal, State and Grantor safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable 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. All installations of equipment shall be permanent in nature, and final equipment placement shall not interfere with the travel and use of public places by the public.

### **10.7 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 Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, 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, Grantor's authority. The Grantee's Cable 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 Grantor 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 or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

#### **10.8 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 Grantor'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. Further, any street cuts made and repaired shall be performed in accordance with all Grantor construction codes.

#### **10.9 Hazardous Substances**

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) The provisions of Section 5.1 shall apply to any claims against the Grantor arising out of a release of hazardous substances caused by Grantee's Cable System.

#### **10.10 Locates**

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to Grantor and to the notification association established in Ch. 19.122 RCW, as such may be amended from time to time.

Within forty-eight (48) hours after any Grantor bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or



(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

#### **10.11 Notice to Private Property Owners**

Except in the case of an emergency involving public safety or service interruption to a large number of Subscribers, Grantee shall give at least three (3) days advance notice to private property owners or legal tenants of work on or adjacent to private property prior to entering upon private premises. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

#### **10.12 Underground Construction and Use of Poles**

(A) When required by general ordinances, resolutions, regulations or rules of Grantor or applicable State or federal law, or Grantor project Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with Grantor'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 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 undergrounding an extension of the Cable System or for 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 Cable System. Grantor will reasonably determine the most appropriate option between undergrounding and erecting new poles considering site specific details and availability of space in the Right-of-Way. If poles are used, all poles of Grantee shall be located as designated by the proper Grantor authorities. Grantor will determine if such poles and related facilities may be placed based on reasonable availability of space within the right of way.

(E) 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 Grantor or any other



Person.

(F) Grantee and Grantor recognize that situations may occur in the future where Grantor may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. Grantee agrees to cooperate with Grantor in any construction by the Grantee that involves trenching or boring, provided that Grantor has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring and Grantor enters into a contract with Grantee consistent with RCW 80.36.150, this Franchise and applicable provisions of Grantor's Code. Grantee shall allow Grantor to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided there is reasonable space available and Grantor shares in the cost of the trenching and boring on the same terms and conditions as the Grantee or otherwise in accordance with Applicable Law. Grantor shall be responsible for maintaining its respective cable, conduit, vaults and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

(G) Where Grantor codes provide holders of building or development permits for planned developments within the Franchise Area to notify utilities and other similar service providers of availability of open trenches, it is the intent of Grantor that such requirements shall include operators of cable systems in the list of entities required to be provided notice by the permit holder. In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new land use development, not associated with a Grantor designated capital improvement project, this Franchise shall in no way limit the Grantee's right to recoup all time and material costs associated with the underground conversion of the Cable System from the Person responsible for the project.

### **10.13 Prewiring**

Any ordinance or resolution of Grantor which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

### **10.14 Repair and Restoration of Property**

(A) The Grantee shall protect public and private property from damage, when performing work as it pertains to using the Right of Way. If damage is caused by Grantee, 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.

(C) 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 in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, Grantor 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 Grantor.

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

#### **10.15 Acquisition of Facilities**

Upon Grantee's acquisition of Cable System-related facilities in any Grantor Right-of-Way, or upon the addition to Grantor of any area in which Grantee owns or operates any such facility, Grantee shall, at Grantor's request, submit to Grantor a statement describing all such facilities located in the Right of Way, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

#### **10.16 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for Grantor'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 Grantor permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor 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 at no cost to Grantor. Grantor 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 Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, 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, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

#### **10.17 Movement of Cable System Facilities For Grantor Purposes**

Grantor shall have the right to require Grantee to, at Grantor's request, relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of Grantor for public purposes, in the event of an emergency; or when the public health, safety, or welfare requires such change. For example, without limitation, this movement of Grantee's facilities may be needed by 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 Grantor for public