

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: March 8, 2021**

<b>AGENDA ITEM:</b>	
Proposed Ordinance Consenting to Change of Control of Astound Broadband, LLC	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Burton Eggertsen	
<b>DEPARTMENT:</b>	
Legal	
<b>ATTACHMENTS:</b>	
Proposed Ordinance	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

Astound Broadband, LLC has a franchise to operate a cable television system in the City. Stonepeak Infrastructure Holdings, a Delaware limited liability company, has entered into an agreement to acquire Radiate Holdings L.P., a Delaware limited partnership, which is a parent company of Astound Broadband. Stonepeak has requested that the City consent to the change of indirect control of Astound Broadband.

Stonepeak has provided the City information required by FCC regulations, and City staff has reviewed the legal, technical, and financial qualifications of Stonepeak. Based on this review, City staff does not anticipate that the change of control will negatively impact the provision of television cable services in the City.

**RECOMMENDED ACTION:**

Staff recommends the City Council consider adopting the ordinance consenting to the change of control of Astound Broadband LLC

CITY OF MARYSVILLE  
Marysville, Washington

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON,  
CONSENTING TO CHANGE OF CONTROL OF ASTOUND  
BROADBAND, LLC.**

WHEREAS, Astound Broadband, LLC (“Franchisee”) owns, operates, and maintains a cable television system in the City of Marysville (the “City”) pursuant to a cable television franchise agreement (the “Franchise”), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the Franchisee is the current duly authorized holder of the Franchise; and

WHEREAS, pursuant to an Agreement and Plan of Merger (“Agreement”), funds associated with Stonepeak Infrastructure Partners (“Acquiror”), a Delaware limited liability company, will purchase 100% of the indirect ownership interests of Radiate Holdings, L.P., a Delaware limited partnership (which owns 100% of the indirect ownership interests in Franchisee), and, as a result, the indirect control of Franchisee will change (the “Change of Control”); and

WHEREAS, the Franchisee and Acquiror have requested the consent of the City to the Change of Control, have filed an FCC Form 394 with the City, and have provided the City with all information necessary to facilitate a decision by the City (collectively, the “Application”); and

WHEREAS, the City has reviewed the Application.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. The City accepts the Application and consents to the Change of Control.

SECTION 2. The City confirms that the Franchise is valid and outstanding and in full force and effect and there are no defaults under the Franchise. Subject to compliance with the terms of this Ordinance, all action necessary with respect to the Change of Control has been duly and validly taken.

SECTION 3. This Ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF MARYSVILLE

By \_\_\_\_\_  
JON NEHRING, MAYOR

Attest:

By \_\_\_\_\_  
TINA BROCK, DEPUTY CITY CLERK

Approved as to from:

By \_\_\_\_\_  
JON WALKER, CITY ATTORNEY

Date of publication: \_\_\_\_\_

Effective Date (5 days after publication): \_\_\_\_\_

CITY OF MARYSVILLE  
Marysville, Washington

ORDINANCE NO. 3067

AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, SETTING FORTH THE AGREEMENT BETWEEN THE CITY OF MARYSVILLE AND ASTOUND BROADBAND, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, D/B/A WAVE, GRANTING WAVE A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REPAIR, REPLACE, AND REMOVE TELECOMMUNICATIONS FACILITIES WITHIN CITY RIGHTS-OF-WAY.

WHEREAS, Astound Broadband, LLC, a Washington Limited Liability Company d/b/a Wave (the "Company") has applied for a nonexclusive franchise to construct, operate, maintain, repair, replace, and remove wired telecommunications facilities on Rights-of-Way within the City; and

WHEREAS, the Company is the successor to Black Rock Cable, Inc. ("Black Rock") and operates under the Open Video System Franchise granted by the City to Black Rock by Ordinance No. 2629, dated November 13, 2001 (the "OVS Franchise"); and

WHEREAS, the OVS Franchise expired on May 11, 2016, and the City and Company have continued to operate under the terms and conditions of the OVS Franchise since then; and

WHEREAS, the Company and the City have engaged in negotiations regarding the Company's right to utilize the City Rights-of-Way; and

WHEREAS, the City will authorize the Company to utilize the City Rights-of-Way subject to certain conditions and restrictions; and

WHEREAS, RCW 35A.47.040 and Chapter 35.99 RCW authorize the City to grant nonexclusive master permits or franchises for telecommunications facilities in the City Rights-of-Way; and

WHEREAS, the City and Company intend to replace and supersede the OVS Franchise with the franchise granted under this Ordinance; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS AND THE PARTIES DO HEREBY AGREE AS FOLLOWS:

**Section 1. Definitions.**

For the purposes of this Ordinance, the following words, terms, and phrases shall have the meanings stated in this section. When consistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. To the extent not defined in this section, words shall be given their common

and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Affiliate” means any corporate entity that (1) the Company owns or controls, (2) the Company is owned or controlled by, or (3) is under common ownership with the Company. Any entity in which the Company has ownership of five percent (5%) or more of the equity ownership (either voting, control, or value) or in which the Company has actual working control, in whatever manner exercised, is an Affiliate. Both the entity owned or controlled and the entity owning or controlling are Affiliates of each other.

1.2 “Cable Television Service” means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of the video programming or other programming service.

1.3 “City” means the City of Marysville, Washington, and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.

1.4 “City Codes” means the Marysville Municipal Code (“MMC”) and all ordinances, resolutions, standards, regulations, procedures, and policies of the City, all as currently existing or as hereafter amended or adopted.

1.5 “Communications Services” means telecommunications services or capacity provided by the Company using its Facilities, either directly or by its Affiliates, including, but not limited to, the transmission of voice, data, or other electronic information by wire, fiber optic cable, or other similar means. For purposes of this subsection, “information” means knowledge or intelligence represented by writing, signs, signals, pictures, sounds, or any other symbols. Communications Services does not include Cable Television Service or Wireless Telecommunications Services.

1.6 “Facilities” means the Company’s telecommunications system constructed and operated within the City’s Rights-of-Way. Facilities shall include all wires, fiber optic cables, cables, amplifiers, conductors, lines, conduits, ducts, manholes, pedestals, meters, and any associated converters, equipment, or other appurtenances and facilities for the purpose of providing Communications Services under this Franchise.

1.7 “Franchise” means the nonexclusive rights, privileges, obligations, and authority granted to the Company under this Ordinance. The Franchise may also be referred to as the “Master Permit” or the “Agreement.”

1.8 “Person” means any individual, corporation, partnership, association, joint venture, organization, or entity of any kind and the lawful trustee, successor, assignee, transferee, or personal representative thereof.

1.9 “Rights-of-Way” means the surface of any land and any space above or below the land previously or hereafter acquired by or dedicated to the public or the City for the purposes, in whole or in part, of public travel. Rights-of-Way includes, but is not limited to, public streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, and similar public property and areas located within the City and under the City’s jurisdiction. Rights-of-Way, for purposes of this Franchise, shall only include those areas that have been improved and/or maintained by the City. Rights-of-Way shall not include State highways. Rights-of-Way shall not

include structures, including poles and conduits, located within the Rights-of-Way.

1.10 “Wireless Telecommunications Services” means the wireless transmission of voice, data, or other electronic information by antennas and radio units whether macrocells, microcells, small cells, distributed antenna systems, or other similar means and associated support facilities including towers, poles, and base stations. Wireless Telecommunications Services does not include providing Communications Services to a site for connection to Wireless Telecommunications Services.

## **Section 2. Grant of Franchise.**

2.1 The City hereby grants the Company a Franchise to use and occupy Rights-of-Way for the purpose of providing Communications Services, including, without limitation, the right to construct, operate, maintain, repair, replace, and remove Facilities in accordance with this Ordinance. The Company and the City recognize that the Company intends, pursuant to this Franchise, to operate and maintain a wired telecommunications system. This Franchise does not grant the Company the right to utilize Rights-of-Way to construct, operate, maintain, repair, replace, or remove any facilities to provide Wireless Telecommunications Services. However, pursuant to this Franchise, the Company may provide Communications Services as backhaul support for Wireless Telecommunications Services located on private property or otherwise constructed, operated, or maintained pursuant to a valid franchise from the City. In order to provide any other services over the Facilities, the Company shall first be required to obtain any additional governmental authorizations required by law. This Franchise replaces and supersedes the OVS Franchise.

2.2 In exercising its rights and obligations under this Franchise, the Company shall comply with all lawfully enacted City Codes. In the event of a conflict between the provisions of this Franchise and the City Codes, the more restrictive provision shall control. In addition, in exercising its rights and obligations under this Franchise, the Company shall comply with all applicable State and Federal laws and regulations.

2.3 The provisions of this Franchise are subject to the lawful exercise of the City’s police powers upon reasonable notice to the Company and nothing contained herein shall be deemed to affect the City’s authority to exercise its police powers to the fullest extent afforded by the Washington State constitution and State law. In accepting this Franchise, the Company acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce, from time to time and in a manner the City deems reasonable, general ordinances necessary for the safety, health, and welfare of the public. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation for the use of the Rights-of-Way should the Company provide services other than Communications Services.

2.4 This Franchise does not grant the Company any vested right to use any portion of the Rights-of-Way except for locations approved by the City and then subject to the terms and conditions of this Franchise and the City’s approval.

2.5 The authority granted herein to the Company is a limited authorization to construct.

operate, maintain, repair, replace, and remove Facilities in the Rights-of-Way to provide Communications Services and shall not include or be a substitute for:

2.5.1 Any other permit or authorization required for the privilege of transacting and carrying on a business within the City, including, but not limited to, a City business license; or

2.5.2 Any permit, agreement, authorization, or condition that may be required by the City for using the Rights-of-Way in connection with operations on or in the Rights-of-Way or public property, such as Rights-of-Way use permits and approved traffic control plans; or

2.5.3 Any permit, agreement, or authorization for occupying any other property of the City or private entity to which access is not specifically granted by this Franchise, including, but not limited to, permits, agreements, or authorizations for placing devices on poles, in conduits, or in or on other structures.

2.6 This Franchise only conveys limited rights and interests as to the Rights-of-Way in which the City has an actual interest. The Franchise is not a warranty of title or interest, does not provide the Company with any representation as to any location of a Right-of-Way or the nature of the City's interest in any Rights-of-Way, and does not provide the Company with any interest in any particular location within the Rights-of-Way. The Franchise does not grant the Company any right to install any Facilities on any City property other than Rights-of-Way, upon any private property without the owner's consent, or upon any public or privately owned utility poles or conduits. To the extent the Company's use of a Right-of-Way is inconsistent with the terms, conditions, or provisions by which the Right-of-Way was created, dedicated, or is presently used, the Franchise grants the Company no right to construct, operate, maintain, repair, replace, or remove Facilities from that Right-of-Way.

2.7 This Franchise shall not be construed as to deprive the City of any rights or privileges that the City now has or may hereafter have to regulate the use and control of the Rights-of-Way and public property. Nothing in this Franchise shall limit or expand the City's right of eminent domain under State law and the Company acknowledges that its use of the space in the Rights-of-Way, but not the actual Facilities themselves, shall have no value for purposes of eminent domain compensation. If at any time the City exercises its authority to vacate all or any portion of any Right-of-Way pursuant to this Franchise, the City shall not be liable for any damages or loss to the Company because of such vacation. The City may, upon ninety (90) days written notice to the Company, terminate this Franchise with respect to any such vacated area.

2.8 The rights and privileges granted under this Franchise are not exclusive. The Franchise is subject to all prior rights, interests, easements, or licenses granted by the City or its predecessors to any Person to use any property, Rights-of-Way, easement, right, interest, or license. The City reserves the right to approve the use of Rights-of-Way for any purpose not incompatible with the Company's rights under this Franchise. The City reserves the right to grant additional franchises upon the same or similar terms at any time and to any Person, provided, however, that such additional grants will not operate to materially modify, revoke, or terminate any rights granted to the Company under this Franchise. The grant of any additional franchise alone shall not constitute a modification, revocation, or termination of rights previously granted to the Company.

2.9 This Franchise does not establish any priority for the use of the Rights-of-Way by the Company or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the Rights-of-Way, the first priority shall be to the City in the performance of its various functions, the second priority shall be to the public generally, and thereafter the City, in exercise of its powers, in a reasonable and non-discriminatory manner shall determine priority between users.

2.10 To the extent that any of the Rights-of-Way within the City are a part of the State highway system and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation regulations, the Company shall comply with said requirements in addition to City Codes. The Company shall correct any noncompliant Facilities identified by the City or by any other local, State, or Federal governmental entity.

### **Section 3. Term.**

3.1 Term. This Franchise shall be in effect from the date of acceptance, as set forth in section 17, until December 31, 2022, unless earlier terminated or revoked.

3.2 Renewal. This Franchise will automatically renew for an additional five (5) year period, upon the same terms and conditions, unless either party, prior to October 1, 2022, informs the other in writing that it wants the Franchise to expire on December 31, 2022.

3.3 Failure to Renew. If neither party indicates its desire for the Franchise to expire as provided in section 3.2 and the parties fail to formally renew this Franchise prior to December 31, 2027, the Franchise will automatically renew month to month until formally renewed or until either party gives written notice, at least ninety (90) days in advance, of its intent to have the Franchise expire.

### **Section 4. Use of Rights-of-Way.**

4.1 Installation of Facilities. Subject to the City Codes, the Company may construct, operate, maintain, repair, replace, and remove its Facilities in, over, under, across, and along the City's Rights-of-Way, as necessary and appurtenant to the provision of its Communications Services.

4.2 Site Specific Agreements. Prior to constructing, installing, or operating any Facility on any City owned structure within a Right-of-Way or installing any Facility which will occupy, more than de minimisly (i.e. a fiber optic cable protruding), the surface of a Right-of-Way (such as utility poles, monopoles, cell towers, vaults, power supplies, etc.), the Company must first enter into a site specific agreement with the City in a form agreed to by the Parties. The City has sole discretion to enter into a site specific agreement and may refuse to do so, among other reasons, where another facility is available for co-location or where a Facility at the given location is not necessary to the Company's provision of Communications Services.

4.3 Permits Required for Construction. Prior to doing any work in the Rights-of-Way, the Company shall apply for, and obtain, appropriate permits from the City including Right-of-Way permits and construction permits. As part of the permitting or approval process, the City may impose, in addition to the requirements contained in this Franchise, such reasonable conditions and regulations as are necessary: (1) to protect any structures in the Rights-of-Way and the



public's use of the Rights-of-Way for pedestrian and vehicular traffic; (2) to provide for the proper restoration of the Rights-of-Way; and (3) to protect the public health, safety, and welfare.

4.3.1 Applications for any required permits or authorizations shall be made, processed, and approved in accordance with applicable City Codes in effect at the time of application. The Company shall assure that all applications, whether submitted by the Company, its employees, agents, or contractors clearly identifies that the work is being done for the benefit of the Company and pursuant to this Franchise.

4.3.2 All permits or authorizations issued for the Company's Facilities or related to its Communications Services are subject to the provisions of this Franchise and the Company, its employees, agents, or contractors shall comply with the provisions of this Franchise whether incorporated into such permit or authorization or not.

4.3.3 The Company shall pay all generally applicable fees for the permit or authorization in accordance with the City Codes in effect at the time of application.

4.3.4 The City may require the Company's Facilities be installed at a particular time, at a particular place, or in a particular manner as a condition of access to a particular Right-of-Way and may deny access if the Company is not willing to comply with the City's requirements.

4.3.5 If the City reasonably determines that the work covered by an application presents a potential for disruption of traffic, injury, damage, or expense to the City if not correctly and timely completed, the City may require the Company to provide an assurance device, in a form acceptable to the City, prior to issuance of a permit or approval. Such project specific assurance device will be in addition to any general assurance devices required by this Franchise.

4.3.6 The City, following advance written notice of not less than thirty (30) days, may require the Company, at its own expense, to modify or remove any Facilities not authorized by this Franchise or installed without prior City approval. The City may remove the Facilities at the Company's sole expense if the Company fails to do so within the time period established by the City.

#### 4.4 General Standards.

4.4.1 All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. All work authorized and required hereunder shall comply with the City permit or authorization, City Codes, and Federal and State law and regulations.

4.4.2 All installation of the Facilities shall be durable and installed in accordance with good engineering practices and industry standards in effect on the date the permits and authorizations are issued for the affected Facilities.

4.4.3 The Company, its employees, agents, and contractors shall comply with all applicable Federal, State, and City safety requirements, rules, regulations, laws, and practices in effect on the date the permits and authorizations are issued for the affected Facilities. By way of illustration and not limitation, this includes the National Electric Code, National Electrical Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

4.4.4 The Company represents that it is familiar with Chapter 19.122 RCW and understands and will comply with local procedures and practices relating to the one call locator service program. The Company and the City shall each comply with their respective obligations pursuant to Chapter 19.122 RCW.

4.5 Coordination. The Company agrees to cooperate with the City's Public Works Department to identify and evaluate the portions of Rights-of-Way necessary for the Company to serve its customers. Priority shall be given to use of those portions of Rights-of-Way where construction can be coordinated with other City and private construction activities, which will least impact the existing condition of the Rights-of-Way, will least impact traffic during construction, and will least impact adjacent neighborhoods during construction and after installation. Sources for planned City and private construction activities include the City's Capital Facilities Plan, Comprehensive Plan, Comprehensive Utility Plan, written construction and planning schedules, and pending development, right-of-way, and construction applications.

4.5.1 Thirty (30) days after acceptance of this Franchise and annually thereafter, the Company shall submit to the City's Public Works Department a plan that shows all major work anticipated to be done in the Rights-of-Way for up to the next five (5) years, to the extent that the development of such plans is reasonably advanced. The City will utilize the plan to identify conflicts and opportunities for coordination between users of the Rights-of-Way. The Company's plan shall be informational only and shall not obligate the Company to undertake any particular project or work. The Company shall identify any portions of its plan that the Company in good faith believes is not subject to disclosure under Chapter 42.56 RCW, shall mark such portions "Confidential," and shall provide a citation to the statutory basis for non-disclosure. The City will exercise its sole legal judgment in responding to a public records request. The City will provide the Company with notification of any anticipated disclosure at least five (5) business days prior to such disclosure to provide the Company an opportunity to obtain a court order preventing disclosure in the event the City intends to disclose a portion of the Company's plan marked "Confidential."

4.5.2 The City adopts a Capital Facilities Plan from time to time, which identifies the roadway projects that the City anticipates constructing during the term of the Capital Facilities Plan. The City will provide the Company a copy of the City's Capital Facilities Plan after acceptance of this Franchise and after adoption of an updated plan during the term of this Franchise.

4.5.3 Within thirty (30) days of acceptance of this Franchise, the Company shall provide the City an email address for the City to add to an email list. The City will communicate substantial (more than 500 lineal feet) roadway projects to this email list in order to provide the Company an opportunity to plan to install Facilities with minimal interruption.

4.5.4 Access to Open Trenches.

4.5.4.1 The Company will be entitled to reasonable access to open City utility trenches, provided that such access does not interfere with the City's placement of utilities or increase the cost to the City thereby. The Company shall pay the City the actual cost to the City resulting from providing the Company access to an open trench, including without limitation the

pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project.

4.5.4.2 The Company shall provide the City and other utility providers or franchise holders access to its open trenches, provided that: (1) such access does not interfere with the Company's Facilities, (2) the other utility provider or franchise holder agrees to reasonable terms of use, including reasonable costs or fees, and (3) the other utility provider or franchise holder has agreed to similar terms to provide access to its trenches.

4.5.4.3 The City will use reasonable efforts to include the Company in any platting process within the City and will exercise reasonable efforts to include, as a condition of issuing a permit for open trenching to any utility or developer, that: (a) the utility or developer give the Company at least fourteen (14) days advance written notice of the availability of the open trench and (b) that the utility or developer provide the Company with reasonable access to the open trench.

4.5.5 If the Company receives email notice of a substantial roadway project and fails to coordinate installation of its Facilities and thereafter seeks to trench, excavate, bore, or cut the street or overlay within five (5) years, the Public Works Director or designee may require additional roadway restoration. The Company agrees that such additional required roadway restoration may include full-width patching extending five (5) feet beyond the Company's disruption of the Right-of-Way.

4.5.6 Subject to receiving reasonable advance written notice, the Company shall have the opportunity to have a representative attend and participate in meetings of the City regarding Rights-of-Way issues that may impact the Company's Facilities.

4.5.7 In all cases, the Company shall utilize existing poles and conduit wherever possible and shall not install new poles. Where the Company will place Facilities underground, and whenever reasonably practical, the Company shall utilize joint trenching and shared bores or cuts and shall work with other providers (such as telecommunications, cable, gas, electric utilities, or the City), licensees, permittees, and franchisees to reduce as far as possible the number of Right-of-Way disturbances.

4.5.8 To the extent practicable, the Company will install its Facilities in a manner that allows other users to collocate with the Company. This includes installing larger diameter conduit where financially reasonable and making the conduit available for additional facilities upon reasonable terms.

4.5.9 The Public Works Director, or designee (e.g., the City Engineer), will be authorized to approve the use by the Company of such Rights-of-Way requested by the Company, and the final decision regarding the use of the Rights-of-Way will remain in the sole discretion of the Public Works Director or designee in accordance with Federal and State law.

#### 4.6 Emergencies.

4.6.1 City's Direction. During unforeseen emergencies that create a threat to the public health, safety, or welfare, the City may require the Company to promptly remove, relocate,

adjust, or secure its Facilities, at the Company's sole expense. If the Company fails, neglects, or refuses to promptly remove, relocate, adjust, or secure its Facilities, the City may perform such work or cause it to be done at the Company's sole expense. The City will bill the Company for any expense incurred within thirty (30) days and the Company shall promptly reimburse the City within thirty (30) days. The provisions of this section shall survive the expiration, revocation, or termination of the Franchise.

4.6.2 Company's Determination. In the event that the Company determines that emergency repairs are necessary, the Company shall immediately notify the City of the need for such repairs. The Company may thereafter initiate such emergency repairs, and shall apply for appropriate permits, within forty-eight (48) hours after the emergency is abated.

#### 4.7 Location of Facilities.

4.7.1 As Built. The Company shall provide to the City upon request and at no cost, a copy of all as-built plans, maps, and records, including revealing the final location and condition of its Facilities within the Rights-of-Way. Such records shall be provided in a format reasonably acceptable to the City.

4.7.2 GIS Mapping. The Company shall comply with City requirements regarding geographic information systems mapping for users of the Rights-of-Way that are in effect on the date the permits and authorizations are issued for the affected Facilities.

#### 4.8 Safety and Least Interference.

4.8.1 The Company shall construct, operate, maintain, repair, replace, and remove Facilities in a manner that prevent injury to Persons, the City's property, or property belonging to any other Person. The Company, at its own expense, shall construct, operate, maintain, repair, replace, or remove its Facilities to keep them in good repair and safe condition. Any work on the Facilities shall be properly safeguarded for the prevention of accidents.

4.8.2 The Company's construction, operation, maintenance, repair, replacement, or removal of its Facilities shall be done in a manner that causes the least interference with the public's travel upon the Rights-of-Way and the rights and reasonable convenience of the abutting property owners and residents. The Company's Facilities shall be constructed, operated, maintained, repaired, replaced, and removed in a manner that causes the least interference with sewers, water pipes, City facilities, or other facilities that may have been located in the Rights-of-Way. The Company shall not interfere with travel and use of public places by persons during the construction, operation, maintenance, repair, replacement, or removal of Facilities and shall not obstruct or impede traffic, except to the extent necessary.

4.8.3 The provisions of this section 4.8 shall survive the expiration, revocation, or termination of the Franchise.

4.9 Notice to Private Property Owners. Except in the case of an emergency involving public safety or an outage or service interruption to a large number of users, the Company shall give reasonable advance notice to private property owners or residents located within one hundred

feet (100') of the Company's Facilities of trenching work that may interfere with the use of property.

#### 4.10 Restoration of Property.

4.10.1 The Company, while constructing, operating, maintaining, repairing, replacing, or removing its Facilities shall exercise commercially reasonable efforts to protect adjoining public and private property from damage. If damage occurs, the Company shall coordinate directly with the property owner and shall resolve the issue, consistent with industry practice, in a reasonable timeframe.

4.10.2 Whenever the Company disturbs or damages any Rights-of-Way or adjoining public or private property the Company shall promptly restore, at the Company's own cost, the Rights-of-Way or property to at least its prior condition, excepting normal wear and tear. The Company shall use its best efforts to complete the restoration as soon as practicably possible, considering the nature of the work to be performed, but in no event more than thirty (30) days following completion of the work.

4.10.3 The Company shall be responsible for the maintenance, repair, or reconstruction of any of its work in the Right-of-Way, in a condition acceptable to the City, until the earlier of (a) two years from the completion of the work or (b) until the Right-of-Way in which the work is located is reconstructed, repaved, or resurfaced by the City. In no event will the Company be obligated to address normal wear and tear or other conditions unrelated to a failure of its work or materials. The Company shall endeavor to complete the maintenance, repair, or reconstruction within the time specified by the City, which shall not be less than seventy-two (72) hours. If the Company fails to maintain, repair, or reconstruct the Right-of-Way to the City's satisfaction within the time specified by the City, the City may cause the maintenance, repair, or reconstruction to be done at the Company's sole expense. The City will bill the Company for any expense incurred within thirty (30) days and the Company shall promptly reimburse the City within thirty (30) days.

4.10.4 Whenever a new street is completed or an overlay of an existing street has been completed within five (5) years of a newly proposed trench, excavation, bore, or cut, additional roadway restoration shall be required as determined by the Public Works Director or designee. The Company agrees that such additional required roadway restoration may include full-width patching extending five (5) feet beyond the Company's disruption of the Right-of-Way.

4.10.5 The provisions of this section 4.10 shall survive the expiration, revocation, or termination of the Franchise.

4.11 Undergrounding. The Company shall place underground, at the Company's expense unless stated otherwise, all of its Facilities that are located or are to be located above or within the Rights-of-Way of the City in the following cases:

(a) All other existing utilities are required to be placed underground by Federal or State law or regulation or the City Codes;

- (b) The Company is unable to get pole attachment agreement permits from pole owners;
- (c) Underground easements are obtained from developers of new residential areas; or
- (d) When required by City Codes or applicable State or federal law.

4.11.1 Whenever the City may require the undergrounding of all aerial utilities, except electrical utilities, the Company shall underground its aerial Facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground Facilities will be approved by the City, following consultation with the Company. Where other utilities are present and involved in the undergrounding project, the Company shall only be required to pay its fair share of the common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of the Company's Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of all other utility facilities being undergrounded.

4.11.2 If an ordinance is passed creating a local improvement district which involves placing underground all utilities, except electrical utilities, including the Company's Facilities which are currently located overhead, the Company shall participate in such underground project and shall remove poles, cables, overhead wires, and other Facilities within such district if requested to do so and place such Facilities underground. If such undergrounding of the Company's Facilities is part of such a project, the costs thereof shall be included in such local improvement district.

4.11.3 In those areas and portions of the City where the transmission or distribution facilities of any utilities providing telephone service and any utilities providing electric service are underground or hereafter are placed underground, then the Company shall likewise construct, operate, and maintain all of its transmission and distribution Facilities underground. Amplifiers and connectors in the Company's transmission and distribution lines may be in appropriate enclosures upon or above the surface of the ground in locations approved by the City, provided that the Company and the City enter into a site specific agreement as detailed in section 4.2. Upon sufficient notice, work shall be done at the same time as other facilities that are placed underground and all work shall be done consistent with City Codes and to minimize impact on streets and neighborhoods.

4.11.4 The Company shall use conduit or its functional equivalent to the greatest extent possible for undergrounding. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. The Company shall use and construct, in conjunction and coordination with other utility companies or providers, common trenches for underground construction whenever available and possible.

4.11.5 The provisions of this section 4.11 shall survive the expiration, revocation, or termination of the Franchise.

#### 4.12 Removal or Relocation

4.12.1 Safety and Free Passage. If the City, in its sole discretion, determines that an emergency exists or that a Facility unduly burdens or endangers the safe and free passage of traffic on the Rights-of-Way, the Company shall modify, replace, relocate, remove, or disconnect the Facilities in the time specified by the City's notice. If the Company fails to modify, replace, relocate, remove, or disconnect the Facilities within the time specified by the City or if the City determines that the City must immediately undertake the modification, replacement, relocation, removal, or disconnection, the City may cause the modification, replacement, relocation, removal, or disconnection to be done at the Company's sole expense. The City will bill the Company for any expense incurred within thirty (30) days and the Company shall promptly reimburse the City within thirty (30) days.

4.12.2 Movement for City Purposes. For any City project, the City may require the Company to modify, replace, relocate, remove, or disconnect its Facilities at the Company's sole expense, so long as the requirements are applied in a non-discriminatory manner. The City will make a reasonable effort to provide the Company with an alternate location within the Rights-of-Way. The City will endeavor to provide at least sixty (60) days written notice to the Company prior to the modification, replacement, relocation, removal, or disconnection of the Company's Facilities and will attempt to minimize the impact on the Company's Facilities. If the Company fails to modify, replace, relocate, remove, or disconnect the Facilities within the time specified by the City, the City may cause the modification, replacement, relocation, or removal to be done at the Company's sole expense. The City will bill the Company for any expense incurred, including any costs or expenses incurred by the City due to the Company's delay within thirty (30) days and the Company shall promptly reimburse the City within thirty (30) days.

4.12.3 Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection of the Company's Facilities is required to accommodate the construction, operation, or repair of the facilities or equipment of another City franchise holder or user of the Rights-of-Way, the Company shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible Person. The Company may require that the costs associated with the removal, replacement, modification, or disconnection of the Facilities be paid by the benefited Person, and the Company may require a reasonable deposit of the estimated payment in advance.

4.12.4 When no longer needed to provide its Communications Services, the Company shall not remove any underground Facilities that require excavation, trenching, or other opening of the Rights-of-Way to remove the Facilities. The Company may remove any underground Facilities from the Rights-of-Way installed in a manner such that the Facility can be removed without excavation, trenching, or other opening of the Rights-of-Way.

4.12.5 The provisions of this section 4.12 shall survive the expiration, revocation, or termination of the Franchise.

4.13 Temporary Changes for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance written notice, the Company shall temporarily raise, lower,

or remove its Facilities as necessary to permit the moving of a building, vehicle, equipment, or other work. The expense of such temporary changes must be paid by the permit holder and the Company may require a reasonable deposit of the estimated payment in advance.

4.14 Reservation of City's Use of Rights-of-Way. Nothing in this Franchise shall prevent the City from constructing sewers, grading, paving, repairing, or altering any Rights-of-Way, laying down, repairing, or removing water mains, or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the use and operation of the Company's Facilities.

4.15 Tree Trimming. To the extent a City owned tree interferes with the Company's Facilities, the Company may prune or cause to be pruned, using proper pruning practices, the City's tree upon receiving the City's approval, which will not unreasonably be withheld. In the event of an emergency, the Company may trim the tree and thereafter provide the City notice of the emergency and the tree trimming with forty-eight (48) hours.

4.16 Inspection of Construction and Facilities. The City may inspect any of the Company's Facilities after forty-eight (48) hours written notice, or, in case of an emergency, upon demand without prior notice.

4.17 Work by Agents, Contractors, and Subcontractors. The Company's agents, contractors, and subcontractors shall be properly licensed and bonded in accordance with the City Codes and State law. Work by agents, contractors, and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by the Company. The Company shall be responsible for all work performed by its agents, contractors, and subcontractors as if the work were performed by the Company. The Company shall ensure that all such work is performed in compliance with this Franchise and applicable laws and shall be jointly and severally liable for all damages and correcting all damage caused by any agents, contractors, or subcontractors. The Company is responsible for ensuring that agents, contractors, and subcontractors are familiar with the requirements of this Franchise and applicable laws.

## **Section 5. Fees.**

### **5.1 Recovery of Costs.**

5.1.1 The Company shall be subject to a one-time administrative fee of two thousand dollars (\$2,000.00) for the City's costs relating to the administration of this Franchise. The Company agrees to pay such administrative fee upon acceptance of this Franchise.

5.1.2 The Company shall reimburse the City within thirty (30) days of receiving an itemized billing from the City for incurred costs, itemized by project, for the Company's proportionate share of all actual, identified expenses incurred by the City as a result of the presence of the Company's Facilities in the Rights-of-Way. This may include the City's expenses in planning, constructing, installing, repairing, altering, or maintaining any City facility. Additionally, the Company shall reimburse the City's actual expenses incurred by the City that are directly related to receiving and approving a permit, license, or franchise and to inspecting plans and construction pursuant to this Franchise.



5.2 Allowable Taxes. Nothing provided herein shall exempt or otherwise limit the Company's obligation to pay any applicable tax required by the Marysville Municipal Code or any other applicable law or regulation, so long as such tax is permitted by federal and/or Washington law. The Company's failure to pay any permitted applicable tax required by the Marysville Municipal Code or any other applicable law or regulation shall constitute a material breach of the Franchise.

5.3 In the event that any payment due to the City under this Franchise, except for allowable taxes, is not received by the City by the date due, interest will be charged from the due date at the rate of twelve percent (12%) per annum.

5.4 Acceptance of Payment. No acceptance of any payment by the City 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 Franchise. The Company's payment to the City shall not be construed as an acknowledgement by the Company that the amount paid is the correct amount and the Company reserves the right to subsequently seek to recover any amount of such payments in the event of an erroneous overpayment or for other lawful reasons.

5.5 Pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee on a "telephone business" as defined in RCW 82.16.010 or a "service provider" as defined in RCW 35.99.010, for the use of the City's Rights-of-Way, except for actual administrative expenses directly related to the franchise or any tax authorized by State law. The Company hereby warrants that its operations, as authorized under this Franchise, are those of a "telephone business" as defined in RCW 82.16.010 or as a "service provider" as defined in RCW 35.99.010. As a result, the City currently lacks the authority to impose any franchise fee under the terms of this Franchise, other than as described herein.

5.6 The City reserves its right to impose a franchise fee, in accordance with State or Federal law, on the Company for purposes other than to recover its administrative expenses, if the Company's operations as authorized by this Franchise change such that the Company's uses of the Rights-of-Way are not those of a "telephone business" as defined in RCW 82.16.010, those of a "service provider" as defined in RCW 35.99.010, or if State or Federal law is amended to allow the imposition of such a franchise fee. The City further reserves the right to require the Company to obtain a separate franchise for its use of City Rights-of-Way to the extent the Company's use is not as a "telephone business" as defined in RCW 82.16.010 or as a "service provider" as defined in RCW 35.99.010.

## **Section 6. Hold Harmless and Indemnity.**

6.1 The Company shall indemnify, defend, and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, costs, and expert witness fees, arising out of or in connection with the construction, operation, maintenance, repair, replacement, and removal of the Company's Facilities or the Company's actions under this Franchise, whether by the Company, its agents, servants, employees, contractors, subcontractors, or assigns, except for injuries and damages caused by the sole negligence of the City, its agents, officers, employees, volunteers, or assigns.

In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify the Company thereof (and in any event prior to the date that Company's rights to defend such claim or demand would be prejudiced), and the Company shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action is commenced against the City based upon any such claim or demand, it shall likewise promptly notify the Company thereof, and the Company shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

6.2 Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of the bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Company and the City, its officers, officials, employees, agents, and volunteers, the Company's liability hereunder shall be only to the extent of the Company's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Company's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

6.3 To the extent not covered by the indemnity requirements of section 6.1, the Company shall indemnify, defend, and hold the City harmless from any and all claims, injuries, damages, losses, or suits against, or payable by, the City arising out of or resulting from, directly or indirectly, the Company's failure to remove, adjust, or relocate any of its Facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.

6.4 In various provisions of this Franchise, the Company is obligated to take action at the direction of the City within a specified time (see i.e. and without limitation, section 4.10.3.3, 4.12.1) and the City is thereafter empowered to undertake such actions at the sole expense of the Company if the Company fails to accomplish the action within the specified time. The City's actions in such a situation are termed the "City's Remedial Actions" for purposes of this section. To the extent not covered by the indemnity requirements of section 6.1, the Company shall indemnify, defend, and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses, or suits against, or payable by, the City arising out of or resulting from, directly or indirectly, the actions of the City, its officers, officials, employees, agents, and volunteers in undertaking the City's Remedial Actions under this Franchise. The Company and the City agree that the Company's indemnification for the City's Remedial Actions includes indemnification for the sole negligence of the City, its officers, officials, employees, agents, and volunteers and further agree that this indemnification obligation is separate, additional to, and severable from the Company's other indemnification obligations under this Franchise.

6.5 The provisions of this section 6 shall survive the expiration, revocation, or termination of the Franchise.

## **Section 7. Insurance.**

7.1 General Requirement. The Company shall procure and maintain for the duration of this

Franchise, and until all Facilities are removed from Rights-of-Way or abandoned in place, insurance against claims for injuries to persons or damage to property which may arise from or in connection with this Franchise or involve the Company.

7.2 No Limitation. The Company's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Company to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or equity.

7.3 Minimum Insurance Limits. The Company shall maintain in full force and effect, at its own cost and expense, each of the following policies of insurance:

7.3.1 Commercial General Liability insurance with limits of no less than Five Million dollars (\$5,000,000) per occurrence and Five Million dollars (\$5,000,000) general aggregate for personal injury, bodily injury, and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse, and underground; and employer's liability.

7.3.2 Commercial Automobile Liability insurance with minimum combined single limit of Five Million dollars (\$5,000,000) per accident for bodily injury and property damage with respect to each of the Company's owned, hired, and non-owned vehicles assigned to or used in the construction, operation, maintenance, repair, replacement, or removal of its Facilities.

7.3.3 Worker's Compensation insurance as required by the Industrial Insurance laws of the State of Washington.

7.3.4 Excess Liability or Umbrella Coverage in the amount of Two Million dollars (\$2,000,000).

7.4 Endorsements. The Company's insurance policies, excluding Worker's Compensation, are to contain, or be endorsed to contain:

7.4.1 That they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Company's insurance and shall not contribute with it.

7.4.2 That the City, its officers, officials, employees, agents, and volunteers are to be covered as, and have the rights of, additional insureds.

7.5 Verification of Coverage. The Company shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Franchise upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Company hereby warrants that its insurance policies satisfy the requirements of this Franchise.

7.6 Acceptability of Insurers. Insurance obtained by the Company is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

7.7 Notice of Cancellation. Provided that the insurer will do so, each policy of insurance shall provide that a written notice of cancellation shall be delivered to the City thirty (30) days in advance of the effective date thereof. Otherwise, the Company shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice. Regardless, the Company shall provide a replacement policy and shall maintain continuous, uninterrupted insurance coverage, in at least the amounts required, for the duration of the Franchise.

7.8 The provisions of this section 7 shall survive the expiration, revocation, or termination of the Franchise.

### **Section 8. Financial Assurances.**

8.1 Surety Bond. No later than thirty (30) days following acceptance of this Franchise, the Company shall establish and provide to the City, as security for the faithful performance by the Company of all of the provisions of this Franchise, a performance bond, from a surety or financial institution acceptable to the City, in the amount of twenty-five thousand dollars (\$25,000).

8.1.1 The performance bond may be drawn upon by the City for purposes including, but not limited to, the following: (1) failure of the Company to pay the City sums due under the terms of this Franchise; (2) reimbursement of costs borne by the City to correct Franchise violations not corrected by the Company; (3) monetary remedies or damages assessed against the Company due to default or breach of Franchise requirements.

8.1.2 The City will give the Company written notice of its intent to withdraw from the surety bond pursuant to this section. Within thirty (30) days following notice that such withdrawal has occurred, the Company shall restore the surety bond to the full amount required by section 8.1. The Company's maintenance of the surety bond shall not be construed to excuse faithful performance by the Company, limit the liability of the Company to the amount of the surety bond, or otherwise limit the City's recourse to any other remedy available at law or in equity.

8.1.3 The Company shall have the right to appeal to the Chief Administrative Official for reimbursement in the event the Company believes that the surety bond was drawn upon improperly. Any funds the City erroneously or wrongfully withdraws from the surety bond shall be returned to the Company.

8.2 Other Bonds. The Company shall comply with any other bonding requirements provided for in the City Codes. Further, if the City reasonably determines that the work covered by an application presents a potential for disruption of traffic, injury, damage, or expense to the City if not correctly and timely completed, the City may require the Company to provide an assurance device, in a form acceptable to the City, prior to issuance of a permit or approval.

## **Section 9. Civil Penalties and Additional Relief.**

9.1 The Company, and any officers, directors, employees, agents, contractors, or other Person acting on behalf of the Company, failing to comply with any of the provisions of this Franchise, shall be subject to a civil penalty and abatement in the manner and to the extent provided for in the City Codes.

9.2 In addition to any penalty which may be imposed by the City, and to the extent that a violation of this Franchise results in damage to City property or Rights-of-Way, the Company shall be responsible for the cost of restoring the affected area to its condition prior to the violation.

9.3 Notwithstanding any other provision herein, the City and the Company may seek legal or equitable relief to enjoin any act or practice and abate any condition, which constitutes or will constitute a violation of the applicable provisions of this Franchise, when civil or criminal penalties are inadequate to effect compliance. In addition to the penalties otherwise set forth in this section 9, the Company and the City acknowledge that any pattern of violations with respect to any material provision of this Franchise, consisting of three (3) or more such violations within a period of twelve (12) consecutive months, may further result in the revocation of any Rights-of-Way use agreement, Rights-of-Way use permit, facilities lease, other such authorization, or this Franchise.

9.4 Nothing in this section shall be construed as limiting any remedies the City or the Company may have, at law or in equity, for enforcement of this Franchise.

## **Section 10. Modifications of Terms and Conditions.**

The City and the Company hereby reserve the right to alter, amend, or modify the terms and conditions of this Franchise and any permit issued thereunder upon written agreement by both parties to such alteration, amendment, or modification. The City Council of the City of Marysville must approve any alteration, amendment, or modification of this Ordinance prior to it being signed by the City.

## **Section 11. Abandonment or Non-Use of Facilities.**

11.1 In the event this Franchise expires, is terminated, or the Company discontinues commercial use of any Facility located in the Rights-of-Way for a period of one hundred eighty (180) consecutive days or longer, the City may, upon written notice to the Company, require removal of any or all such Facilities from the Rights-of-Way within ninety (90) days. If the Company fails to remove the specified Facilities within the time specified, the City may cause removal of the specified Facilities at the Company's sole expense. The City will bill the Company for any expense incurred within thirty (30) days and the Company shall promptly reimburse the City within thirty (30) days.

11.2 Notwithstanding any other provision of this Franchise, the City may permit, by written notice, the Company to abandon any or all Facilities in place. The City's written notice will specify a date certain, no earlier than ninety (90) days after the date of the notice, prior to which the Company may remove its Facilities in accordance with this Franchise and after which the

Facilities will be considered abandoned in place. Upon being abandoned in place, the Facilities shall become the property of the City and the Company shall submit to the City an instrument, in writing and approved by the City Attorney, transferring ownership of the Facilities to the City.

11.3 The provisions of this section 11 shall survive the expiration, revocation, or termination of this Franchise.

**Section 12. Severability.**

If any term, provision, condition, or portion of this Franchise shall be held to be invalid or unconstitutional for any reason, the portion declared invalid shall be severable and the remaining portions of this Franchise shall be enforceable unless to do so would be inequitable or would result in a material change in the rights and obligations of the parties hereunder.

**Section 13. Transferability.**

The rights and privileges granted to the Company as provided in this Franchise may only be assigned or transferred to another Person with the prior written approval of the City, which will not be unreasonably withheld, conditioned, or delayed. However, the Company, following thirty (30) days written notice to the City, may assign this Franchise to an Affiliate, provided the Affiliate has the legal, technical, financial, and other qualifications to own, hold, construct, operate, maintain, repair, replace, and remove the Facilities for the purpose of providing Communications Services and agrees, in writing, to be fully liable to the City for compliance with all terms and conditions of this Franchise. The City is under no obligation to investigate the Company's then existing compliance with the Franchise and the failure of the City to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

**Section 14. General Enforcement.**

In the event that the City believes that the Company has not complied with any terms of the Franchise or the City Codes, other than sections 4.6, 4.10.3, or 4.12.1, the City may discuss the violation with the Company or may issue a written notice to cure the default. The City's notice to cure the default will include the actions to be taken to remedy the default and the timeframe, which shall be no less than thirty (30) days, within which the Company should accomplish the actions. The Company will thereafter have the time specified in the notice to cure the default to correct the default or, if the Company believes that the actions cannot be taken within the time specified, respond with a timeline for diligently accomplishing the actions and diligently complete those actions on the identified timeline.

**Section 15. Termination.**

Except as otherwise provided herein, this Franchise may be terminated, without penalty or further liability, as follows:

(a) Upon thirty (30) days written notice by the City if the Company fails to cure a default for payment of amounts due under this Franchise or the City Codes within that thirty (30) day period, provided that the City may not terminate for the non-payment of taxes under section 5.2 if the Company provides written notice to the City that it contests the legality of the taxes

imposed and provides a good faith basis for challenging the legality of the taxes imposed under section 5.2;

(b) Upon thirty (30) days written notice by either party if the other party commits a non-monetary material default and fails to commence curing such default within that thirty (30) day period, or such longer period as may be required to diligently complete a cure commenced within that thirty (30) day period; or

(c) Upon ninety (90) days written notice by the Company for economic reasons or if the location or the Facilities are or become unacceptable under the Company's design or engineering specifications for its communications system.

**Section 16. Effective Date.**

16.1 This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall take effect and be in force from and after the effective date of this Franchise.

16.2 The effective date of this Franchise shall be the date of acceptance as specified in section 17, but in no event prior to five days after publication of this Ordinance by summary.

**Section 17. Franchise Acceptance.**

Within forty-five (45) days of the adoption of this Ordinance by the City Council, the Company shall execute and return to the City two fully executed acceptance forms, in the form attached to this Ordinance. In the event the Company fails to accept this Franchise, the Franchise shall be null and void and the Company shall have no rights or privileges hereunder.

**Section 18. Miscellaneous.**

18.1 This Franchise constitutes the entire agreement and understanding between the parties and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein. Any amendments to this Franchise must be in writing, approved by the City Council, and executed by both parties.

18.2 This Franchise shall be binding on and inure to the benefit of the permitted successors and permitted assignees of the respective parties.

18.3 Any notice or demand required to be given herein shall be made by United States mail or reliable overnight courier to the address of the respective parties set forth below:

To the City:	To the Company:
City of Marysville Attn: Chief Administrative Officer 1049 State Avenue Marysville, WA 98270	Astound Broadband, LLC d/b/a Wave Attn: Byron Springer, EVP 401 Kirkland Parkplace, Suite 500 Kirkland, WA 98033

With a required copy to:

City of Marysville

Attn: City Attorney

1049 State Avenue

Marysville, WA 98270

The City or the Company may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

18.4 This Franchise shall be governed by the laws of the State of Washington.

18.5 In any case where the approval or consent of one party hereto is required, requested, or otherwise to be given under this Franchise, such party shall not unreasonably delay or withhold its approval or consent.

18.6 All amendments and exhibits annexed hereto form material parts of this Franchise.

18.7 This Franchise may be executed in duplicate counterparts, each of which shall be deemed an original.

18.8 Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity.

18.9 Venue for any dispute related to this Franchise shall be in Snohomish County Superior Court in Everett, Washington.

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

18.11 The failure of the either party at any time to require performance by the other of any provision hereof shall in no way affect the right of such party thereafter to enforce the same, nor shall the waiver by such party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself or any other provision.

PASSED by the City Council and APPROVED by the Mayor this 9 day of

October, 2017.

CITY OF MARYSVILLE

By: 

Jon Nehring, Mayor



Attest:

By: Tina Brock  
April O'Brien, Deputy City Clerk  
Tina Brock

Approved as to form:

By: [Signature]  
Jon Walker, City Attorney

Date of Publication: October 14, 2017

Effective Date: October 19, 2017  
(5 days after publication)

