

33713942

RESOLUTION NO. 126-81

A RESOLUTION GRANTING A FRANCHISE TO Barber Videochlo, LLC, 1st St., Montesano, WA, ITS SUCCESSORS AND ASSIGNS TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE COUNTY OF MASON, STATE OF WASHINGTON, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE PROVIDING FOR COUNTY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM.

Section 1. DEFINITIONS. For the purpose of this ordinance the following terms, phrases, words, abbreviations, and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- (a) "County" shall mean the County of Mason.
- (b) "Commission" shall mean the Board of Mason County Commissioners.
- (c) "Company" shall mean the grantee of rights under this ordinance.
- (d) "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.
- (e) "Franchise area" shall mean that area shown on the map or description attached as Exhibit 1.
- (f) "Street" shall mean the surface of and the space above and below any public street, right of way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the franchise area.
- (g) "Property of company" shall mean all property owned, installed or used by the Company in the conduct of a CATV business in the County.

(h) "CATV" shall mean a cable television system as hereinafter defined.

(i) "Cable Television System" shall mean a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable audio and/or visual radio, television, electronic or electrical signals to and from persons, subscribers and locations in the franchise area.

(j) "Basic CATV Service" shall mean the distribution of broadcast television signals by the Company.

(k) "Subscriber" shall mean any person or entity receiving basic CATV service.

(l) "Gross Annual Basic Subscriber Revenues" shall mean any and all compensation and other consideration received directly by the Company from subscribers in payment for regularly furnished basic CATV service. Gross annual basic subscriber revenue shall not include any taxes on services furnished by the Company imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the Company for such governmental unit.

Section 2. GRANT OF AUTHORITY. Whereas the Commission has approved the legal, character, financial, technical and other qualifications of the Company and the adequacy and feasibility of the Company's construction arrangements as part of a full public proceeding affording due process, and in consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, the right and privilege is hereby granted by the Commission to the Company to engage in the business of operating and providing a CATV system in the Franchise Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street, public way and public place,

now laid out or dedicated and all extensions thereof and additions thereto in the franchise area such poles, wires, cable, conductors, ducts, conduit vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations including but not limited to any public utility or other grantee franchised or permitted to do business in the County.

Section 3. NON-EXCLUSIVE GRANT. This Franchise is granted upon the further express conditions that it shall not be deemed or held to be an exclusive Franchise, and shall not in any manner prohibit the County from granting other and further Franchises over, upon, and along any of said roads and public highways of any kind or character that it may deem proper, and this Franchise shall in no way prohibit or prevent the County from using the said roads or affect their jurisdiction over them or any part of the same, with the full power to make all necessary repairs or changes in the same.

Section 4. TERM OF FRANCHISE. The franchise and rights here-in granted shall take effect and be in force 30 days from and after the final passage hereof and upon filing of acceptance by the Company and shall continue in force and effect for a term of 15 years after the effective date of this franchise. The franchise may be renewed for an additional fifteen year period following a full public proceeding affording due process.

Section 5. CONDITIONS OF STREET OCCUPANCY.

(a) All transmission and distribution structures, lines, and equipment erected by the Company within the franchise area shall be so located as to cause no interference with the proper use of streets, and other public ways and places, and to cause no interference with the rights and reasonable convenience of property owners who join any of the said street or other public ways and places. The CATV system shall be constructed and operated in compliance with all County, State and National construction and electrical codes and shall be kept current with new codes. The Company

shall install and maintain its wires, cables, fixtures and other equipment in such manner that they will not interfere with any installations of the County or of a public utility serving the County. In all areas of the County where any cables, wires, or other like facilities of public utilities are required to be or placed underground, the Company shall place its cables, wires, or other like facilities underground in conformance with permits issued by the County Engineer to the maximum extent existing technology reasonably permits.

(b) The Company shall furnish to and file with the County Engineer maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities. Such maps, plats, and permanent records furnished and filed with the County shall be updated on April 1 and October 1 by the Company.

(c) In case of disturbance of any street, public way, or paved way, or paved area, the Company shall immediately, at its own cost and expense, and in accordance with County standards and specifications, replace and restore such street, public way, or paved area in as good a condition or better as before the work involving such disturbance was done.

(d) If at any time during the period of franchise the County shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Company upon notice by the County shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense and in compliance with County standards and specifications.

(e) The Company shall, on the request of any person holding a building moving permit issued by the County, temporarily move, raise, or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment, in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes and should meet current height restriction requirements.

(f) With County approval, the Company shall have the authority to trim trees upon and overhanging streets and public ways and places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company and shall be responsible for debris removal from such activities, except that, at the option of the County, such trimming may be done by it or under its supervision and direction at the expense and liability of the Company.

(g) The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Company when required by the County by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies; provided, however, that the Company shall in all such cases have the rights and obligations of abandonment of property of the Company, subject to County ordinance.

(h) The County shall have the right to make additional use, for any public or municipal purpose, of any poles or conduits controlled or maintained exclusively by or for the Company in any street, provided such use by the County does not interfere with the use by the Company. The County shall indemnify and hold harmless the Company against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of Company's poles or conduits.

(i) In the maintenance and operating of its transmission and distribution system in the streets, alleys and other public places, and the course of any new construction or addition to its facilities, the Company shall proceed so as to cause the least inconvenience to the general public; any opening or obstruction in the streets or other public places made by the Company in the course of its operations shall be guarded and protected at all times by the placement of adequate



barriers, fences, or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights, in accordance with the Manual of Uniform Traffic Control Devices.

Section 6. SAFETY REQUIREMENTS

(a) The Company shall, at all times, employ professional care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) All structures and all lines, equipment and connection in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

(c) The County reserves the general right to see that the system of the Company is constructed and maintained in a safe condition and if an unsafe condition is found to exist, to order the Company to make necessary repairs and alterations forthwith, and if the Company shall fail to make the necessary repairs and alterations, the County may make them or have them made, and collect all cost and expense thereof from the Company.

Section 7. SYSTEM CONSTRUCTION

(a) The distribution system of the Company to be hereafter installed shall not be abandoned either in whole or part without the consent of the Commission. In the event of the failure of the Company to commence construction of the system within sixty days after the enactment of this resolution and the securing of the pole franchise with owners, or in the event of the failure of the Company to render community television service to the franchise area and the inhabitants thereof, as contemplated and provided for by this resolution within a period of one year from the effective date of this resolution, the Commission shall have the right, on reasonable notice to the Company, to declare this resolution and the rights and franchise granted thereunder forfeited provided; however, failure to comply with these terms by reason of circumstances beyond the reasonable control of the Company which could not be anticipated at the time of the

acceptance of its terms by the Company, shall not be sufficient grounds to declare a forfeiture.

(b) Company, whenever it shall receive a request for service from at least ten subscribers within 1320 cable feet of its trunk cable, shall extend its system to such subscribers at no cost to the subscribers for system extension other than the usual connection fees for all subscribers, provided that such extension is technically and physically feasible. The 1320 feet shall be measured in extension length of Company's cable required for service located within the public way or easement and shall not include length of necessary service drop to the subscriber's home or premises.

(c) No person, firm, or corporation in the Company's service area shall be arbitrarily refused service. However, in recognition of the capital costs involved, for unusual circumstances, such as requirement for underground cable, or more than 150 feet of distance from distribution cable to connection of service to subscribers, or a density of less than ten subscribers per 1320 feet of cable system, in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be made available on the basis of cost of materials, labor, and easements.

#### Section 8. OPERATION STANDARDS

(a) The Company shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

(b) Installations shall be maintained so as not to interfere with TV reception already in existence.

(c) 6 viewing channels shall be furnished as a minimum; educational channels are included as part of the minimum.

(d) Installation and maintenance of equipment shall be such that standard color signals shall be transmitted to any subscriber receiver.

(e) Additional viewing services shall be reviewed by the Commission upon request by the Company and the Commission shall have the right upon review to request and require additional viewing service of the Company.

#### Section 9. LOCAL OFFICE; COMPLAINTS

The Company shall maintain a local business office or agent which

subscribers may telephone during regular business hours without incurring added message or toll charges, so that complaints regarding cable television operations may be promptly reported to the Company. Should a subscriber have an unresolved complaint regarding cable television operations, the subscriber shall be entitled to file his complaint with the County Auditor, and thereafter to meet jointly with a representative of the Commission and a representative of the Company within thirty (30) days to fully discuss and resolve such matters. The Company shall notify each subscriber, at the time of initial subscription to the service of the Company, of the procedures for reporting and resolving such complaints.

Section 10. RATES

From time to time the Company may seek approval of the Commission for a rate increase; provided, however, that any rate increase submitted by the Company for Commission approval will become effective automatically within sixty (60) days of submission, unless the Commission after review of all relevant material in an appropriate public hearing affording due process finds the proposed increase is unreasonable. Rates approved shall remain in effect for not less than twelve (12) calendar months after the effective date. Subject to these procedures, the Company may pass along to subscribers such additional fees as may be imposed on it, including but not limited to direct taxes, copyright fees, and permit fees.

The determination of the Company's rates shall be subject to the rules and regulations of any state or federal authority which may subsequently, by due process of law, acquire jurisdiction over this type of industry or enterprise.



Section 11. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

The Company shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further that connection and service charges may be waived or modified during promotional campaigns of Company.

Installation and housedrop hardware shall be uniform throughout the County, except that the Company shall be free to change its hardware and installation procedure as the art progresses.

Section 12. FRANCHISE PAYMENTS.

The Company shall pay to the County on or before March 31 of each year, a 3 % franchise fee based on gross annual basic subscriber revenues received for cable television operations in the Franchise Area for the preceding calendar year.

Sales tax or other taxes levied directly on a per subscription basis and collected by the Company shall be deducted from the gross annual basic subscriber revenues before computation of sums due the County, is made. The Company shall provide an annual summary report showing gross annual basic subscriber revenues received during the preceding year. Payment shall be made on or before the 16th day of January, April, July and October of each year of the sum due hereunder for the proceeding quarter. The above rental percentum may be renegotiated by either the County OR the grantee giving the other party thirty (30) days written notice requesting a meeting for such renegotiation.

Section 13. INDEMNIFICATION OF COUNTY.

(a) The Company shall indemnify, protect and save harmless the

County from and against losses and physical damages to property, and bodily injury or death to persons, including payments made under any workmen's compensation law, which may arise out of or be caused by the erection, maintenance, presence, use or removal of said attachments or poles within the County, or by any act of the Company, its agents or employees and will defend the County against any and all actions which may be brought against the County as a consequence thereof. The Company shall carry insurance to protect the County and the Company from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly from or by reason of such loss, injury or damage. The amounts of such insurance against liability due to physical damage to property shall not be less than one million dollars as to any one accident and not less than one million dollars aggregate in any single policy year; and against liability due to bodily injury or to death of persons not less than one million dollars as to any one person and not less than one million dollars as to any one accident. The Company shall also carry such insurance as it deems necessary to protect it from all claims under any workmen's compensation laws in effect that may be applicable to the Company. All insurance required by this agreement shall be and remain in full force and effect for the entire life of this agreement. Said policy or policies of insurance or a certified copy or copies thereof shall be approved by the Mason County Prosecuting Attorney and then deposited with and kept on file by the County Auditor.

(b) It is understood that the Company is an independent contractor and is not an agent of the County, and all personnel used by the Company in the performance of this franchise shall be employees of the Company and not of the County, and shall have no claim against the County for compensation or other benefits available to employees of the County.

(c) At the time this franchise becomes effective, the Company shall furnish a bond to the County in the amount of ten thousand dollars in such form and with such sureties as shall be acceptable to the County, guaranteeing the payment of all sums, which may at

any time become due from the Company to the County under the terms of this franchise (except such sums as are covered by the insurance provided in section a), and further guaranteeing the faithful performance of all the obligations of the Company under the terms of this franchise.

Section 14. PROCEDURES.

(a) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the County in regard to the operations of Company's cable television system, including action in regard to a change in subscription rates, shall be taken only after thirty (30) days public notice of such action or proposed action is served directly on Company; and, the Company has been given an opportunity to respond or comment in writing on the action or proposed action.

(b) The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the Commission. If a hearing is to be held, the public notice shall give the date and time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Company shall be a necessary party to any hearing conducted in regard to its operations.

Section 15. PROCEDURE UPON TERMINATION.

Upon expiration of the franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets, and public ways of the County, for the purposes of removing therefrom any or all of its property. In so removing said property the Company shall refill, at its own expense, any excavation that shall be made by it, and shall leave said streets and public ways and places in as good condition or better as that prevailing prior to the Company's removal of its property.

Section 16. APPROVAL OF TRANSFER.

The Company shall not sell or transfer its plant or system to another, other than a parent company or a wholly-owned subsidiary

of the Company, nor transfer any rights under this franchise to another without Commission approval. Provided, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the County Auditor an instrument duly executed reciting the fact of such sale, assignment or lease accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Commission approval will not be unreasonably withheld and neither this Section nor other Sections of this franchise shall preclude the mortgaging, hypothecating, or the assignment of certain rights in the system, or the pledge of stock by the Company for the purpose of financing.

Section 17. NEW DEVELOPMENTS.

It shall be the policy of the County liberally to amend this franchise upon application of the Company, when necessary to enable the Company to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers.

Section 18. MISCELLANEOUS PROVISIONS.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the County shall be filed with the County Auditor.

(b) The Company shall assume the cost of publication of this franchise as such publication is required by law. A bill for publication costs shall be presented to the Company by the County Auditor upon the Company's filing of acceptance and shall be paid at that time.

(c) In consideration of the granting of this franchise to the Company, as aforesaid, the Company will furnish without installation charge or monthly service fee, a single-outlet to any of the County departmental offices within the service area of the Company, if and when requested to do so; but such outlets shall not exceed an aggregate total of ten.

(d) In consideration of the granting of the franchise to the Company as aforesaid, the Company will furnish without installation charge or monthly service fee a single outlet to any public schools, public hospitals, and County-sponsored social service agencies within the service area of the Company if and when requested to do so.

(e) In the case of any emergency or disaster, the Company shall, upon the request of the County, make available its facilities to



the County for emergency use during the emergency or disaster period.

(f) The County shall have access at all reasonable hours to all of the Company's plans, contracts and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Company and to all other records required to be kept hereunder. The following report shall be filed with the Clerk of the County Board and in the local office of the Company:

Gross Revenue. An annual summary report showing gross revenues received by the Company from its operations within the County during the preceding year and such other information as the County shall request with respect to properties and expenses related to the Company's service within the County.

Section 19. COMPLIANCE WITH APPLICABLE PROVISIONS, LAWS AND ORDINANCES.

(a) The Company shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the County. The County reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be deemed necessary to the exercise of police power. Such regulation shall be reasonable and not destructive to the rights herein granted and not in conflict with the laws of the State.

(b) Upon failure of the Company to comply with any of the provisions or conditions hereof, within thirty (30) days after service of notice to comply with any such provisions, conditions, restrictions or limitations, made and served by order of the Commission upon the Company, the Commission may declare by resolution and enforce an immediate forfeiture of this franchise.

Section 20. FEDERAL REGULATION.

Any modification resulting from amendment of Section 76.31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one year of adoption or at the time of franchise renewal, whichever occurs first.

Section 21. SEVERABILITY.

Should any section, clause or provision of this resolution be declared invalid by a court of record, the same shall not affect the validity of the resolution as a whole or any part thereof, other than the part so declared invalid.

Section 22. EFFECTIVE DATE.

(a) This resolution shall take effect and be in force thirty (30) days from and after its passage, subject to acceptance by the Company within said 30 day period.

(b) This resolution shall be null and void unless the Company shall within thirty (30) days after its passage, approval and publication, file with the County Auditor its written acceptance of all terms and conditions hereof.

PASSED, ADOPTED AND APPROVED this 5<sup>th</sup> day of October, 1981.

ATTEST:

MASON COUNTY BOARD OF COMMISSIONERS

Inaine Coats  
Clerk of the Board

Annette L. McSee  
Chairman

APPROVED:

Marley J. Young  
County Engineer

Ed Johnston  
Member

William O. Hunter  
Member

ACCEPTED BY:

Burt Rouds v.p.  
Harbor Videocable a division  
of Harbor Properties Inc

APPROVED AS TO FORM:

John B. Buda P.P.S.  
Prosecuting Attorney

Vice President  
Title

10/26/81  
Date

EXHIBIT I

"FRANCHISE AREA"

Township 19 North, Range 2 West, W.M.  
Sections 5, 6

Township 19 North, Range 3 West, W.M.  
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18

Township 19 North, Range 4 West, W.M.  
Sections 1, 2, 3

Township 20 North, Range 2 West, W.M.  
Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32

Township 20 North, Range 3 West, W.M.  
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

Township 20 North, Range 4 West, W.M.  
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36

Township 21 North, Range 2 West, W.M.  
Sections 31, 32, 33

Township 21 North, Range 3 West, W.M.  
Sections 31, 32, 33, 34, 35, 36

Township 21 North, Range 4 West, W.M.  
Sections 31, 32, 33, 34, 35, 36

17<sup>00</sup>  
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REGISTERED  
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REQUEST OF

Mason County Commissioner