

ORDINANCE NO. 109-01-01

**AN ORDINANCE GRANTING A FRANCHISE TO TCI CABLEVISION, INC.**

**WHEREAS**, pursuant to Master Cable Ordinance No 39-99 approved on April 20, 1999, Mason County agrees to grant TCI Cablevision of Washington, Inc. all necessary rights and privileges to use public rights-of way necessary for the construction, maintenance, operation and reconstruction of a Cable Communications System,

**NOW, THEREFORE**, be it hereby ordained by the Mason County Board of Commissioners to enter into the franchise agreement with TCI Cablevision of Washington, Inc. (attachment A).

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**Section F1: Purpose.**

This Franchise shall constitute an agreement between Mason County (hereinafter the "County") and TCI Cablevision of Washington, Inc. (hereinafter the "Operator"). The Operator promises to construct, maintain, and operate a Cable Communications System for the distribution of Cable Services pursuant to the terms of this Franchise and the Master Cable Ordinance No. 39.99 passed and approved by the County Commissioners on April 20, 1999 and incorporated herein by reference, provided that in the case of any conflict between the express terms of this Franchise and the express terms of the Master Ordinance, this Franchise shall govern. The County agrees to grant the Operator all necessary rights and privileges to use public rights-of-way necessary for the construction, maintenance, operation and reconstruction of a Cable Communications System. This Franchise shall, as of its effective date, supersede and replace all existing franchises previously granted by Mason County to the Operator or any of its predecessors, subsidiaries or affiliated companies.

**Section F2: Length of Franchise.**

The term of this franchise shall be for a period of four (4) years commencing upon January 2, 2001 and terminating at midnight January 1, 2005. Provided, however, that if the Operator has increased the cable television system channel capacity to no less than seventy-five (75) channels using fiber technology within the initial four (4) year term, the franchise shall automatically, subject to the provisions of Section M46: Revocation for Cause of the Master Cable Television Ordinance, be extended for an additional four (4) years. Notwithstanding the above, nothing shall restrict the franchisee from seeking renewal under Section 47 USC 546, or as amended. Moreover, if this franchise is not extended for such additional four year period, the franchisee shall be deemed to have complied with the renewal notification under such section without impairment of such rights granted therein. At the end of such eight (8) year period the County shall examine any additional feature that other Operators in the County may have incorporated into their systems. If the

1 commissioners find that such features are desirable in other areas of the County covered by  
2 the Operator, taking into due consideration the cost to the subscriber and the applicability of  
3 such features and/or services, the Operator will be granted an additional four (4) years to  
4 incorporate such designated features in the Operator's system. Failure to install these  
5 features, once promised, shall be deemed as a failure to fulfill the conditions of the franchise  
6 extension. Provided, however, that the Operator shall be under no obligation to make such  
7 a promise and any failure to do so shall not be considered a violation of the terms of this  
8 agreement.

9 **Section F3: Application Section.**

10 The Operator making application for such a franchise renewal shall submit the  
11 application on applicable forms and furnish a non-refundable filing fee of Seven Thousand  
12 Five Hundred dollars (\$7,500.00) which is not in lieu of franchise fees or other contributions  
13 to the County.

14 **Section F4: Service Area.**

15 The Operator's service area shall be the entire unincorporated area of Mason  
16 County, in its present unincorporated form or in any later reorganized, enlarged or  
17 consolidated form. However, in accordance with Section M17 of the Master Cable  
18 Ordinance, the Operator shall not be required by this Franchise to extend its Cable System  
19 and provide Cable Services to areas where service is provided by other cable Operators.  
20 Extensions of the Operator's Cable System into areas of the County not currently receiving  
21 Cable Service shall be governed by Section M18: Extraordinary Installation.

22 **Section F5: Franchise Fee.**

23 The Operator shall pay to the County quarterly, on or before the forty-fifth (45th)  
24 day after the end of each quarter (March, June, September, December), a sum equal to  
25 five percent (5%) or maximum allowable of Gross Revenues, as defined in Master  
26 Ordinance, for the preceding three calendar months. Revenues that are derived as a  
27 portion of a national or regional service shall be computed on a per subscriber basis if such

determination cannot be achieved by other means. The County may modify the franchise fee if so permitted by federal and state law. Prior to implementation of any modification in franchise fees the Operator may request a public hearing by the County Commissioners to discuss said modification. Following such a hearing the County Commissioners may require the implementation of such modification in accordance with the provisions of this Ordinance. In the event the Act, as now existing or hereafter adopted or amended, is revoked, and other laws, statutes, rules or regulations are adopted which authorize the County to impose a greater Franchise fee or other charge upon the cable communication system, then Operator agrees to the inclusion of such Franchise fee in this Franchise.

A. Late Payment. Any quarterly franchise fee not paid by the Operator within forty-five (45) days of the end of a quarter shall bear interest at the rate of twelve percent (12%), per annum or whatever maximum amount is allowed under State law, whichever is greater, from the due date until paid.

B. Financial Reports. Each Franchise fee payment shall be accompanied by a financial report on a form provided by the County compatible to the Operator's computer system showing the basis for the Operator's computation, including, without limitation, revenues received by the Operator within the County from such items as basic service, expanded basic service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the Operator's gross revenues as may be reasonably required by the County.

C. Audit by County. The County may, upon seven (7) days' advance notice, inspect the books and records of the Operator during normal business hours, for the purpose of ascertaining the actual gross revenues for the previous year collected by the Operator. In the event that such audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by the Operator with a quarterly payment and the actual quarterly gross revenues collected by the Operator, the Operator agrees to pay to the County the costs of such audit. In the event that such audit results in a

1 determination that additional franchise fees are due the County, the Operator further agrees  
2 to pay interest as required for late payment on such additional franchise fees computed  
3 from the date on which such additional franchise fees were due and payable. The County  
4 agrees to close the audit within six (6) months.

5 D. Non-waiver. Acceptance of any franchise fee payment by the County shall  
6 not be construed as an agreement by the County that the franchise fee paid is in fact the  
7 correct amount, nor shall acceptance of payment by the County be construed as a release  
8 or waiver of any claim the County may have for further or additional sums payable under  
9 the provisions of this Ordinance.

10 E. Taxes. Nothing in this Section shall limit the Operator's obligation to pay  
11 applicable local, state, or federal taxes.

12 **Section F6: Access Interconnection.**

13 Upon request of the County the Operator, in conjunction with the other major  
14 Operator within the County (currently Charter Communications, Inc.), shall present a joint  
15 feasibility study within one hundred twenty (120) days, for providing a county-wide PEG  
16 Access Interconnect. The feasibility study shall include the additional estimated per  
17 subscriber cost of construction and interconnect that shall be passed through to subscribers.  
18 After the County has reviewed the study, if the additional costs are deemed reasonable,  
19 the County will instruct the Operators to proceed with the interconnect. However, if the total  
20 cost of the interconnect shall exceed one hundred thousand dollars (\$100,000.00), the  
21 project shall be postponed. Upon request of the County, which shall not occur more  
22 frequently than once every two years, the Operator with the largest cost potential shall be  
23 responsible for updating and representing the design and feasibility study. Subsequent  
24 interconnect projects shall be subject to the same approval and monetary restrictions as  
25 listed above. Within one hundred twenty (120) days of the effective date of this franchise,  
26 the Operator shall have made the necessary provisions so that character generated  
27 messages initiated by the County may be cablecast over a separate government access

1 channel provided by the Operator. In addition, within this time frame, the Operator will  
2 submit to the County an operational plan and cost estimate that will permit tapes of  
3 Commissioner's meetings, if so desired, to be cablecast over the Mason County  
4 government access channel by the Operator on a tape delayed basis.

5 **Section F7: Access Channels.**

6 Within two (2) months following the completion of the upgrade and following a  
7 showing to County Supervisors by appropriate members of the community of the  
8 perceived need for such channel a further channel(s) shall be made available for educational  
9 or public cablecasting purposes. At this time an additional channel shall be made available  
10 for other government cablecasting such as TVW, at the discretion of the Commissioners.  
11 Additional channels over and above these two shall be made available when a channel is  
12 used for access purposes with programming of any type during fifty percent (50%) of the  
13 hours between 10:00 a.m. and 10:00 p.m., during any consecutive ten (10) week period.  
14 Except for character generated announcements, the programming of additional channels  
15 required shall be distinct and non-repetitive of the previous channel. Character generated  
16 announcements, however, which may be cablecast on additional channels which are  
17 duplicative of those on another channel shall not be counted towards the total channel  
18 usage. Based upon this criterion the Operator shall, within six (6) months following a  
19 request by the County, provide another designated access channel for this purpose.  
20 However, at no time during the term of this franchise shall the total number of PEG access  
21 channels exceed five (5). If an activated channel fails to meet the continuing criteria of  
22 programmed usage, for one hundred and eighty (180) continuous days of operation, upon  
23 thirty (30) days written notification sent by certified mail, such channel shall revert to the  
24 Operator for whatever use it deems appropriate.

25 **Section F8: Institutional Interconnections.**

26 In accordance with Section M21: Institutional Networks, in the Master Ordinance, at  
27 such time as the Operator shall offer Cable Internet services, all accredited schools and

1 Libraries within the Operator's service area shall be provided with one cable modem per  
2 site, and Cable Internet service shall be provided free of charge. However, in the event  
3 that the County wishes to elect to be provided with a direct cabled Institutional Network  
4 rather than Internet services, such alternative shall be installed only if the total cost of the  
5 project, amortized over the remaining franchise term is less than one dollar (\$1.00) per  
6 subscriber per month based upon 2001 dollars.

7 **Section F9: Public and Educational Facilities.**

8 All buildings listed on Appendices "A" and "B" located within the Operators service  
9 area shall be provided with a single outlet and converter, if required, for the reception of  
10 basic cable service within the limitations of Section M23: Public Buildings of the Master  
11 Cable Television Ordinance. Additional outlets, if requested, shall be furnished on a time  
12 and material basis. Such authorization shall be made by a delegated school official.

13 **Section F10: Access Equipment.**

14 Upon sixty (60) days notice from the County, the Operator shall, at its discretion,  
15 make either a one time payment of \$60,000.00 or begin collecting for pass through to the  
16 County on a quarterly basis nineteen cents (19¢) per customer per month on or before the  
17 thirtieth (30th) day of each January, April, July and October. These sums represent the  
18 Operator's portion of its capital support for the County's PEG access program. At the  
19 option of the County, the amount of the per customer contributions may be increased to  
20 \$.25¢ per customer in the fifth year of the agreement. Operator may pass all contributions  
21 through to subscribers in accordance with applicable law.

22 **Section F11: Discounts.**

23 A franchisee shall offer a discount from the normal charge for basic services and  
24 installation to those individuals age sixty-two (62) or older or disabled who are the legal  
25 owner or lessee/tenant of their residence provided that their combined disposable income  
26 from all sources does not exceed the Housing and Urban Development (HUD) standards  
27 for the Seattle-Everett-Olympia area for the preceding calendar year. The Operator will



periodically, and no less than once a year, notify subscribers of the availability of the discount. The County or its designee shall be responsible for certifying to a franchisee that such applicants conform to the specified criteria.

**Section F12: Standby Power.**

Upon completion of the upgrade, the Operator shall provide standby power generating capacity at the Cable System Headend capable of providing at least four (4) hours of emergency operation. The Operator shall maintain standby power supply systems, rated for at least two (2) hours duration, throughout the trunk and distribution networks.

**Section F13: Insurance.**

The Operator shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, and property damage. The Operator shall provide annually a Certificate of Insurance designating the County as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days' prior written notice to the County.

**Section F14: Penalties.**

Liquidated damages may be assessed by the County in accordance with the Master Cable Ordinance for failure to comply with the following:

1. Conform to customer service standards as required by, Section M25: Customer Service.
2. Provide PEG access channels as required by Section F7: Access Channels.
3. Provide the Capital Contribution as required by F10: Access Equipment.
4. Provide two-way connections as required by Section F8: Institutional Interconnections.

- 1           5.       Provide Coverage of existing and future annexed areas as required by  
2                   Section M17: Coverage.

3           Liquidated damages may be assessed retroactive to the date that notification was  
4 provided to the Operator in such cases where the Operator has been non-responsive in  
5 correcting the situation or in the case of flagrant violations. If payment of any of these  
6 penalties is delinquent by three (3) months or more, the County may require partial or total  
7 forfeiture of performance bond or other surety.

8       **Section F15: Franchising Costs.**

9           Upon acceptance of renewal franchise granted hereunder, the Operator shall pay to  
10 the County the costs of publishing notices and ordinances. Such payment is not to be  
11 considered in lieu of franchise fee payments. Payment is due within thirty (30) days of  
12 receipt of appropriate invoice from the County.

13       **Section F16: Acceptance.**

14           This grant of Franchise and its terms and provisions shall be accepted by the  
15 Operator by the submission of a written instrument, executed and sworn to by a corporate  
16 officer of the Operator before a Notary Public, and filed with the County within thirty (30)  
17 days after the effective date of this Franchise. Such instrument shall evidence the  
18 unconditional acceptance of this Franchise and the promise to comply with and abide by all  
19 its provisions, terms and conditions.

20       **Section F17: General Provisions.**

21           A.       Entire Agreement. This Franchise contains all of the agreements of the Parties  
22 with respect to any matter covered or mentioned in this Franchise and no prior agreements  
23 or understandings pertaining to any such matters shall be effective for any purpose.

24           B.       Modification. No provision of this Franchise may be amended or added to  
25 except by agreement in writing signed by both of the Parties.

1           C.     Full Force and Effect. Any provision of this Franchise which is declared invalid,  
2 void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such  
3 other provisions shall remain in full force and effect.

4           D.     Assignment. Operator shall not have the right to transfer or assign, in whole  
5 or in part, any or all of its obligations and rights hereunder without the prior written consent of  
6 the County. Any assignee shall, within thirty (30) days of the date of any approved  
7 assignment, file written notice of the assignment with the County together with its written  
8 acceptance of all terms and conditions of this Franchise.

9           E.     Attorney Fees. In the event the County or the Operator defaults on the  
10 performance of any terms in this Franchise, and the Operator or the County places the  
11 enforcement of the Franchise or any part thereof, or the collection of any monies due, or to  
12 become due hereunder, in the hands of an attorney, or file suit upon the same, each party  
13 shall pay its own costs, including reasonable attorneys' fees, costs and expenses. The  
14 venue for any dispute related to this Franchise shall be in a court of competent jurisdiction.

15          F.     No Waiver. Failure of the County to declare any breach or default  
16 immediately upon the occurrence thereof, or delay in taking any action in connection with,  
17 shall not waive such breach or default, but the County shall have the right to declare any  
18 such breach or default at any time. Failure of the County to declare one breach or default  
19 does not act as a waiver of the County's right to declare another breach or default.

20          G.     Governing Law. This Franchise shall be made in and shall be governed by  
21 and interpreted in accordance with applicable County, State and Federal laws, rules and  
22 regulations, including applicable regulations of the Environmental Protection Agency and the  
23 Endangered Species Act.

24          H.     Authority. Each individual executing this Franchise on behalf of the County  
25 and Operator represents and warrants that such individuals are duly authorized to execute  
26 and deliver this Franchise on behalf of the Operator or the County.

I. Notices. Any notices required to be given by the County to Operator or by Operator to the County shall be delivered by registered mail to the parties at the following addresses:

Operator:

TCI Cablevision of Washington, Inc.  
22025 30th Ave. SE  
P.O. Box C-8004  
Bothell, WA 98082-8004  
Attn: Franchise Department

County:

Mason County  
County Courthouse, Building 1  
411 North 5th Street  
Shelton, WA 98584  
Attn: Clerk of the County

Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

J. Captions. The respective captions of the Sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

K. Time of Essence. Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

L. Remedies Cumulative. Any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the County at law, in equity or by statute.

**Section F18: Effective Date.**

This Ordinance shall be in full force and effect five days after its passage and publication as required by law, provided Operator files acceptance pursuant to Section 6 of the Master Ordinance.

PASSED by the County Commissioners and approved this 2nd day of  
October, 2000.  
2001-02

MASON COUNTY

[Signature]  
Executive

CHAIRPERSON

BOARD OF MASON COUNTY COMMISSIONERS

Attest:

[Signature]  
Clerk of the Board

Approved as to Form:

[Signature], Ch. DPA  
County Prosecutor

Published: \_\_\_\_\_

**Appendix "A"****MASON COUNTY  
SCHOOL BUILDINGS**

Grapeview School District Headquarters  
E 822 Mason-Benson Rd.  
Grapeview WA 98546  
(360)426-4921

Grapeview Middle School  
E 822 Mason-Benson Rd.  
Grapeview, WA 98546  
(360)426-4921

Grapeview Elementary  
E 822 Mason-Benson Rd.  
Grapeview, WA 98546  
(360)426-4921

Hood Canal School District Headquarters  
No. 404 (475)  
N 111 Highway 106  
Shelton, WA 98584  
(360)877-9700

Hood Canal Junior High  
N 111 Highway 106  
Shelton, WA 98584  
(360)877-5463

Hood Canal Elementary  
N 111 Highway 106  
Shelton, WA 98584  
(360)877-5463

Mary M Knight School District Headquarters  
No. 311 (270)  
W 2987 Matlock Brady Rd.  
Elma, WA 98541  
(360)426-6767

Mary M Knight High  
W 2987 Matlock Brady Rd.  
Elma, WA 98541  
(360)426-6767

Mary M Knight Elementary  
W 2987 Matlock Brady Rd.  
Elma, WA 98541  
(360)426-6767

North Mason School District Headquarters  
E 50 North Mason School Rd.  
P.O. Box 167  
Belfair, WA 98528  
(360)275-2881

North Mason High School  
E 50 North Mason School Rd.  
P.O. Box 167  
Belfair, Wa 98528  
(360)275-2811

Hawkins Middle School  
E 50 North Mason School Rd.  
Belfair, WA 98528  
(360)275-4461

Belfair Elementary  
22900 Hwy 3  
P.O. Box 167  
Belfair, Wa 98528  
(360)275-2863

Sand Hill Elementary  
791 NE Sandhill Rd.  
P.O. Box 167  
Belfair, WA 98528  
(360)275-6080

Mission Creek Youth Camp  
791 NE Sandhill Rd.  
P.O. Box 100  
Belfair, WA 98528  
(360)275-6080

Pioneer Elementary/Middle School  
E 611 Agate Rd.  
Shelton, WA 98584  
(360)426-8291

Pioneer Primary School  
E 611 Agate Rd.  
Shelton, WA 98584  
(360)427-2737

## Appendix "B"

ORDINANCE NO. 109-01

EXHIBIT A

### MASON COUNTY PUBLIC BUILDINGS

Mason County Courthouse No.1  
411 North Fifth St.  
Shelton, WA 98584  
(360)275-4467

Mason County Courthouse No.2  
419 North Fourth St.  
Shelton, WA 98584

Mason County Courthouse/Jail  
416 North Fifth St  
Shelton, Wa 98584

Mason County Juvenile Detention Center  
317 North Fifth St  
Shelton, Wa 98584

Mason County Cooperative Extension Center  
North 11840 Hwy. 101  
Shelton, WA 98584

Belfair Annex  
NE 23780 Hwy 3  
Belfair, WA 98528  
Pioneer School District Headquarters  
E 611 Agate Rd.  
Shelton, WA 98584  
(360)426-9115

### FIRE DISTRICTS

Aracadia / Kamilche No.4  
SE 2970 Arcadia Rd.  
Shelton, WA 98584

Allyn/Agate/Shelton No.5  
E 2520 Mason-Benson Rd.  
P.O. Box 127  
Allyn, WA 98524  
(360)426-5533

Union No.6  
E 50 Seattle St.  
P.O. Box 39  
Union, WA 98592  
(360)898-4871

No.8  
NE 14880 North Shore Rd.  
P.O. Box 299  
Tahuya, WA 98588  
(360)275-6478

### FIRE DISTRICTS (cont.)

Skokomish Valley No.9  
W 2320 Skokomish Valley Rd.  
Shelton, WA 98584  
(360)427-7426

Hoodsport No.1  
N 331 Finch Creek Dr.  
P.O. Box 354  
Hoodsport, WA 98548  
(360)877-5186

Belfair No.2  
NE 460 Old Belfair Hwy.  
P.O. Box 277  
Belfair, WA 98528-0277  
(360)275-6711

Grapeview No.3  
E 4350 Grapeview Loop Rd.  
P.O. Box 142  
Grapeview, WA 98546  
(360)275-4483

No.11  
E 130 Island Lake Rd.  
P.O. Box 743  
(360)426-1822

No.12  
P.O. Box 102  
Matlock, WA 98560  
(360)426-6721

Lilliwaup/Eldon No.17  
N 34571 Hwy. 101  
P.O. Box 4  
Lilliwaup, WA 98555

Lake Cushman No.18  
Lake Standstill Dr.  
Hoolsport, WA 98548  
(360)877-9882