ORDINANCE NO. 04-11

AN ORDINANCE OF MASON COUNTY, WASHINGTON, RELATING TO FRANCHISE REQUIREMENTS; REPEALING AND REENACTING CHAPTER 5.20 OF THE OFFICIAL CODE OF MASON COUNTY RELATING TO CABLE TELEVISION USE OF THE ROAD RIGHT-OF-WAY; AMENDING CHAPTER 12.24 REGULATING UTILITY OCCUPANCY AND USE OF THE ROAD RIGHT-OF-WAY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the County has authority pursuant to the Cable Communications Policy Act of 1984 (the "Cable Act") and RCW 36.55.010 to grant franchises to cable operators for the use of the public rights of way to construct, operate, maintain and repair Cable Television Systems within the unincorporated boundaries of the County, and

WHEREAS, the Board of County Commissioners (the "Board") finds that County road rights-of-way are critical to the travel of persons and the transport of goods and other tangibles; are used by the County to provide critical services to its citizens, including services to protect public safety; and that such rights-of-way are intended for public uses and must be managed and controlled consistent with that intent such that the installation, maintenance, and operation of cable operator facilities does not interfere with or incommode such public uses; and

WHEREAS, the Board finds that the development of Cable Television Systems has the potential of having great benefit and impact upon the residents of the County and that because of the complex and rapidly changing technology associated with cable television, the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the County or such persons as the County shall designate, and

WHEREAS on December 20, 2006, the Federal Communications Commission ("FCC") adopted a new rule, set forth in a Report and Order and Further Notice of Proposed Rulemaking that was released March 5, 2007 (the "Competitive Franchise Application Rule" or "CFAR"), that among other things, provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator (the "Incumbent Cable Operator"); and

WHEREAS, the CFAR provides that local franchising authorities may require application information from an applicant for a competitive cable franchise, in addition to the information set forth in the CFAR; and

WHEREAS, Board has determined that in order to comprehensively evaluate whether or not to grant a competitive cable franchise, it will require certain information from competitive cable franchise applicants in addition to the information required by the CFAR; and

WHEREAS, on November 6, 2007, the FCC released the text of its Second Report and Order on local franchising (the "Second Order"), which became effective December 24, 2007; and

WHEREAS the Second Order, for the most part, applied the order (other than those on timing and build-out) to incumbent cable operators immediately, rather than only at renewal; and

WHEREAS, the Second Order makes certain parts of the CFAR applicable to Incumbent Cable Operators who take affirmative steps to alter the existing franchise; and

WHEREAS, to ensure compliance with the CFAR and the Second Order, the County additionally seeks to codify the process for reviewing applications for competitive cable franchises as well as applications for renewal of an cable franchise for an Incumbent Cable Operator, and the criteria upon which the final decision of the County will be based; and

WHEREAS, the application requirements and the processes for application review and determination set forth in this Ordinance are intended to comply with the new FCC rules; and

WHEREAS, in light of the changes in federal law, County staff recommends repealing and reenacting MCC chapter 5.20 and amending MCC chapter 12.24 to address these changes and other update the cable television regulations;

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF MASON COUNTY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment of MCC 12.24.035(d). Section 12.24.035(d) of the Mason County Code is hereby amended (amendments shown in legislative revisions marks) to read as follows:

(d) Application. Every application for a new cable franchise or a new open video system franchise, for renewal of a cable franchise or an open video system franchise, for amendment to a cable franchise or open video system franchise, and for transfer of a cable franchise or open video system, shall be governed by and conform to the requirements of Chapter 5.20 of the Mason County Code. All other applications for a new franchise, renewal of a franchise, amendment of a franchise, and for the transfer of a franchise, and every application for a new franchise, master road use permit, or private line utility occupancy permit, or for an amendment to a franchise, master road use permit, or private line utility occupancy permit, or for a transfer of a franchise, master road use permit, or private line utility occupancy permit, or for a renewal of a

franchise or master road use permit shall be on forms provided by the Mason County engineer which application forms shall, at a minimum, contain and require the following:

(1) Identity of Authorized Parties. The names and addresses of persons authorized to act on behalf of the operator with respect to the application and those person(s) who are authorized to receive all notices regarding action taken pursuant to an application.

(2) Nonrefundable Application Fee. An initial nonrefundable application fee in the amount of:

Four hundred dollars for a new franchise or new master road use permit;

Two hundred dollars for a new private line utility occupancy permit;

Three hundred dollars for a renewal of a franchise or master road use permit;

Two hundred fifty dollars for an amendment of a franchise or master road use permit;

One hundred dollars for amendment of a private line utility occupancy permit;

One hundred dollars for a transfer of a franchise or master road use permit; and

One hundred dollars for a transfer of a private line utility occupancy permit.

The purpose of the nonrefundable application fee is to reimburse the county for the costs incurred to review and issue or deny a franchise, master road use permit, or private line utility occupancy permit, or issue an amendment thereto, or a renewal, or a transfer. In addition to the nonrefundable application fee, the applicant shall, as a condition of action being taken, reimburse the county for the direct costs of third parties retained by the county when deemed by the county engineer to be reasonable and necessary to assist the county in reviewing or responding to the application. The County Engineer shall, at the request of the applicant, provide an itemized accounting for the services provided that become a cost of the applicant as provided herein.

The County Engineer is directed to review the application fees on a biennial basis and make a recommendation to the board for adjustment of the application fees. The board may adjust the application fees from time to time by a duly adopted resolution.

(3) Identity of Applicant. Identity of the operator, the persons who exercise working control over the operator, and the persons who control those persons to the ultimate parent.

(4) Certificate Verifying Status as Exempt Operator. If applicable, a certification of the authorized officer of the operator stating that the operator is exempt and the reasons therefore; provided that, if such utility facilities will be used to provide services other than those qualifying it as an exempt operator, the applicant shall state what other services will be provided and under what authority the applicant will be utilizing facilities located within the public rights-of-way to provide such services.

(5) Location/Description/Purpose of Facilities. The location in the county in which the applicant proposes to install utility facilities in the road rights-of-way, including the approximate linear feet of overhead utility facilities, the approximate linear feet of underground utility facilities; the type of utility facilities to be installed; and, the proposed use of the utility facilities and type of services to be provided.

(6) Certification Verifying Truth/Accuracy. A certificate of an authorized officer of the operator certifying the truth and accuracy of the information in the application.

Section 2. Repeal and Reenactment of Mason County Code Chapter 5.20 (Cable Television Franchises). Chapter 5.20 of the Official Code of Mason County is hereby repealed in its entirety and reenacted to read as follows:

5.20.010 PURPOSE.

The purpose of this chapter is to:

A. Establish local franchise requirements, in addition to those set forth in chapter 12.24 of the Mason County Code, that concern cable and open video systems operators that use the Public Rights-of-Way;

B. Provide for the grant of a franchise to govern cable and open video system operator's use of and activities within the public rights-of-way to provide cable or open video services;

C. Establish a policy that promotes the availability of diverse, multimedia information resources to the community; provides for enhancing educational opportunities throughout the community and building a stronger community; while ensuring that the County has the authority to act to protect the public, safety, and welfare in the face of a rapidly-changing industry that is placing increasing demand on public resources;

D. Encourage the provision of advanced and competitive cable or open video system services on the widest possible basis to the businesses, institutions, and residents of the County;

E. To encourage economic development, while preserving aesthetic and other community values, and preventing proliferation of above-ground facilities

F. Ensure that all Persons providing cable or open video facilities or services within the County comply with the ordinances, rules, and regulations of the County;

G. Ensure the ability of the County to obtain sufficient information from cable and open video system operators subject to its jurisdiction to enable effective decisions regarding their access to County road rights-of-way and effective management of activity in the road rights-of-way;

H. Ensure that the County can continue to fairly and responsibly protect the public health, safety, and welfare; and

I. Enable the County to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

J. Minimize unnecessary local regulation of operators and services;

K. Permit and manage reasonable access to the road rights-of-way of the county on a competitively neutral basis;

L. Assure that the County's current and ongoing costs of granting and regulating access to and use of the road rights-of-way are fully paid for by the persons seeking such access and causing such costs;

5.20.020 POLICY GUIDELINES.

The administration of this chapter shall be governed by the following video programming policy guidelines:

A. Mason County supports efforts to establish an open, competitive marketplace for video programming services. The County promotes and encourages competition for video and video programming services that make the latest and best technology available and keep service prices affordable for all County residents and businesses. An integral component of this open marketplace is the consistent application of regulations to all video programming providers and the preservation of local authority over matters of local impact.

B. The following policy guidelines express the commitment of the County to support video programming services and to manage its road rights-of-way proactively, while balancing the interests and needs of the community:

1. The County will manage access to its road rights-of-way for video programming purposes in a non-discriminatory, competitively neutral, and non-exclusive way to the extent required by applicable law and, to the extent allowed by applicable law, to receive fair compensation. The public interest will be protected by collecting fair, reasonable, and lawful compensation, associated fees, taxes, administrative costs, and construction costs for use of the Public Rights-of-Way.

2. Investments by video programming providers will be encouraged in order to enhance economic development programs and provide jobs, opportunities, and choices for its citizens.

3. Universal access to video programming services is encouraged for all residents and businesses.

5.20.030 DEFINITIONS.

For the purposes of this chapter 5.20 of the Mason County Code ("MCC"), the following terms, phrases, words, and abbreviations shall have the meanings given herein unless otherwise

expressly stated. 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, words in the singular number, include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined in this Chapter shall be construed consistent with MCC Title 12, and if not defined therein, shall be construed consistent with Title 47 of the United States Code, and, if not defined therein, their common and ordinary meaning shall apply. References to governmental entities (whether Persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

A. "Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

B. "Application Fee" means the charge specified in Sections 5.20.160 and designed to recover the County's actual costs in processing applications for initial Franchises, including applications for the Transfer thereof.

C. "Basic Cable Service" means any Service Tier that includes the retransmission of local television broadcast signals.

D. "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

E. "Cable Operator" means any Person or group of Persons: (1) who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

F. "Cable Service" means:

1. The one-way transmission to Subscribers of (a) video programming, or (b) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

G. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple Subscribers within a community; but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any Road Rights-of-Way;

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with 47 U.S.C. § 573; or

5. Any facilities of any electric utility used solely for operating its electric utility systems.

H. "County" means Mason County and all departments, divisions, and agencies thereof.

I. "County Engineer" means the County Engineer or the County Engineer's designee.

J. "Franchise" refers to the authorization granted by the County to an Operator of a Cable System, or an Open Video System under this chapter giving the Operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over any Road Rights-of-Way in the in-incorporated areas of the County, to provide a Cable Service within a Franchise Area. Any Franchise shall be issued in the form of an ordinance, and must be accepted by the Franchisee to become effective in the time and manner specified in the Mason County Code, or the Franchise ordinance. Such Franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the County required by the lawful ordinances of the County, for the unincorporated areas of the County

2. Any permit, agreement, or authorization required in connection with operations on or in Road Rights-of-Way or property, including, by way of example and not limitation, street cut permits; or

3. Any permits or agreements for occupying any other property of the County or private entities to which access is not specifically granted by the Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the County, or a private entity. Therefore, any Person who desires to use such property must obtain additional approvals, Franchises, or agreements for that purpose, as may be lawfully required by the County.

K. "Franchise Area" means the area of the County that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.

L. "Franchisee" refers to a Person holding a Franchise granted by County ordinance.

M. "FCC" means the Federal Communications Commission or its successor.

N. "Gross revenues" means any and all receipts and revenues received directly or indirectly from all sources derived from the provision of cable services furnished by a Franchisee, including franchise fees if allowable by Federal law, other than transactions related to real property receipts by a Franchisee not including bad debt and any taxes on services furnished by a Franchisee, imposed on any subscriber or used by any governmental unit, agency or instrumentality and collected by a Franchisee for such entity.

O. "Open Video System" or "OVS" refers to a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which is provided to multiple Subscribers within a community, and which the FCC or its successor has certified as compliant with Part 76 of its rules, 47 C.F.R., Part 76, as amended from time to time. For purposes of MCC chapter 5.20, Open Video System shall be considered the same as a Cable System, and all regulations contained in this chapter governing Cable Systems shall apply equally to Open Video Systems to the extent consistent with applicable law.

P. "Operator" means a Cable Operator.

Q. "Overhead Facilities" refers to electric utility and communications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

R. "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the County.

S. "Programmer" refers to any Person, who creates video programming to Subscribers over a Cable System or an Open Video System, excluding video programming delivered not for a charge over a public, educational, or governmental ("PEG") channel.

T. "Road Rights-of-Way" mean the public streets and easements which, under the Mason County Code, County ordinances, and applicable laws the County has authority to grant Franchises, permits, or licenses for use thereof or has regulatory authority thereover, and as may be more specifically defined in the Franchise granting any right to or use thereof, excluding railroad rights-of-way, airport, port, and harbor areas. Road Rights-of-Way, for the purpose of this chapter, do not include buildings, poles, or similar facilities or property owned by or leased to the County, including, by way of example and not limitation, structures in the Road Rights-of-Way such as utility poles and light poles.

U. "Service Tier" means a package of two or more Cable Services for which a separate charge is made by the Franchisee, other than a package of premium and pay per-view services that is not subject to rate regulation under the Cable Act and applicable FCC regulations because those services are also sold on a true à la carte basis.

V. "Subscriber" means the County, any government entity, or any Person who legally receives any Cable Service from a Cable Operator delivered over that Cable Operator's Cable System.

W. "Chapter," when used in the context of referring to this chapter of the Mason County Code, shall mean this chapter 5.20 of the Mason County Code and each section and subsection thereof.

X. "Transfer" means any transaction in which:

1. All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Public Rights-of-Way);

2. There is any change, acquisition, or direct or indirect Transfer of control of the Franchisee;

3. The rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or

4. The transfer of stock in a corporation so as to create a new contr olling interest constitutes a Transfer. The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

In succeeding provisions of this chapter, all these activities are referred to as Franchise Transfers.

5.20.040 FRANCHISE REQUIRED.

A. No Franchise shall be exclusive. The issuance of a Franchise shall not affect the County's right to itself construct, operate, or repair any County owned communications facility, with or without a Franchise.

B. Franchise requirement. An Operator of a Cable System must obtain a Franchise prior to providing Cable Service; an Operator of an Open Video System must obtain a Franchise before providing services via an Open Video System. No Franchise shall become effective without the Franchisee signing an acceptance of the ordinance which grants it the Franchise.

C. Nature of grant. A Franchise shall not convey title, equitable or legal, in the Public Rights-of-Way. The right granted is only the right to occupy those portions of the Road Rights-of-Way to which the County has the right to grant access, for the purposes and for the period stated in the Franchise, and, subject to the limitations in this section and elsewhere in this chapter, the right may not be subdivided or subleased. Every Franchise shall be:

1. Deemed to include all the provisions that are required to be in a Franchise under chapter 5.20 of the Mason County Code, as if fully set forth in the Franchise; and

2. Deemed to provide for forfeiture under the circumstances set forth under the provisions of this chapter and any Franchise ordinance thereunder; and

D. No reference herein, or in any Franchise, to a Road Rights-of-Way shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Franchise shall be deemed to grant no more than those rights which the County may have the undisputed right and power to give.

5.20.050 COST RECOVERY.

A. Purpose. To ensure that the County, as far as possible, is compensated for the rights granted and receives fair, reasonable, and lawful compensation for use of Road Rights-of-Way over which it exercises control, or which is held in public trust; and in order that the County is compensated for reasonable and lawful expenses arising from the use of those Public Rights-of-Way, the County shall, pursuant to this chapter, require Persons using its Road Rights-of-Way to provide Cable Service to pay compensation as may be permitted under applicable law.

B. Compensation for use. Every Operator of a Cable System shall pay a Franchise fee as required by this chapter, except as provided in MCC section 5.20.050.D. Every Operator that is subject to the exceptions in MCC section 5.20.050.D or OVS Operator that uses the rights-of-way is subject to the condition that, should the exception ever be eliminated or modified, the Operator or reseller shall be obligated to pay such compensation that would otherwise be required in the absence of the exception.

C. Payments required. Except as otherwise expressly provided in this chapter, every Cable Operator must:

1. Pay an Application Fee for the consideration of an application for issuance of an initial Franchise, pursuant to Section 5.20.160. The County Engineer, at any time, may require the applicant to deposit additional sums if it appears that the initial deposit or subsequent deposits will be exhausted prior to the final action by the County relating to the consideration by the County of an application for issuance of an initial Franchise. The applicant will not be entitled to further consideration by the County of its requested action until such time as the additional deposit required by the County Engineer has been deposited with the County. In the event the amount of the deposit of an applicant is in excess of the amount of the administrative expenses of the County related to the action requested, then the applicant shall be entitled to a return of any such excess amount; and

2. Pay the fees required by Section 12.24.060 of Title 12 of the Mason County Code.

D. Exceptions. The franchise fees required under this chapter need not be paid if state or federal law or the County Charter requires otherwise. This exception shall be read narrowly; an Operator that is engaged in one line of business that is subject to this exception, shall not be excused from paying the Franchise fee for its other lines of business. In cases subject to this exception, the highest permissible fee shall be paid.

E. Application to Persons that provide different types of services. The fact that a fee is paid on one type of service provided over a Cable System, does not excuse an Operator from its duty to pay lawful fees on other types of services provided over that facility as required by MMC chapter 12.24. As an example, and not as a limitation of the foregoing, the operator of a telecommunications system must pay a franchise fee under Chapter 5.20 to the extent it provides Cable Services to Subscribers via a Cable System

F. General rules for payment of fees and assessments.

1. Unless otherwise specified in a Franchise, Franchise fees shall be paid to the County quarterly, and not later than 45 days after the end of the quarter for which the fee or assessment is owed.

2. No acceptance by the County of any Franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Franchise fee payment be construed as a release of any claim the County may have for additional sums payable.

3. The Franchise fee payment is not a payment in lieu of any tax, fee, or other assessment, except as specifically provided in this chapter or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable.

4. If payments are late, in addition to paying any applicable penalties or damages, the Person that owes the fee shall pay interest on the amount owed at the rate of 1 percent per month or fraction thereof compounded monthly.

5. The County may, from time to time and upon reasonable advance written notice, inspect and audit any and all books and records reasonably necessary to determine whether fees have been accurately computed and paid. The Operator must make available the books and records, or copies thereof, to the County, as provided in the Franchise agreement.

6. Notwithstanding the foregoing, in the event that a Person that is obligated to pay a fee ceases to provide service for any reason (including as a result of a Transfer), such Person shall make a final payment of any amounts owed to the County within ten business days of the date its operations in the County cease, and shall provide a statement of gross revenues for the calendar year through the date operations ceased.

5.20.060 GENERAL CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY.

A Franchisee shall be responsible to comply with all lawful provisions of the Mason County Code, as amended, any administrative regulations promulgated thereunder, and any other generally applicable laws related to the use of the Road Rights-of-Way.

5.20.070 PROTECTION OF THE COUNTY AND RESIDENTS.

A. Indemnification. Unless otherwise approved by the County's risk manager, no Franchise or other authorization to use the Road Rights-of-Way issued to a Cable Operator shall be valid or effective until and unless the County obtains an adequate indemnity from such Operator in conformance with the requirements of MCC section 12.24.100(a).

B. Insurance. Unless otherwise approved by the County's Risk Manager, no Franchise or other authorization to use the Road Rights-of-Way issued to a Cable Op erator shall be valid or effective until and unless the County obtains assurance that such Operator (and those acting on its behalf) has adequate insurance in conformance with the requirements of MCC section 12.24.100(b).

C. Performance Bond. Every operator shall be required to obtain performance bonds and, if necessary, payment bonds, to ensure the faithful performance of its responsibilities under any Franchise, in conformance with the requirements of MCC section 12.24.100(c).

D. Security Fund. Unless reduced or waived as provided herein below, every operator shall establish a cash security fund or provide the County Engineer an irrevocable letter of credit or a performance bond in an amount no less than $50,000.00, to secure the payment of fees owed, to secure any other performance promised in a Franchise, and to pay any taxes, fees, or liens owed to the County. The County Engineer shall exercise reasonable judgment when determining the amount of the security fund required of any individual franchisee. The letter of credit or performance bond shall be in a form and with an institution acceptable to the County Treasurer and the County Prosecuting Attorney. Should the County draw upon the cash security fund, performance bond or letter of credit, it shall promptly notify the Cable Operator, and the Cable Operator shall promptly restore the fund performance bond or the letter of credit to the full required amount. This security fund/letter of credit/performance bond obligation may be waived or reduced by the County Engineer, pursuant to the terms of the Franchise agreement.

5.20.080 ENFORCEMENT, REMEDIES PENALTIES..

The County Engineer is responsible for enforcing and administering MCC chapter 5.20 and the County Engineer is authorized to give any notice required by law or under any Franchise, including, by way of example and not limitation, a notice required under 47 U.S.C. § 546. The County Engineer is also authorized to seek information from any Cable Operator, to establish forms for submission of applications and other information, and to take all other actions necessary or appropriate to the administration of this chapter or any Cable Franchise. Franchises may only be denied, issued, or revoked by action of the County Board of Commissioners

Any Person found to have violated any of the provisions of this chapter shall be subject to the penalties set forth at MCC 12.24.120(c). Notwithstanding the forgoing, nothing in this section shall be construed as limiting any judicial remedies that the County or any Person may have, at law or in equity, for enforcement of this chapter.

5.20.090 MINIMUM CONTENTS OF EVERY CABLE FRANCHISE.

A. In addition to satisfying the other applicable requirements of this chapter and MCC Ch 12.24, every Franchise for a Cable System shall contain the following provisions:

1. The Franchise shall provide that neither the granting of any Franchise, or any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the County as may exist at the time the Franchise is issued or thereafter be obtained.

2. The Franchise shall only authorize occupancy of the Public Rights-of-Way to provide the services and for the purposes described in the Franchise.

3. A Franchise shall be a privilege that is held in the public trust and personal to the original Franchisee. The Franchise shall ensure that no Transfer of the Franchise may occur, directly or indirectly, without the prior consent of the County; except as contemplated by MCC section 5.20.280, or as otherwise expressly provided in this chapter.

4. The Franchise shall ensure that any Person placing a Cable System in the Road Rights-of-Way will not unlawfully discriminate in hiring, in contracting, or in the provision of services.

5. The Franchise shall be for a specified term set forth in the Franchise. No Franchise issued under this chapter shall be for a term of longer than ten years, unless the County Board of Commissioners determines that a longer period would be in the County's interest.

6. Such other terms as are required by law.

5.20.100 REVOCATION, REDUCTION OF TERM, OR FORFEITURE OF FRANCHISE.

A. Revocation. In addition to all other rights of the County under MCC section 12.24.120(a) or under a cable Franchise, the County shall have the right to revoke the Franchise: (1) for violations of material provisions of this chapter; (2) for defrauding or attempting to defraud the County or Subscribers; (3) if the Franchisee willfully refuses to provide service to the County or any part of the County in accordance with its Franchise.

B. Reduction of term. Where, after notice and providing the Franchisee an opportunity to be heard, if such opportunity is timely requested by Franchisee, the County finds that any conditions exist that would support Franchise revocation or reduction in term, the County may make an appropriate reduction in the remaining term of the Franchise or revoke the Franchise. The County Engineer is authorized to make a recommended decision to the County Board of Commissioners, but any final decision to reduce the term of a franchise or to revoke the franchise shall be made by the County Board of Commissioners.

C. Notwithstanding the foregoing, the franchise may only be revoked or reduced in term if the Franchisee (1) was given notice of the default; and (2) 30 days to cure the default; and (3) the Franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to

the County where it is impossible to cure the default in 30 days and where requested by the Franchisee (4) a hearing conducted by the County Board of Commissioners where Franchisee is afford the opportunity to present testimony and witnesses on its behalf. The required notice may be given before the County conducts the proceeding required by this paragraph. No opportunity to cure is allowed for fraud which shall be deemed incurable.

C. Relation to insurance and indemnity requirements. Recovery by the County of any amounts under insurance, the performance/payment bond, the letter of credit, or otherwise does not limit the Franchisee's duty to indemnify the County in any way; nor shall such recovery relieve the Franchisee of its obligations under the Franchise, limit the amounts owed to the County, or in any respect prevent the County from exercising any other right or remedy it may have.

D. Effect of revocation, termination or forfeiture. Upon termination, revocation or forfeiture of a Cable Franchise, whether by action of the County as provided above or by passage of time, the Franchisee shall be obligated to cease using the Cable System for the purposes authorized by the Franchise, unless mutually agreed to continue to use for the authorized purpose by the County and Franchisee. The County may either take possession of some or all of the Franchisee's facilities in the Road Rights-of-Way, if it is not prohibited from doing so by law, or require the Franchisee or its bond surety to remove some or all of the Franchisee's facilities from the Road Rights-of-Way and restore the Road Rights-of-Way to the condition specified in MCC Title 12. Should the Franchisee neglect, refuse, or fail to remove such facility, the County may remove the facility at the expense of the Franchisee. The obligation of the Franchisee to remove shall survive the termination of the Franchise; provided, that this provision does not permit the County to take possession of, or require the Franchisee to remove, any facilities that are used to provide another service for which the Franchisee holds a valid Franchise issued by the County or other lawful authorization.

E. Remedies cumulative. All remedies under this MCC chapters 5.20 and 12.24 and any Franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a Cable Operator of its obligations to comply with its Franchise. Remedies may be used singly or in combination; in addition, the County may exercise any rights it has at law or equity. Recovery by the County of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise, does not limit a Cable Operator's duty to indemnify the County in any way; nor shall such recovery relieve a Cable Operator of its obligations under a Franchise, limit the amounts owed to the County, or in any respect prevent the County from exercising any other right or remedy it may have.

5.20.110 BOOKS, RECORDS, PRIVACY AND REPORTING.

A. Each Cable Operator shall provide the County reasonable access to all books and records directly related to the County's administration and enforcement authority pursuant to any Franchise, this Code, or any other applicable law, in accordance with the provisions of a Franchise agreement. The County may inspect any books and records and copy non-confidential

books and records. The Operator's obligation includes the obligation to reasonably produce all books and records related to revenues derived from the operation of the Cable System to the extent that system revenues are in connection with the fees or taxes charged or burdens imposed on the Operator under a Franchise. An Operator is responsible for obtaining or maintaining the necessary possession or control of all such books and records related to the construction, operation, or repair of the Cable System, so that it can produce the documents upon request. Books and records must be maintained for a period of six years, except that: (1) any record that is a public record must be maintained for no less than the period required by state law; and (2) a Franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials.

B. For purposes of this chapter, the terms "books and records" shall be read expansively to include information in whatever format stored. Books and records requested shall be produced to the County in accordance with the provisions of a Franchise agreement.

C. Without limiting the foregoing, the Operator of a Cable System shall make available to the County the following within ten days of their receipt or (in the case of documents created by the Operator or its Affiliate) filing:

1. Notices of deficiency or forfeiture related to the operation of the Cable System; and

2. Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee, directly or indirectly.

D. Each Cable Operator shall take all reasonable steps required, if any, to ensure that it is able to provide the County all information which must be provided or may be requested under this chapter, a Franchise, or applicable law, including by providing appropriate Subscriber privacy notices. Each Operator shall be responsible for redacting any data that applicable law prevents it from providing to the County. Nothing in this section shall be read to require an Operator to violate state or federal law protecting Subscriber privacy.

5.20.120 COMPLIANCE WITH LAWS/RESERVATION OF RIGHTS.

A. General. Each Franchisee shall comply with all applicable laws related to use of the Road Right-of-Way and all other applicable laws heretofore and hereafter adopted or established during the entire term of its Franchise.

B. Reservation of authority. The County may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter.

C. No waiver. The failure of the County to insist on timely performance or compliance with this chapter by any Person holding a Franchise shall not constitute a waiver of the County's right to later insist on timely performance or compliance by that Person or any other Person holding such a Franchise.

D. Chapter not a contract. The County expressly reserves the right to amend this chapter from time-to-time in the exercise of its lawful powers. Any amendment to this Chapter shall not apply throughout the term of a Franchise where such amendment was passed subsequent to the approval of the Franchise by the County. The provisions of this chapter shall not be construed to create or to be a contract.

5.20.130 TRANSITIONAL PROVISIONS.

A. Persons operating without a Franchise. The Operator of any facility, the operation of which is required to be Franchised under this chapter, shall have three months from the effective date of this Chapter to file an application for a Franchise under this ordinance. Any Cable Operator timely filing such an application shall not be subject to a penalty under Section 5.20.100 hereof for failure to have such a Franchise, as long as said application remains pending; provided, however, nothing herein shall relieve any Cable System Operator of any liability for its failure to obtain any Franchise or other authorization required under other provisions of the Mason County Code, and nothing herein shall prevent the County from requiring removal of any facilities installed in violation of the Mason County Code.

B. Persons holding Franchises. Any Person holding an outstanding Franchise from the County for a Cable System may continue to operate under the existing Franchise to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the Franchise; provided, however, that such Franchisee may elect at any time to apply for a superseding Franchise under this chapter; and, provided further, that, such Person shall be subject to the other provisions of this chapter to the extent permitted by law.

C. Persons with pending applications. Pending applications shall be subject to this chapter. A Person with a pending application shall be provided 30 days from the effective date of this chapter to submit additional information to comply with the requirements of this chapter governing applications.

D. Transitional rules to be narrowly interpreted. It is the intent of the County to apply the provisions of this chapter to Cable System Operators, except to the extent federal or state law prevents it from doing so.

5.20.140 FRANCHISE APPLICATIONS, GENERAL.

This MCC chapter 5.20 shall be read and applied so that it is consistent with Sections 621, 625, and 626 of the Cable Act, 47 U.S.C. §§ 541, 545, and 546 to the extent the County is required to comply with those Cable Act sections; provided, however, that nothing herein shall be read to incorporate those provisions into the Mason County Code, or prevent the County from challenging their applicability or to give any entity a right or a right of action or impose any

obligation on the County which it would not otherwise have under such federal laws. The County may adopt procedures for conducting any proceedings required under federal law, including, without limitation, procedures for presentation of evidence; and may also specify the person or entity that will conduct any administrative hearing that may be required by federal law, should the County Board of Commissioners decide that it does not wish to conduct the proceeding itself. In any case, however, the final decision to deny or grant renewal shall remain with the County Board of Commissioners.

5.20.150 APPLICATIONS FOR GRANT OF AN INITIAL FRANCHISE.

A. Written application.

1. A written application shall be filed with the County Engineer for the grant of an initial Franchise. Each entity that is required to hold a Franchise must submit an application therefore to the County Engineer in accordance with the requirements of MCC chapter 5.20. To be accepted for filing, an applicant must file an original and three copies of a complete application for a Franchise. An application may be filed by any Person on that Person's own initiative or in response to a request for proposals. The County Engineer is authorized to issue requests for proposals from time to time.

2. The County Engineer shall accept and review only those applications that include complete responses to every requirement of MCC section 5.20.150. Submission of an application that does not include the requisite information set forth in MCC section 5.20.150 and the Application Fee shall not commence the time period for granting or denying any application governed by 47 C.F.R. §76.41(d). The applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the County's review of the application.

B. Contents of applications. Except as expressly modified by the County for good cause or when determined by the County Engineer to be unnecessary to the consideration of the application, a request for proposals for a cable Franchise shall be deemed to require, and any application submitted pursuant to this MCC section 5.20.150 shall contain, at a minimum, the following information:

1. Identity of the applicant, including the name, address, telephone number, and web site (if applicable); the name, address, telephone number, and e-mail address of all individual(s) authorized to represent the applicant before the County during its consideration of the Franchise(s) requested; management/organizational information, showing the management structure of the applicant. A similar chart shall also be provided identifying the relationship of the applicant to all general partners, parent corporations, subsidiaries, Affiliates, and all other subsidiaries of parent corporations, including a brief description of each entity's relationship to the applicant.

2. An applicant shall list all Cable Systems in which it or any Affiliate owns more than 5 percent of the system.

3. Identification of the area of the County to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries.

4. Technical qualifications, planned Services and operations.

(a) The application shall describe the applicant's planned initial and proposed Cable Services geographic area, including a map of all areas proposed to be served and proposed dates for offering service to each area, including a description of the miles of plant to be installed and a description of the size of equipment cabinets, shielding, and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust, and pollutants, if any, that will be generated by the operation of the same. Notwithstanding these requirements, if some of the descriptive data is not available at the time of application, a Franchise may be granted subject to conditions that the data be filed and approved by the County before construction begins and that the Franchise will be deemed to be forfeited if the data is not supplied and approved. The application shall additionally state whether the applicant proposes to provide Cable Services to the entire Franchise Area, and, if so, a proposed timetable for meeting that goal.

(b) If the applicant has or asserts existing authority to access the Public Right-of-Way in any of the initial or proposed service areas listed in MCC subsection 5.20.150.B.4(a) above, the applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.

(c) The applicant shall describe with particularity its planned residential Cable Services, including Basic Cable Services, other cable programming Service Tiers, and any additional pay-per-view, on-demand, or digital services; and the projected rates for each category or tier or service.

(d) The applicant shall describe with particularity its planned system technical design, performance characteristics, headend, access (and institutional network) facilities and equipment, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the applicant's technology will be deployed so as to be able to successfully offer Cable Services in the proposed locations.

(e) The applicant shall describe with particularity its planned non-residential Cable Services.

(f) The applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy, describing when and where construction will begin, how it will proceed, and when it will be completed; and describe the current status of the applicant's existing or proposed arrangements, with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable. Information shall include a designation of the portions of the system that will be placed above ground and the portions that will be placed underground, and the construction techniques that the Operator proposes to use in installing the system above ground and underground; and the expected effect on Public Rights-

of-Way usage, including information on the ability of the Road Rights-of-Way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities. In addition, applicant shall provide a description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.

(g) The applicant shall describe its plan to ensure that the safety, functioning, and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the applicant's fa cilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation, or removal of the facilities.

(h) The applicant shall describe its plan to comply with the Subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of any state or local statutes, ordinances, or regulations.

5. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, as reasonably determined or established by the County.

6. A demonstration of the financial qualifications of the applicant, including at a minimum, a statement regarding the applicant's financial ability to complete the construction to meet the time frame proposed and to operate the Cable System proposed certified by the applicant's chief financial officer.

7. A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System.

8. A demonstration that the applicant is legally qualified, which proof must include a statement from the applicant:

(a) Whether it has received, or is in a position to receive, necessary authorizations from state and federal authorities;

(b) Whether it has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows County to conclude the applicant cannot be relied upon to comply with requirements of Franchise, or provisions of this chapter;

(c) Whether it or any Affiliate has been found in violation by a regulatory authority or franchising authority of any Franchise ordinance or agreement, contract or regulation governing a Cable System. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, and result or disposition of that proceeding;

(d) Whether it has been found in violation by a regulatory authority of any other type (e.g. utility) of Franchise, ordinance, agreement, permit, contract, or regulation. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, and result or disposition of that proceeding;

(e) Whether it is willing to enter into a Franchise, to pay required compensation, and to abide by the provisions of applicable law, including those relating to the construction, operation, or repair of its facilities, and has not entered into any agreement that would prevent it from doing so.

9. Declaration of applicant. Each application shall be accompanied by a declaration substantially in the form set forth below:

> This application is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the applicant and certifies the representations are true and correct.
>
> The applicant recognizes that all representations are binding on it, that all application commitments are enforceable, and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a denial of an application by the County.
>
> The applicant shall comply with all applicable local laws.
>
> Consent is hereby given to the County and its representatives to make inquiry into the legal, character, technical, financial, and other qualifications of the applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.
>
> "I certify (or declare) under penalty of perjury under the laws of the state of Washington that the
> foregoing is true and correct":
>
> . . . . . .
> (Date and Place) (Signature)

5.20.160 INITIAL FRANCHISE APPLICATION FEES.

A. Minimum deposit. Every application for an initial Franchise shall be accompanied by an initial minimum deposit in the amount of $5,000.00 or, in the discretion of the County Engineer, such higher amount as may be necessary to cover the County's direct costs in processing the application. The County shall draw upon such deposit to cover the direct cost of its administrative expenses incurred in reviewing the franchise application, preparing a franchise

ordinance, and taking action to grant or deny a Franchise. Any unexpended amounts shall be reimbursed to the applicant. In the event that the deposit is depleted, the applicant shall replenish the deposit.

B. Publication expenses. In addition, an applicant that is awarded a Franchise, shall pay to the County a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a Franchise, pursuant to the provisions this chapter. Such payment shall be made by delivery of payment to the County Treasurer within 30 days after the County furnishes the Franchisee with a written statement of such expenses.

C. Failure to remit fees. No Franchise shall become effective until all required fees and costs are paid.

5.20.170 OPEN RECORDS/CONFIDENTIALITY.

Unless otherwise provided by law, information submitted as part of a Franchise application is open to public inspection and subject to the Washington Public Records Act (Chapter 42.56 RCW). It is the applicant's responsibility to be familiar with the Washington Public Records Act. An applicant may specifically identify any information it considers proprietary by providing said information to County in a separate envelope marked "Proprietary Information." In the event that: (A) the County receives a request from another party to disclose any information which the applicant has deemed proprietary, and if the County Prosecuting Attorney determines that said information may be subject to being disclosed; or (B) the County determines that the information should be disclosed in connection with its enforcement of any provision of this chapter, or in the exercise of its police or regulatory powers, then the County shall notify the applicant of the applicant's opportunity to seek a protective order from a court with appropriate jurisdiction. In the event an action is not commenced within ten business days, the County may disclose said information. By submitting information which the applicant deems proprietary or otherwise exempt from disclosure, the applicant agrees to defend and hold harmless the County from any claim for disclosure, including, but not limited to, any expenses including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the County for the attorney fees of the party requesting disclosure.

5.20.180 REVIEW PROCESS.

A. Acceptance of application. Within ten business days of receipt of an application for an initial Franchise, the County shall review the application to ensure all requisite information is included in the application. If the application is not complete, the County will notify the applicant in writing, listing the requisite information that is required to complete the application. Such notification will also inform the applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will not begin to run until such information is received. If the application is complete, the County will notify the applicant in writing that all requisite information has been received.

B. Staff Review. The County staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires

additional information from the applicant, staff will promptly request the information from the applicant, in writing. Such notification will also inform the applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the County. After completing the review, staff shall provide an analysis of the application to the County Board of Commissioners.

C. Franchise Negotiations. Upon acceptance of a complete application, the County shall commence the process for negotiating a Franchise agreement with the applicant. Within the time period set forth in 47 C.F.R. § 76.41(d), the County shall attempt to negotiate a cable Franchise agreement with the applicant, and within that time period, schedule the application and any proposed Franchise for public hearing, as set forth in MCC section 5.20.180 D.

D. Public Hearing. The County shall hold a public hearing before acting on an application, affording participants a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable Franchises.

E. Review Criteria. The County may deny an application if, based on the information provided in the application, at the public hearing, and/or any terms of a proposed Franchise agreement: (1) the applicant does not have the financial, technical, or legal qualifications to provide Cable Service; (2) the applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or (3) the applicant's proposed terms do not comply with applicable federal, state, and local laws and regulations, including, but not limited to, local customer service standards, or relevant existing contractual obligations of the County.

F. Grant or Denial of Franchise Application. If the County finds that it is in the public interest to issue a Franchise considering the factors set forth above, the County may adopt a Franchise ordinance setting forth the terms and conditions of the Franchise, which Franchise shall become effective upon satisfaction of conditions precedent to effectiveness, and when signed and accepted by the applicant. If the County denies a Franchise, it will cause a written explanation of the denial to issue, which may be in any appropriate form. Without limiting its authority to deny an application for a Franchise, the County specifically reserves the rights to reject any application that is incomplete or fails to respond to a request for proposal. Nothing in this chapter shall be construed in any way to limit the discretion and legislative authority of the County Board of Commissioners in making decisions relative to the granting, denial, or renewal of a Franchise.

5.20.190 PROCEDURE FOR CABLE FRANCHISE RENEWALS.

Renewal under Cable Act. To the extent required by federal law, requests for cable Franchise renewal under the Cable Act will be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. § 546. B. Informal applications for renewal. Notwithstanding the provisions of Section 5.20.160, a Cable Operator may submit a proposal for renewal of a Franchise, pursuant to 47 U.S.C. § 546(h). Such a

proposal may be submitted at any time and the County may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings have been commenced in accordance with 47 U.S.C. § 546(a)).

5.20.200 APPLICATIONS FOR MODIFICATION OF FRANCHISE.

A. An application for modification of a Franchise shall include, at minimum, the following information:

1. The specific modification requested;

2. A statement indicating whether the modification is sought, pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

3. Any other information that the applicant believes is necessary for the County to make an informed determination on the application for modification; and

4. A declaration of the applicant or applicant's authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with the requirements of applicable law.

B. A request for modification submitted pursuant to 47 U.S.C. § 545 shall be considered in accordance with the requirements of that section.

C. Public hearings. An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given a reasonable opportunity to be heard. In addition, prior to the issuance of a Franchise, the County shall provide for the holding of a public hearing within the proposed Franchise Area, following notice to the public, at which each applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

5.20.210 ADDITIONAL RULES APPLICABLE TO CABLE SYSTEMS

A Franchisee may not require a Subscriber or a building owner or manager to enter into an exclusive contract for the provision of Cable Service as a condition of providing or continuing service.

5.20.220 CONSTRUCTION PROVISIONS AND TECHNICAL STANDARDS.

A. System construction schedule. Every Franchise shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.

B. Use of Cable Operator's facilities. The County and the Cable Operator shall in good faith discuss a County request to install and maintain, upon any poles owned by a Cable Operator in the County and utilized for Franchisee's cable operations, any wire and pole fixtures that do not unreasonably interfere with the Cable System or other operations of the Franchisee; provided, that the Franchisee may charge the County a fair market rate for the use of such poles. Each Cable Operator shall notify the County when and with whom it enters into an agreement for use of its poles and conduits in the County.

C. Provision of service/quality of service. In addition to satisfying such requirements, as may be established in a Franchise, every Cable Operator shall operate its Cable System subject to the following conditions, except as prohibited by federal law:

1. It is the policy of the County to ensure that every Cable System provide service in the Franchise Area, upon request, to any person or any government building consistent with applicable law and the Franchise. The County retains the discretion to evaluate any Franchise proposal, and impose construction and service availability requirements in a Franchise in order to meet the needs of the community, so long as such requirements are consistent with applicable law.

2. A Cable Operator must extend service to any person or to any government building which requests it in the County or (if smaller) its Franchise Area within seven days of the request, where service can be provided by activating or installing an aerial drop within 125 feet of the structure to receive service. In cases where a potential Subscriber's structure is more than 125 feet from a Franchisee's existing cable plant, a Franchisee must still provide service, so long as the potential Subscriber agrees to bear a share of extension or installation costs, equal to the Franchisee's incremental cost of an extension that exceeds the 125-foot limit. A Franchisee that requires a potential Subscriber to bear a portion of installation or extension costs must prepare a written estimate of extension costs within seven days of a request for an installation or extension that would be subject to cost sharing.

3. A Cable System within the County shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601–640, as amended, and all other lawful and applicable technical standards.

4. A Cable Operator shall perform all tests necessary to demonstrate compliance with the requirements of its Franchise and other lawful technical standards. Unless a Franchise or applicable law provides otherwise, all tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of the Society of Cable Telecommunications Engineers (SCTE) Recommended Practices; specifically, its Recommended Practices for Fiber Optic Cable Construction and Testing and its Recommended Practices for Coaxial Cable Construction and Testing, or such other manual as may be directed under FCC regulations. A written report of any test results shall be filed with the County within seven days of a request by the County. If a location fails to meet technical or performance specifications, the Operator, without requirement of additional notice or request from County, shall promptly take corrective action, and retest the locations.

D. System maintenance and Technical Quality. Scheduled maintenance shall be performed so as to minimize the effect of any necessary interruptions of Cable Service and a Cable Operator shall maintain all transmission equipment as necessary to carry a quality signal from the access facilities provided under this section or any Franchise to Subscribers. A Cable Operator shall maintain all access channels, interconne cts, and return lines at the same or better level of technical quality and reliability required by a Franchise and all other applicable laws, rules, and regulations for other channels, services, and interconnects.

E. Emergency alert capability. A Cable Operator shall provide an Emergency Alert System ("EAS") and comply with all applicable federal, state, and regional emergency alert and notification statutes, regulations, and plans, and any other requirements that may be contained within a cable Franchise. The County may use the EAS, under procedures established between the County and the Cable Operator, which are consistent with a Cable Operator's state and federal EAS requirements, to transmit an emergency alert signal, including the ability to override the audio and video on all channels throughout the County from the County's Emergency Operations Center or other location as may be designated by the County. A Cable Operator shall test the EAS, as required by the FCC. Upon request, the County shall be permitted to participate in and/or witness the EAS testing, up to twice a year, on a schedule formed in consultation with a Cable Operator. If the test indicates that the EAS is not performing properly, a Cable Operator shall make any necessary adjustment to the EAS, and the EAS shall be retested. The County shall permit only appropriately trained and authorized persons to operate the EAS equipment provided, pursuant to this subsection.

F. Continuity of service. Each Franchisee shall, during the term of the Franchise, ensure that Subscribers are able to receive continuous service. In the event the Franchise is revoked or terminated, the Franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the Franchisee to another entity. A Franchise may establish more particular requirements under which these obligations will be satisfied.

5.20.230 OPERATION AND REPORTING PROVISIONS.

A. Communication with regulatory agencies. If requested by the County, a Cable Operator shall file with the County all reports required by the FCC including, without limitation, any proof of performance tests and results; Equal Employment Opportunity ("EEO") reports; and all petitions, applications, and communications of all types directly related to the Cable System, or a group of Cable Systems of which the Cable Operator's Cable System in the County is a part, submitted or received by the Cable Operator, an Affiliate, or any other Person on the behalf of the Operator, either to or from the FCC, the Security and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Cable System; provided, that nothing herein requires a Franchisee to produce regulatory or court filings that are treated by the agency or court as confidential, such as Hart-Scott-Rodino Act filings. If any such documents are available on line, in lieu of filing hard copies with the County, the Cable Operator may direct the County to the on-line location of the information. Nothing in this Section 5.20.240.A affects any rights the County may have to obtain books and records under this chapter.

B. Reports.

1. Upon written request by the County Engineer, within 45 days of the end of each calendar quarter, a Cable Operator shall submit a report to the County containing the following information: (a) The number of service calls (calls requiring a truck roll), received by type, during the prior quarter; and (b) The number and type of outages known by the Operator for the prior quarter affecting more than ten Subscribers specifying the following: the duration; the geographical area; the number of Subscribers affected; and, if known, the cause.

2. No later than 120 days after the end of its fiscal year, a Cable Operator shall submit a fully audited or certified revenue report from the previous calendar year for the Cable System. Upon 120 days advanced written request from the County Engineer, a Cable Operator may be required by the County to provide the following no later than 120 days after the end of the Cable Operator's fiscal year

(a) A summary of the previous year's activities in the development of the Cable System, including descriptions of services begun or discontinued and the number of Subscribers gained or lost for each category of Cable Service;

(b) A summary of complaints for which records are required under MCC section 5.20.230.A, identifying both the number and nature of the complaints received and an explanation of their dispositions;

(c) An ownership report, indicating all Persons who, at the time of filing, control or own an interest in the Cable Operator of 10 percent or more;

(d) A list of officers and members of the Board of Directors of the Franchisee and any Affiliates directly involved in the operation or the maintenance of the Cable System;

(e) An organizational chart showing all corporations or partnerships with more than a 10 percent interest ownership in the Cable Operator, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified, and so on, until the ultimate corporate and partnership interests are identified;

(f) An annual report of each entity identified in MCC section 5.20.240.B.2(f), which issues an annual report;

(g) A complete report on its plant, which shall state the physical miles of plant construction and plant in operation during the prior calendar year categorized as aerial and underground, identify any cases where Subscribers contributed to plant extension, and report the results of appropriate electronic measurements to show conformity with FCC technical standards;

(h) A report showing the nature and type of complaints and corrective action taken to address the complaint and

(i) Once the information required by MCC sections 5.20.240.B.2(d)-(e) has been filed, it need be re-filed only if it changes.

C. Records required. A Cable Operator shall at all times maintain:

1. Records of all complaints received with information sufficient to allow the Operator to prepare the reports required in this MCC section 5.20.240. The term "complaints" as used herein and throughout this ordinance refers to complaints about any aspect of the Cable System or Franchisee's operations, including, without limitation, complaints requiring service calls, and complaints about employee courtesy, billing, prices, programming, outages and signal quality;

2. Records of outages known to the Cable Operator, with information sufficient to allow a Franchisee to prepare the reports required in this MCC section 5.20.240;

3. Records of service calls for repair and maintenance indicating the date and time service was requested; the date of acknowledgment; date and time service was scheduled, if it was scheduled; the date and time service was provided; and, if different, the date and time the problem was solved; and

4. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

5.20.240 CONSUMER PROTECTION.

A. Rate discrimination prohibited. Except to the extent permissible by law a Cable Operator is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the Franchise Area. A Franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A Cable Operator shall comply at all times with all applicable federal, state, and County laws, and all executive and administrative orders relating to non-discrimination.

B. Redlining prohibited. A Cable System Operator shall not deny access or charge different rates to any group of Subscribers or potential Subscribers because of the income of the residents of the local area in which such group resides.

C. Cable customer service standards. The County retains the continuing authority to enforce provisions of federally-adopted customer service standards in accordance with applicable law or to adopt local customer service standards, in its discretion.

5.20.250 FRANCHISE FEE.

A Cable Operator shall pay to the County a Franchise fee in an amount equal to 5 percent of gross revenues from Cable Services, or such other amount as may be specified in the Franchise.

5.20.260 TRANSFERS.

A. County approval required. No Transfer shall occur without prior written notice to and approval of the County Board of Commissioners. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

B. Application.

1. The Franchisee shall promptly notify the County Engineer of any proposed Transfer involving a Cable System.

2. At least 120 calendar days prior to the contemplated effective date of a Transfer involving a Cable System, the Franchisee shall submit to the County Engineer an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the Transferee subject to applicable law. At a minimum, the following information must be included in the application, provided that, a Franchisee is not required to duplicate information that it submits to the County Engineer to comply with its obligations under federal or state law:

(a) All information and forms required by FCC Form 394 and any other form that may be promulgated under federal law, or, the equivalent of such forms if no longer required by federal law or if Operator elects not to utilize such forms, any contracts or other documents that relate to the proposed transaction or other documents, schedules, or exhibits that would have been provided to the County under FCC form 394;

(b) Any shareholder reports or filings with the Securities and Exchange Commission ("SEC") that discuss the transaction;

(c) Other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed Transfer; and

(d) Complete information regarding any potential impact of the Transfer on Subscriber service.

3. For the purposes of determining whether it shall consent to a Transfer, the County, or its agents, may inquire into the legal, financial and technical qualifications of the prospective Transferee and necessary to determine whether the Transfer is in the public interest and should be approved. The Franchisee and any prospective transferees shall assist the County Engineer in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

C. Determination by County. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise under this MCC section 5.20.260.C, the County shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the County. The County's consent to a Transfer shall not be unreasonably withheld.

D. Transferee's agreement. No application for a Transfer of a Franchise, subject to this MCC section 5.20.260, shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this chapter and the Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this chapter and the Franchise for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

E. Approval does not constitute waiver. Approval by the County of a Transfer of a Franchise, pursuant to this MCC section 5.20.260, does not constitute a waiver or release of any of the rights of the County under this chapter or a Franchise, whether arising before or after the date of the Transfer.

F. Exception for intra-company Transfers. Notwithstanding the foregoing, a Franchise may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of MCC section 5.20.260.A-B where (1) the Affiliate is wholly owned and managed by an entity that will guarantee the performance under a Franchise or provide other adequate assurance acceptable to the County Engineer; and (2) the transferee Affiliate:

1. Notifies the County Engineer of the Transfer at least 60 days before it occurs and, at that time provides the agreements and warranties required by this MCC section 5.20.260, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;

2. Warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise and related amendment, regulations, ordinances, and resolutions then in effect;

3. Agrees to assume all responsibility for all liabilities, acts, and omissions known and unknown, of its predecessor Franchisees for all purposes, including renewal;

4. Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisees;

5. Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;

6. Warrants that the Transfer will not in any way adversely affect the County or Subscribers (including by increasing rates);

7. Notifies the County Engineer that the Transfer is complete within five business days of the date the Transfer is complete; and

8. Agrees that the Transfer in no way affects any evaluation of its legal, financial, or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers.

G. Exception for Financing Related Actions. Notwithstanding Sections A thru E above, a Franchisee may, without obtaining consent of the County from time to time (a) restructure its debt or change the ownership interests among its equity participants or its affiliates; and (b) pledge or grant a security interest in its assests, including but not limited to the Franchise or the equity or other ownership interests in the Franchisee to any lender to secure indebtness.

5.20.270 CONNECTIONS TO CABLE SYSTEM; USE OF ANTENNAE.

A. Subscriber right to attach. To the extent consistent with federal law, Subscribers shall have the right to attach DVRs, receivers, and other terminal equipment to a Franchisee's Cable System. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

B. Removal of existing antennae. A Franchisee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the Subscriber or potential Subscriber, or prohibit installation of a new antenna, provided that such antenna is connected with an appropriate device and complies with applicable law.

5.20.280 DISCRIMINATION PROHIBITED.

A. A Cable Operator shall not discriminate among persons or the County or take any retaliatory action against a person or the County because of that entity's exercise of any right it may have under federal, state, or local law, nor may the Operator require a person or the County to waive such rights as a condition of taking service.

B. A Cable Operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, age, disability, religion, ethnic background, or marital status. A Cable Operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

5.20.290 MISCELLANEOUS

A. Captions. The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

B. Calculation of time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any Franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

C. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Dated this 11 day of January, 2011.

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON

ATTEST:

Mari Ramer FOR
Shannon Goudy, Clerk of the Board

B K Mallahan P.E.
County Engineer

By: Lynda Ring Erickson
Lynda Ring Erickson, Chair

By: Tim Sheldon
Tim Sheldon, Commissioner

By: Jerry K. Lingle
Jerry K. Lingle, Commissioner

Approved as to form:

Prosecuting Attorney #3787
DPA Mason County

MASON COUNTY
COMMISSIONERS RESOLUTION NO: 03-11
COUNTY ROAD PROJECT NO. 1950

WHEREAS, on Mason County Road No.70390, known locally as the North Shore Road, and more specifically located in Sec. 20, T22 N, R 3W, WM, at the approximate mile posts listed below; work defined as "construction" in the BARS Manual, Page II-63, et seq, is determined to be necessary and proper; and,

THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that it is their intention to:

Repair and stabilize slide area. Work to be performed at approximate mileposts: 18.04.

SAID WORK is to be performed by Contract in accordance with Washington State Standard Specifications for Road and Bridge Construction as adopted by Mason County.

BE IT FURTHER RESOLVED that the described County Road Project is necessary and proper, and the estimated costs of said project are herewith set out as follows:

Engineering:	**$ 25,000.**
Right of Way	**$ 0 .**
Construction	**$ 175,000.**

The County Road project herein described in HEREBY DECLARED to be a public necessity, and the County Road Engineer is HEREBY ORDERED AND AUTHORIZED to report and proceed thereon as by law, provided and in accordance with RCW 36.77.020 et. seq.

ADOPTED this 11th day of January, 2011.

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON

Lynda Ring Erickson

Lynda Ring Erickson, Chair

Jerry K. Lingle, Commissioner

Tim Sheldon

Tim Sheldon, Commissioner

ATTEST:

Marie Ryan FOR

Clerk of the Board

APPROVED AS TO FORM:

#37021

Tim Whitehead, Deputy Prosecuting Attorney

cc: Co. Commissioners
Engineer
JOURNAL: Publ. It: 1/20/11

OfficeManager h:\wp\crp\1950-CRP-Res.doc