

## ORDINANCE NO. 505

### AN ORDINANCE OF THE TOWN OF SOUTH PRAIRIE, PIERCE COUNTY, WASHINGTON, GRANTING A FRANCHISE TO COMCAST PUGET SOUND, INC. FOR CABLE SERVICES

WHEREAS, the Comcast Puget Sound, Inc. ("Comcast"), has provided a draft Agreement, attached to this Resolution as Exhibit A, for the construction, operation, and maintenance of a cable system within the Town of South Prairie; and

WHEREAS, the Town Council has determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community; and

WHEREAS, the cable franchise will require the use of the Town streets for installation and maintenance of the utility, including installation of fiber optic cable; and

WHEREAS, the Town Council has determined that such use of the rights-of-way is appropriate, considering the benefits that will be realized by Town citizens and businesses; and

WHEREAS, this Ordinance was first introduced at the regular Town Council meeting on October 7, 2008, and has been submitted for review to the Town Attorney.

NOW, THEREFORE, the Town Council of the Town of South Prairie do hereby ordain as follows:

1. Comcast shall be granted a franchise over the Town's rights-of-way for the purpose of installing and maintaining a cable system, including fiber optic cables, as set forth in more detail in the Franchise Agreement, attached as Exhibit A. Such franchise shall in no way be construed as exclusive, and shall not restrict the Town's ability to grant other franchises, uses, or permits for use of the public rights-of-way.
2. This Franchise shall in all respects be governed by the laws of the State of Washington, including but not limited to the Revised Code of Washington, as well as the Town's Ordinances.
3. Comcast shall, upon the request of the Town, furnish a bond issued by a corporate surety prior to any construction or installation, such bond being sufficient to ensure Comcast's performance under the Agreement, pursuant to RCW 35.23.251.
4. Comcast shall pay to the Town a franchise fee of 5% of its gross revenues on a quarterly basis.

Passed this 4<sup>th</sup> day of November 2008.

Peggy Levesque

Mayor Peggy Levesque

INTRODUCED 10/7/2008

PASSED 11/4/2008

APPROVED 11/4/2008

PUBLISHED 11/12/2008

**ATTESTED:**

Marla Nevill

Marla Nevill, Town Clerk/Treasurer

**APPROVED AS TO FORM:**

Sisille for

Kathleen Haggard, Town Attorney



## FRANCHISE

This Franchise (hereinafter, the "Franchise") is between Town of South Prairie (hereinafter, "Town") and Comcast of Puget Sound, Inc. (hereinafter, "Grantee").

The Town, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

### SECTION 1 - Definition of Terms

For the purpose of this Franchise, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

1.1 "Cable Services" shall mean (1) the one-way transmission to Customer's of (a) video programming, or (b) other programming service, and (2) Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.2 "Cable System" shall mean the Grantee's 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 within the Franchise Area.

1.3. "Customer" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.

1.4. "Effective Date" means the date on which all persons necessary to sign this Franchise in order for it to be binding on both parties have executed this Franchise as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

1.5. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.

*Exhibit A*

1.6. "Franchise" shall mean this document and any amendments or modifications hereto.

1.7. "Franchise Area" means the area within the present legal boundaries of the Town as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.8. "Town" means the Town of South Prairie or the lawful successor, transferee, designee, or assignee thereof.

1.9. "Grantee" shall mean Comcast of Puget Sound, Inc.

1.10. "Gross Revenue" means the revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not limited to monthly basic, premium and pay-per-view fees, installation fees, and equipment rental fees. Gross Revenue shall not include advertising or home shopping revenue, refundable deposits, bad debt, late fees, investment income, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

1.11. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Town.

1.12. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Town in the Franchise Area, which shall entitle the Town and the Grantee to the use thereof for the purpose of installing, operating, repairing, upgrading and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Town within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

## SECTION 2 - Grant of Authority

2.1. The Town hereby grants to the Grantee under the Cable Act a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in, along, among,

*Exhibit A*

upon, across, above, over, under, or in any manner connected with Public Ways and easements within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Grantee reserves the right to challenge provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Town.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be five (5) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise and the Cable Act.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4. Reservation of Authority. Nothing in this Franchise shall (A) abrogate the right of the Town to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Town, or (C) be construed as a waiver or release of the rights of the Town in and to the Public Ways.

2.5. Competitive Equity.

2.5.1. The Grantee acknowledges and agrees that the Town reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the Town agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; public, education and government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the Town, which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the Town agrees that it shall amend this

*Exhibit A*

Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by Town and Grantee.

2.5.2. In the event an application for a new cable television franchise is filed with the Town proposing to serve the Franchise Area, in whole or in part, the Town shall serve or require to be served a copy of such application upon the Grantee by registered or certified mail or via nationally recognized overnight courier service.

2.5.3. In the event that a wireline multichannel video programming distributor provides video service to the residents of the Town under the authority granted by federal or State legislation or other regulatory entity, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Town shall not unreasonably withhold consent to the Grantee's petition.

2.6. Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Town lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Town agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System, which is reasonably acceptable to the Town, the Grantee and the Town may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Town or the Grantee.

### **SECTION 3 – Construction and Maintenance of the Cable System**

3.1. Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the

*Exhibit A*

Cable System shall be performed in a safe manner using materials that meet or exceed industry standards. All facilities, poles, conduits, cables, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise shall be located so as to minimize interference with the designated use of the Public Ways at the time of Cable System facilities installation.

3.2. Conditions on Occupancy of Public Ways.

3.2.1. Relocation at request of Town. Upon thirty (30) days prior written notice to Grantee, Town shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Public Ways when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Town, Town may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Town due to Grantee's delay. If Town requires Grantee to relocate its facilities located within the Public Ways, Town shall make a reasonable effort to provide Grantee with an alternate location within the Public Ways. This Section does not apply to overhead to underground conversions, see Section 3.2.6 "Aerial and Underground Construction". If public funds are available to any Person using such Public Ways for the purpose of defraying the cost of any of the foregoing, the Town shall upon written request of the Grantee make application for such funds on behalf of the Grantee.

3.2.2. Temporary Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Town to move any structure, temporarily move its facilities to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its facilities, and such charge may be required to be paid in advance of the movement of its wires or cables; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

3.2.4. Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent accidents that may cause damage or injuries. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Public Ways.

*Exhibit A*

3.2.5. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth interfering with, damaging, or restricting access to, any of its Cable System facilities in the Public Ways. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

3.2.6. Aerial and Underground Construction. If all of the transmission and distribution facilities of all of the respective wireline service providers in any given area within the Franchise Area are underground, the Grantee shall place its Cable Systems' distribution cables underground; provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of any of the respective wireline service providers are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where a wireline service providers wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

3.2.6.1 In the event of a Town driven facilities relocations project that require conversion of overhead facilities to underground, such as projects that may include, but not be limited to: road widening, surface grade changes, sidewalk installation, or beautification, Grantee agrees to bear the costs of converting Grantee's cable system from an overhead system to an underground system as follows:

A. Utility Trench and Vault/Pedestal Engineering -- To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete cable system related engineering coordination with the other utilities involved in the project.

B. Conduit and Vaults/Pedestals Placement -- Grantee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo cable trench as follows:

1. If the Town contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.

*Exhibit A*

2. If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the Town or it's contractor, Grantee shall have the option to hire their own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.

3. If Grantee chooses option (2), the Town and it's contractor(s) are responsible to coordinate with Grantee's contractor(s) to provide reasonable notice and time to complete the placement of Grantees conduits and vaults/pedestals in the supplied joint trench.

C. Within the conversion area, Grantee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo cable trench. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed in item B above.

3.2.6.2 In the event of a Local Improvement District (LID) project that requires relocation of Grantees facilities, Grantee shall be reimbursed by the LID funding for all expenses incurred as a result of the project.

3.2.6.3 The Grantee shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided (i) the Grantee may impose a charge for all time and material costs associated with the project on any Person for the relocation of its facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables, and (ii) Grantee is granted a permit for such work by the Town.

3.2.6.4 In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for the all time and material costs associated with the conditioned underground conversion of cable facilities. Comcast and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.

3.2.6.5 The Grantee shall utilize existing poles and conduit wherever possible.

#### **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per strand mile in areas served by underground facilities. Subject to the density requirement, Grantee shall offer Cable Service at standard installation rates to all new homes or previously unserved homes located within one-hundred twenty five (125) aerial feet of the

*Exhibit A*

Grantee's aerial distribution cable, or within sixty (60) underground trench feet of either aerial or underground distribution facilities.

The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be that portion of the installation that exceeds the standards set forth above.

4.2. Programming. The Grantee shall offer to all Customers a diversity of video programming services.

4.3. No Discrimination. Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial, and other business obligations to the Grantee are satisfied. Grantee shall not however be required to continue service to a customer who is verbally or physically abusive, harassing, or threatening to Grantee or any of its employees, agents, representatives, contractors, subcontractors, or consultants. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. New Developments. The Town shall provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within the Franchise Area requiring underground installation and/or conversion of cable facilities as part of the approval condition(s). The Town agrees to require the developer, as a condition of issuing land use and building permits, to give the Grantee access to all open trenches for deployment of cable facilities throughout the development and at least ten (10) business days written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering and deployment of labor applicable to its installation of cable facilities within the development. For conversion of cable facilities as part of the street improvement condition(s), see Section 3.2.6 "Aerial and Underground Construction."

4.5. Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

## **SECTION 5 - Fees and Charges to Customers**

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate,

*Exhibit A*

fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

## **SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection**

6.1. Customer Service Standards. The Town hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3. Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

## **SECTION 7 - Oversight and Regulation by Town**

7.1. Franchise Fees. The Grantee shall pay to the Town a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on quarterly basis and shall be due forty-five (45) days after the close of each quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

### 7.2. Franchise Fees Subject to Audit.

7.2.1. Upon reasonable prior written notice, during normal business hours, at Grantee's principal business office, the Town shall have the right to inspect the Grantee's

*Exhibit A*

financial records used to calculate the Town's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Town receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Town, the Town shall provide to the Grantee a final report setting forth the Town's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Town with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section (7.2), the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Town by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Finally Settled Amount(s)" due to the Town as a result of such audit shall be paid to the Town by the Grantee within forty-five (45) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Town shall have no further rights to audit or challenge the payment for that period. The Town shall bear the expense of its audit of the Grantee's books and records.

7.3. Oversight of Franchise. In accordance with applicable law, the Town shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Public Ways, as necessary to monitor Grantee's compliance with the provisions of this Franchise.

7.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Town shall have, upon written request, the right to review tests and records required to be performed pursuant to the FCC's rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise, the Grantee agrees that the Town, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the Town shall be retained by the Grantee for a minimum period of three (3) years.

7.5.2. File for Public Inspection. Throughout the term of this Franchise, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

*Exhibit A*

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The Town agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Town that have a need to know in order to enforce this Franchise and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the Town receives a request under a state “sunshine,” public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Town shall notify Grantee of such request and cooperate with Grantee in opposing such request.

### ***SECTION 8 – Transfer or Change of Control of Cable System or Franchise***

8.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 50% or greater ownership interest in Grantee, shall take place without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Town shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Town has not taken action on the Grantee’s request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

### **SECTION 9 - Insurance and Indemnity**

9.1. Insurance. Throughout the term of this Franchise, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Town certificates of insurance designating the Town as additional insured and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or

*Exhibit A*

more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Town. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Town from any workers compensation claims to which the Grantee may become subject during the term of this Franchise

9.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the Town, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Town shall give the Grantee written notice of its obligation to indemnify and defend the Town within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Town determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Town.

## **SECTION 10 - System Description and Service**

10.1. System Capability. During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming to its customers in the Franchise Area.

10.2. Service to School Buildings. The Grantee shall provide free "Basic" tier Cable Service and free installation (within the installation guidelines described in Section 4.1 of this Franchise) at one outlet to each accredited public and private school, not including "home schools," located in the Franchise Area.

10.3. Service to Governmental and Institutional Facilities. The Grantee shall provide free "Basic" tier Cable Service and free installation (within the installation guidelines described in Section 4.1 of this Franchise) at one outlet to each municipal building located in the Franchise Area. Additional outlets or services will be installed by Grantee at the normal non-discriminatory commercial rate and billed for on a monthly basis at the normal commercial rate as determined by the Grantee's commercial accounts guidelines. "Municipal buildings" are those buildings owned or leased and occupied by the Town for government administrative purposes, and shall not include buildings or sites owned by Town such as storage facilities, golf courses, utility offices or other facilities not used for administrative purposes, or those buildings owned by the Town but leased to third parties at which government administrative employees are not regularly stationed. In instances wherein the Town is leasing and occupying the building, the Town shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building's owner.

*Exhibit A*

## **SECTION 11 - Enforcement and Termination of Franchise**

11.1. Notice of Violation or Default. In the event the Town believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

11.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the Town's written notice: (A) to respond to the Town, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that they will be completed.

11.3. Public Hearings. In the event the Grantee fails to respond to the Town's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Town shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Town that is scheduled at a time that is no less than ten (10) business days therefrom. The Town shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

11.4. Enforcement. Subject to applicable federal and state law, in the event the Town, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the Town may:

11.4.1. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

11.4.2. In the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked in accordance with the following:

(i) The Town shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Town has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Town shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

*Exhibit A*

(ii) At the designated hearing, the Town shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which, it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Town shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Town “de novo” and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Town.

11.5. Technical Violation. The Town agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.5.1. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.5.2. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

## **SECTION 12 - Miscellaneous Provisions**

12.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee’s ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee’s cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

12.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Town:

Town of South Prairie  
121 NW Washington St.  
PO Drawer F  
South Prairie, WA 98385  
Attn: Town Clerk

*Exhibit A*

To the Grantee:

Comcast of Puget Sound, Inc.  
410 Valley Ave. NW  
Puyallup, WA 98371  
Attn: General Manager

with a copy to:

Comcast Cable Communications, Inc.  
15815 25<sup>th</sup> Avenue W.  
Lynwood, WA 98087  
Attn: Franchising

12.3. Entire Franchise. This Franchise, including all Exhibits, embodies the entire understanding and agreement of the Town and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

12.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

12.5. Governing Law. This Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.

12.6. Modification. No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Town and the Grantee, which amendment shall be authorized on behalf of the Town through the adoption of an appropriate resolution or order by the Town, as required by applicable law.

12.7. No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

12.8. No Waiver of Rights. Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

*Exhibit A*

IN WITNESS WHEREOF, this Franchise has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest:

  
Marla Nevill  
Clerk/Treasurer

Town:

By:   
Name: Peggy Levesque  
Title: Mayor  
Date: Nov. 4, 2008

Attest:

\_\_\_\_\_

Comcast of Puget Sound, Inc.

By: \_\_\_\_\_  
Name:  
Title:  
Date:

*Exhibit A*