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ORDINANCE NO. 3371

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO BLACK ROCK CABLE, INC. TO OPERATE AND MAINTAIN AN OPEN VIDEO SYSTEM IN THE CITY OF EDMONDS, SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, Black Rock Cable, Inc., DBA Black Rock Cable ("Black Rock"), a Nevada Corporation, desires to operate an open video telecommunications system in the rights-of-way of the City of Edmonds; and

WHEREAS, negotiations between Black Rock and the City have been completed and the franchise process followed in accordance with applicable law; and

WHEREAS, the City Council has determined that it is in the public interest to grant Black Rock's request; and NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning set forth in this Section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in the Franchise is not defined in this Section and there is a definition for the term in the Cable Communications Policy Act of 1984, or the Cable Television Consumer Protection and Competition Act of 1992, or the Telecommunications Act of 1996, all as codified at 47 U.S.C. §§ 521 et seq. (hereinafter collectively referred to as the "Cable Act"), the Cable Act definition shall apply. Other terms in the Franchise, which are not defined in this Section, shall be given their common and ordinary meaning.

(a) "Access Channels" means channels set aside by the Operator exclusively for noncommercial public, educational, or governmental use (commonly referred to as "PEG" channels).

(b) The "Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any subsequent

amendments.

(c) "Addressability" means the ability of a system allowing the Operator to authorize specific equipment to receive, change or to cancel any or all specified programming.

(d) "Basic Cable Service" means the lowest level of service regularly provided to all Subscribers that includes the retransmission of local broadcast signals.

(e) "Cablecast" means the distribution of programming, which originates within the facilities of the cable television system.

(f) "Cable Facilities" means equipment and wiring used to transmit audio and video signals to subscribers.

(g) "Cable Service" shall mean (1) the one-way transmission to Subscribers of video programming or other services; and (2) Subscriber interaction, if any, which is required for the selection of such video programming or other service.

(h) "Cable system" or "Open Video System" or "system" means a facility, consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other service to subscribers pursuant to FCC rules 47 CFR 1500.

(i) "Channel" or "cable channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television signal as defined by the Federal Communications Commission.

(j) "Character generator" means a device used to generate alpha numerical programming to be cablecast on a cable channel.

(k) "City" means the City of Edmonds, a municipal corporation of the State of Washington.

(l) "Council" means the City of Edmonds Council acting in its official capacity.

(m) "Data Communication" means (1) the transmission of encoded information or (2) the transmission of data from one point to another.

(n) "Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hospitals, hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes, extended care facilities and other multiple family residential units.

(o) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

(p) "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.

(q) "Fiber Optics" means the technology of guiding and projecting light for use as a communications medium.

(r) "Franchise" shall mean the initial authorization, or renewal thereof, issued by the City which authorizes construction and operation of a cable system or open video system for the purpose of offering cable service or other service to subscribers.

(s) "Gross revenues" means any and all revenues (as that term is defined by generally accepted accounting principles) received directly or indirectly from all sources, which arise out of or are derived from the operation of the Operator's cable system in the City. When the revenue of the Operator includes gross revenues from sources outside of the City, the Operator shall prorate the gross revenues among its sources by multiplying such gross revenues by a fraction the numerator of which is the number of the Operator's subscribers in the City and the denominator of which is the total number of all the Operator's subscribers. "Gross Revenues" shall not include the following:

1. Fees and payments from subscribers who do not live in the City;
2. Taxes on services furnished by the Operator, which are imposed on any subscriber or used by any governmental unit, agency or instrumentality and which are collected by the Operator for such entity;
3. Bad debt write-offs;
4. Revenue from the sale of equipment or other assets of the cable system to persons not purchasing services from the cable system;
5. Revenue from transactions involving real property owned or leased by the Operator;
6. Amounts collected from Subscribers as a franchise fee to be paid to City.

(t) "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

(u) "Installation" means the connection of the Cable System from feeder cable to subscribers' receivers.

(v) "Institutional Networks (I-Nets)" means that portion of a cable system, which is designated principally for the provision of non-entertainment services to public schools, or public agencies such as public libraries separate and distinct from the subscriber network, or on secured channels of the subscriber network.

(w) "Interactive services" means services provided to subscribers where the subscriber (i) receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; and (ii) has the ability to transmit signals to any other location for any purpose.

(x) "Office" means the person or entity designated by the City as being responsible for the administration of a Franchise for the City.

(y) "Operator" means Black Rock Cable, Inc., a Washington corporation.

(z) "Premium services" means video programming offered on a pay-per-channel or pay-per-program basis.

(aa) "Property of Operator" means all property owned, installed or used by the Operator in the conduct of its business in the City under the authority of the Franchise granted pursuant to this Ordinance.

(bb) "Public Way," "Public Right-of-Way" or "Street" means the surface, the air space above the surface and the area below the surface of any public street, including, but not limited to, any public alley, boulevard, drive, easement, right-of-way or sidewalk under the jurisdiction of the City.

(cc) "Subscriber" means a person or entity or user of the cable system who lawfully receives cable services or other service therefrom with the Operator's express permission.

Section 2. Purpose

This Ordinance shall establish a non-exclusive Franchise and shall constitute an agreement between the City and Black Rock Cable, Inc., (hereinafter the "Operator"). The Operator is authorized to construct, maintain, and operate an open video system for the distribution of television and other electronic signals pursuant to the terms of this Franchise. The City agrees to grant the Operator, consistent with applicable City codes, all necessary rights and privileges to use public rights-of-way necessary for the open video system.

Section 3. Term of Franchise.

A. The length of this Franchise shall be the period of time between the Effective Date of this Franchise, through midnight April 26, 2011 subject to the conditions specified in Section 34: Performance Review Extension.

B. Prior to the granting renewal of this Franchise, the City Council shall conduct a public hearing to determine the following:

1. Whether the Operator has substantially complied with the material terms of this Franchise and with applicable law;
2. Whether sufficient capacity continues to exist of public rights-of-way to accommodate the Open Video System; and
3. The degree of potential disruption to existing users of the public rights-of-way to be used by the Open Video System and the resultant inconvenience which may occur to the public from the continued operation of the Open Video System.

Section 4. Service Area

The Operator's service area shall be the entire incorporated area of the City of Edmonds, in its present incorporated form or in any later reorganized, consolidated, enlarged, or re-incorporated form.

Section 5. Police Power

In accepting this Franchise, the Operator acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power.

Section 6. Rules and Regulations by the City

In addition to the inherent powers of the City to regulate and control any franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the City, or agreed to and provided for in this Franchise, the right and power is hereby reserved by the City to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers giving due regard to the rights of the Operator. Except as noted above, the foregoing does not allow for amendment by the City of material terms of this Franchise it issues without the consent of the Operator. The City Council reserves the right to delegate its authority for

franchise administration to a designated agent.

Section 7. Construction Standards

All Cable Facilities constructed under this Franchise shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of the State of Washington, and City codes, regulations, standards and policies pertaining to such construction. Cable Facilities shall be placed in the Public Ways in accordance with the provisions of Section 9 hereof. At least ten (10) days prior to the intended construction of cable facilities, the Operator shall inform all residents and businesses in the affected area that a construction project will commence, the dates and nature of the project, and a toll-free telephone number, which may be called for further information. A pre-printed door hanger may be used for this purpose.

Section 8. Notice of Entry on Private Property

A. General Notice. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new plant construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property. The Operator shall make a good faith effort to comply with the property owner or Subscriber's preferences, if any, on location or placement of underground installations consistent with sound engineering practices.

B. Emergency Repairs. Notice requirements of Section 7 shall not apply to entry upon private property to perform repairs at the Subscriber's request or in the event of system outage repairs or other emergencies in which insufficient time is available to provide notice to subscribers.

C. Restoration of Property. After performance of work, the Operator shall restore private property as nearly as practicable to its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements on private property shall, at the sole expense of the Operator, be promptly repaired and restored (including replacement of such items as shrubbery and fencing) to the reasonable satisfaction of the property owner or Subscriber.

Section 9. Undergrounding and Landscaping

A. The undergrounding requirements of this Section shall apply only to Cable Facilities which are reasonably capable of being placed underground based upon standard industry practices. This Section shall not apply to antennas, other facilities which are required to remain above ground in order to be functional, or to active and passive electronic components such as amplifiers, junction boxes, and tap boxes. Where there is a conflict or inconsistency between the undergrounding provisions of this Ordinance and other ordinances of the City, the provisions of this Ordinance shall govern.

B. In any city block (or comparably sized area) of the City in which there are no aerial telephone or cable television facilities, other than antennas or other facilities required to remain above ground in order to be

functional, or in any Public Way in which all telephone, electric power wires and cables capable of being placed underground have been placed underground, the Operator shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. The Operator acknowledges and agrees that if the City does not require the undergrounding of its Cable Facilities at the time of initial installation, the City may, at any time in the future, require the conversion of the Operator's above-ground and/or aerial Facilities to underground installation at the Operator's expense, in conjunction with other affected cable television and telecommunications facilities, all as provided by applicable law.

C. Whenever the City requires the undergrounding of above-ground and/or aerial utilities in any area of the City, the Operator shall underground its above-ground and/or aerial Facilities in the manner specified by the City, concurrently with and in the area of all the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. The Operator shall underground its Facilities at its own expense to the extent required by law. The Operator is encouraged to contact and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are borne fairly and proportionately by all the utilities involved in the underground project.

Section 10. Construction in Rights-of-Way

A. Notification of City Development Services Department. The Operator shall submit an application for permit to perform work in the City's rights-of-way. Permits to perform work in the City's rights-of-way shall be available on the basis of the most favorable terms and conditions of any other franchisee or utility. The City shall provide an annual master permit process for the cable system. No work, other than emergency repairs shall commence without such a permit. Emergency repairs may be made immediately with notification given to the City no later than the next business day.

B. Installation. In accordance with the permit issued, all transmission lines, equipment, and structures shall be located and installed so as to cause minimum interference with the rights and reasonable convenience of property owners, and at all times shall be maintained in a safe condition, and in good order and repair. Per the Manual on Uniform Traffic Control Devices, latest edition, suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Operator shall be placed in such manner as not to interfere with the usual travel on such public way.

C. Interference with Use of Streets. The Operator must submit an application for permit to perform work in the rights-of-way for all work performed by the Operator in such areas. When installing, locating, laying, or maintaining facilities, apparatus, or improvements, the Operator shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by the Operator of such work. Any facility, apparatus, or improvement under this Franchise shall be laid, installed, located, or maintained in conformance with City Codes and Standards, and to the reasonable satisfaction of the City. In any event, the Operator shall, at its own expense, and to the reasonable satisfaction of the City in accordance with the terms of the permit to perform work in the rights-of-way, restore to City standards and specifications any damage or disturbance caused to streets as a result of the

Operator's construction or operations.

D. Relocation and Removal. Upon receipt of thirty (30) days prior written notice, the Operator, at its own expense, shall protect, support, temporarily disconnect, relocate, or remove any of its property when, in the judgement of the City Engineer, the same is required by reason of traffic conditions, public safety, and/or improvements by governmental agencies. Nothing herein shall be deemed a taking of the property of the Operator, and the Operator shall be entitled to no surcharge by reason of this Section. After receipt of thirty (30) days prior written notice, upon failure of the Operator to commence, pursue, or complete any work required by the provisions of this Franchise to be performed on any street, within the reasonable time prescribed and to the reasonable satisfaction of the City, the City may, at its option, cause such work to be done, and the Operator shall pay to the City the reasonable cost thereof within thirty (30) days after receipt of demand.

E. Location of Facilities. The Operator agrees to provide the City with a map or maps which shall show the vertical and horizontal location of its facilities within the Franchise Area using a minimum scale of one inch equals one hundred feet (1' = 100'), measured from the center line of the rights-of-way, which maps shall be in hard copy plan form acceptable to the City and in Geographical Information System (GIS) format. This information shall be provided within ninety (90) days of the effective date of this Franchise, or, if no facilities are installed at that time, within ninety (90) days of installation. Said maps shall be updated at least every twelve (12) months thereafter.

Section 11. Safety Requirements

A. The Operator, in accordance with applicable National, State, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

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

C. The City reserves the general right to see that the system of the Operator is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with the Operator, establish a reasonable time for the Operator to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from the Operator.

Section 12. Building Moving

Whenever any person shall have obtained permission from the City to use any street for the purpose of moving any building, the Operator, upon seven (7) days written notice from the City, shall raise or remove, at the expense of the permittee desiring to move the building, any of the Operator's wires or facilities which may obstruct the removal of such building; provided that the moving of such building shall be done in accordance with regulations and general ordinances of the City. Where more than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference. In such event, the City shall be responsible for determining the path of least interference. It is further provided that the person or persons moving such building shall indemnify and save harmless the Operator of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of the Operator.

Section 13. Tree Trimming

In accordance with City ordinances, the Operator shall have the authority to trim and remove trees upon and overhanging streets, public ways and places in the Franchise Area so as to prevent the branches of such trees from coming into contact with wires and cables of the Operator and, if necessary, to clear a microwave path. The Operator shall be responsible for debris removal from such activities.

Section 14. Franchise Fee

A. The Operator shall pay to the City quarterly, on or before the last day of each calendar quarter, a sum equal to five percent (5%) of Gross Revenues, for the preceding three calendar months. Gross Revenues that are derived as a portion of a national or regional service shall be computed on a per subscriber basis if such determination cannot be achieved by other means.

B. The franchise fee payable by the Operator to the City on Gross Revenues derived from any non-cable television-related programming product or other communication services such as interactive data, telephone transmission or other communications products or services, which is delivered to the Subscriber by using public rights-of-way, shall be at the same rate as the fee, tax, assessment or other revenue payable to the City by other providers of the same product or services within the City.

C. The City may modify the franchise fee if so permitted by Federal and State law. Prior to implementation of any modification in franchise fees the Operator may request a public hearing by the City Council to discuss said modification. Following such a hearing the City Council may require the implementation of such modification in accordance with the provisions of this Ordinance.

D. Any quarterly franchise fee not paid by the Operator within thirty (30) days after the end of a calendar quarter shall bear interest at the rate of twelve percent (12%), per annum or whatever maximum amount is allowed under State law, whichever is greater, from the due date until paid.

E. Each franchise fee payment shall be accompanied by a financial report on a form provided by the City showing the basis of the Operator's computation for each income segment as indicated. Gross Revenue sources, which may not be applicable shall be clearly delineated on the report.

F. The City shall have the right, upon reasonable notice of no less than ten (10) working days, to inspect the books and records of the Operator during normal business hours, for the purpose of ascertaining the actual Gross Revenues collected by the Operator during any of the five (5) previous calendar years. In the event a discrepancy exists of more than ten percent (10%) between the financial report submitted by the Operator with a quarterly payment and the actual Gross Revenues collected by the Operator, the Operator agrees to pay to the City the costs of such audit. In the event that additional franchise fees are due the City, the Operator further agrees to pay interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable.

G. Acceptance of any franchise fee payment by the City shall not be construed as an agreement by the City that the franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Franchise.

H. Nothing in this Section shall limit the Operator's obligation to pay applicable local, State, or Federal taxes.

Section 15. Technical Standards

Subject to Federal, State and local law, the Operator shall comply with FCC rules, and, at the minimum, the

following:

1. Applicable City, State and National/Federal Codes and Ordinances;
2. Applicable Utility Joint Attachment Practices;
3. The National Electric Safety Code; ANSI C2;
4. City Utility Code Requirements;
5. City Rights-of-Way Procedures;
6. Bell System Code of Pole Line Construction

The Operator shall also make available a copy of the results of the proof of performance tests to the City at the same time as submission to the FCC.

Section 16. Reports

A. The Operator shall furnish, upon written request, made by the City not more often than once each calendar year a report of its activities as appropriate. Such report shall include:

1. Most recent annual report of the Operator, if the Operator is required to file annual reports with the Securities Exchange Commission.
2. The number of homes passed.
3. The number of subscribers with basic services.
4. The number of subscribers with premium services.
5. The number of hook-ups in period.
6. The number of disconnects in period.
7. Total number of miles of cable in City.
8. Such other reports with respect to its local operation, affairs, transactions or property as are necessary to monitor compliance with this Agreement and the Ordinance.

B. The Operator shall have not less than sixty (60) days to prepare and submit this report.

Section 17. Periodic Meetings

Upon request, but not more than once during any calendar year, the Operator shall meet with designated City officials and/or designated representative(s) of the City to review the performance of the Operator for the preceding period. The Operator shall be given not less than thirty (30) days' prior written notice of any such meeting. The subjects may include, but are not limited to, Franchise compliance

Section 18. Cable System Evaluation

In addition to periodic meetings, and with written notice of not less than five (5) business days so that the Operator can arrange to have necessary personnel present, the City may require reasonable evaluation sessions at any time during the term of this Franchise. It is intended that such evaluations cover areas such as the Operator's performance under and compliance with the terms of this Franchise.

Section 19. Record Inspection

Subject to statutory and constitutional limits and upon not less than ten (10) business days' advance written notice, the City reserves the right to inspect the records of the Operator, which are not a part of its public files but which are necessary for the enforcement of this Franchise, during normal business hours provided that the City shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Operator. Such documents shall include such information as financial records, subscriber records and plans pertaining to the Operator's operation in the City. Provided, nothing in this Franchise shall be read to require the Operator to violate state or federal law respecting Subscriber privacy, nor shall this Franchise be read to require the Operator to disclose confidential or proprietary information without adequate safeguards to protect its confidential or proprietary nature.

Section 20. External Franchising Costs

Prior to expenditure of capital for any Franchise-related requirements that would be treated as an external cost passed through to Subscribers, the Operator shall notify the City of its intent to exercise its right and the amount to be passed through to Subscribers. The City may waive the Franchise-related requirement if, in the City's opinion, the increase in rates would be a burden on City ratepayers.

Section 21. Transfer of Ownership

A. This Franchise shall not be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless approval is granted by the City Council to ensure a review of unforeseen circumstances not present at the time of the original Franchise approval. The City's approval shall not be unreasonably withheld. Such costs associated with this review process shall be reimbursed to the City by a new prospective Franchisee.

B. An assignment of this Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

C. The Operator shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Operator's company. Every change, transfer, or acquisition of control of the Operator's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel this Franchise. Approval shall not be required for mortgaging purposes or if said transfer is from the Operator to another person or entity controlling, controlled by, or under common control with the Operator.

D. The City will exercise such regulatory control as it has under the Act to monitor ownership, control, utilization and transfer of this Franchise.

Section 22. Removal & Abandonment of Property of Franchisee

A. The City may direct the Operator to temporarily disconnect or bypass any equipment of the Operator in order to complete street construction or modification, install and remove underground utilities, or for other

reasons of public safety and efficient operation of the City. Such removal, relocation or other requirement shall be at the sole expense of the Operator.

B. In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this Franchise or other City ordinances or the Franchise has been terminated, cancelled or has expired, the Operator shall promptly, upon being given ten (10) days' notice, remove within ninety (90) days from the streets or public places all such property and poles of such system other than any which the City may permit to be abandoned in place which permission shall not be unreasonably withheld. In the event of such removal, the Operator shall promptly restore the street or other areas from which such property has been removed to a condition reasonably satisfactory to the City.

C. Any property of the Operator remaining in place ninety (90) days after the termination or expiration of this Franchise shall be considered permanently abandoned unless the Franchisee has commenced removal within a reasonable time.

D. Any property of the Operator to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the property of the Operator in place, the property shall become that of the City, and the Operator shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. None of the foregoing affects or limits the Operator's rights to compensation for an involuntary abandonment of its property under State, or Federal law.

Section 23. Revocation for Cause

This Franchise may be terminated during its term for repeated failure by the Operator to comply with material provisions hereof or FCC Regulations.

The procedure to be followed resulting in termination for any of the above reasons, save the Operator's request, shall be:

1. The City Council shall identify the deficiencies or noncompliance and shall direct the Operator, in writing, to correct such deficiencies or comply with such regulations within thirty (30) days or a reasonable period of time.
2. Failure to comply with the provision of (a) above will cause the matter of noncompliance to be brought before the City Council for hearing.
3. At such hearing the Operator and other interested Parties shall be given fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, and to question witnesses. The City Council, or its designee, acting as hearings officer, will make the determination as to whether any non-compliance or deficiency was without just cause. In the event the City Council finds that such non-compliance or deficiency was without just cause, the City Council may in its sole discretion fix an additional time period to cure such deficiency(ies). If the deficiency has not been cured at the expiration of any additional time period or if the Council does not grant any additional period, the City Council may by ordinance declare the franchise to be terminated and forfeited.
4. If the Operator appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided the Operator is otherwise in compliance with this Franchise.

5. Nothing contained in the above subsections of this Section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, upon satisfactory assurances made to the City Council that the terms and conditions of this Ordinance can be met by the new Operator.

Section 24. Effect of Termination for Non-Compliance

This Franchise is terminated by the City by reason of the Operator's non-compliance, that part of the system under this Franchise located in the streets and public property, shall, at the election of the City, become the property of the City in accordance with the City's as well as the Operator's rights and remedies under State and Federal law. If the City, or a third party, does not purchase the system, the Operator shall, upon order of the City Council, remove the system as required under Section 22: Removal & Abandonment of Property of Franchisee of this Ordinance.

Section 25. Penalties

A. The City shall notify the Operator in writing stating the nature of any perceived failure by the Operator to comply with conditions of this Franchise and setting forth a reasonable time within which the Operator will be allowed to rectify such alleged improper condition. The Operator may request an extension of time if construction or other performance is suspended or delayed by the City, or where unusual weather, acts of God (e.g. earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of the Operator delay or impair performance provided that the Operator has not, through its own actions or inactions, contributed to the delay. The extension of time in any case shall not be greater than the extent of the actual non-contributory delay experienced by the Operator.

B. Failure of the Operator to correct these deficiencies, except in those circumstances cited above, may result in the City calling a hearing with reasonable prior notice to the Franchise, to determine if penalties should be imposed upon the Operator or if a violation of this Franchise has occurred in accordance with Section 23 Revocation for Cause.

C. Such hearing shall be informal and shall be conducted by the City's designated department head or other person in a way which provides the Operator with an opportunity to be heard prior to a finding by the City regarding violation of this Franchise. The decision shall be in writing and include findings of fact and conclusions. The City's decision shall be based upon a preponderance of the evidence and only substantial and competent evidence shall be considered. The Operator shall have the right to seek de novo judicial review of any adverse finding by filing a written notice of appeal with the Snohomish County Superior Court within twenty (20) calendar days of receipt of the written decision. If federal jurisdictional standards are met, the Operator may alternatively seek review of any federal question in the United States District Court for the Western District of Washington at Seattle within said twenty (20) day period. In the event of an appeal, the prevailing party shall be entitled to its reasonable costs and attorney fees.

D. If a final determination is made that the Operator is in violation of this Franchise, monetary penalties of five hundred dollars (\$500.00) per day shall be imposed for each day beyond thirty (30) days that the Operator has not fulfilled the requirement(s):

1. PEG access channel allocations as required by Section 32: PEG Access Channels & Cablecasting Equipment.
2. Public access facilities as required Section 32: PEG Access Channels & Cablecasting Equipment.
3. Provision of equipment and funds for educational access cablecasting as required by Section 32: PEG

Access Channels & Cablecasting Equipment.

4. Provision of equipment and funds for government access cablecasting as required Section 32: PEG Access Channels & Cablecasting Equipment.

E. Monetary penalties may be assessed retroactive to the date that was provided to the Operator in such cases where the Operator has been non-responsive in correcting the situation or in the case of flagrant violations. If payment of any of these penalties is delinquent by three (3) months or more, the City may require partial or total forfeiture of any performance bond or other surety posted by the Operator. These provisions benefit the City. All damage awards or penalties shall be paid to the City. This Section does not create a private right of action for the benefit of subscribers.

Section 26. Indemnity & Hold Harmless

The Operator shall indemnify and hold harmless the City from any and all liabilities, fees, costs and damages, except in the case of judicially determined gross negligence and/or willful misconduct of the City, whether to person or property, or expense of any type or nature which may occur to the City by reason of the construction, operation, maintenance, repair and alteration of the Operator's facilities or any other actions of the Operator in the City. In any case in which suit or action is instituted against the City by reason of damage or injury caused by the Operator, the City shall cause written notice thereof to be given to the Operator and the Operator thereupon shall have the duty to appear and defend any such suit or action, without cost or expense to the City.

Section 27. Insurance

A. The Operator shall, concurrently with the filing of an acceptance of this Franchise, furnish to the City and file with the City Clerk and at all times during the existence of this Franchise, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, for the purpose of protecting the City and all persons against liability for loss or damage, for personal injury, death and property damage, and errors or omissions, occasioned by the operations of the Operator under this franchise, such policy to provide minimum limits of One Million Dollars (\$1,000,000.00) for both personal injury and/or property damage.

B. The policies mentioned in the foregoing paragraph shall name the City as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof. If such insurance is provided by a policy which also covers the Operator or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

Section 28. Performance Bond

The Operator shall promptly repair or cause to be repaired any damage to City property caused by the Operator or any agent of the Operator. The Operator shall comply with all present and future ordinances and regulations regarding excavation or constriction and, if deemed necessary by the City, shall be required to post a performance bond or other surety acceptable to the City in an amount specified by the City in favor of the City warranting that all restoration work will be done promptly and in a workmanlike manner and that penalties, if any, after final adjudication are paid to the City within ninety (90) days of such finding.

Section 29. Recourse Against Bonds and Other Security

A. Bonds and other security may be utilized by the City for the purposes, including, but not limited to, reimbursement of the City by reason of the Operator's failure to pay the City any sums due under the terms of

this Franchise, reimbursement of the City for reasonable costs borne by the City to correct franchise violations not corrected by the Operator after due notice; and monetary remedies or damages assessed against the Operator due to default or violations of the franchise requirements or this Franchise.

B. In the event the Operator has been declared to be in default by the City under Section 23, and if the Operator fails, within thirty (30) days of mailing of the City's finding, to pay the City any franchise fee, penalties, or monetary sanctions, or fails to perform any of the conditions of this Franchise, or fails to file for judicial review of the City's findings, the City may thereafter foreclose against the performance bond and/or withdraw from any other security an amount sufficient to compensate the City's damages, with interest at the legal rate. Upon such foreclosure or withdrawal, the City shall notify the Operator in writing, by First Class Mail, postage prepaid, of the amount and date thereof.

C. Within thirty (30) days after mailing notice to the Operator that the City has foreclosed Operator's performance bond or that any amount has been withdrawn by the City from the other security pursuant to subsection B above, the Operator shall deposit such further bond or sum of money, or other security, as the City may require, sufficient to meet the requirements of this Franchise.

D. The rights reserved to the City with respect to any bond or security are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond or other security shall constitute an election or waiver of any rights or other remedies the City may have.

Section 30. Inconsistency

If any portion of this Franchise should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other Federal law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other Federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this Franchise shall not be effected thereby.

Section 31. Emergency Override

Pursuant to FCC rules, the Operator shall comply with FCC Regulations requiring installation of an Emergency Alert System (EAS) and provide an audio interrupt on all channels and video message on at least one channel during an emergency. The Operator shall establish a process, which will provide a character generated scroll and will make its best effort to furnish a voice override notifying viewers and listeners of an emergency. Subject to federal and state laws and regional planning authorities, the City may preempt the operation of the Open Video System in the event of an emergency. The City, at its option may elect to share this service with adjoining communities in the event of an emergency if such sharing is feasible with then existing technology in the system. The City shall hold the Operator, its agents, employees, officers, directors, shareholders and assigns harmless from any claims arising out of the emergency use of its transmitting facilities by the City.

Section 32. PEG Access Channels & Cablecasting Equipment

Pursuant to FCC rules, 47 CFR 1505, the Operator must satisfy the same public, educational and governmental access obligations as the local cable operator by providing the same amount of channel capacity for public, educational and governmental access and by matching the local cable operator's annual financial contributions towards public, educational and governmental access services, facilities and equipment that are actually used for public, educational and governmental access services, facilities and equipment. For in-kind contributions (e.g., cameras, production studios), the Operator may satisfy its obligations by negotiating mutually agreeable terms with the local cable operator, so that public, educational and governmental access services to the community is

improved or increased. If such terms cannot be agreed upon, the Operator shall pay the City the monetary equivalent of the local cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the Operator must be used to fund activities arising under Section 611 of the Communications Act. Any monetary equivalent required under this Section shall be applied only when the Operator's construction permits are approved and allow the Operator to construct its Facilities in accordance with applicable state and federal law.

Section 33. Interconnection

A. Pursuant to FCC rules, 47 CFR 1505, the local cable operator is required to permit the Operator to connect with its public, educational and governmental access channel feeds. The Operator and the cable operator may decide how to accomplish this connection, taking into consideration the exact physical and technical circumstances of the cable and open video systems involved. If the cable and open video system operator cannot agree on how to accomplish the connection, the City may decide. The City may require that the connection occur on government property or on public rights-of-way.

B. The costs of connection to the cable operator's public, educational and governmental access channel feed shall be borne by the Operator. Such costs shall be counted towards the Operator's matching financial contributions as mandated in FCC rules, 47 CFR 1505 (d) (1).

Section 34. Performance Review Extension

One year prior to the expiration of this Franchise, the City and the Operator shall meet for the purpose of reviewing, and at the option of either party, renegotiating any of the terms hereof, consistent with applicable federal and state laws. The City and the Operator shall also review of the current state of federal regulation and its impact on the Franchise to determine whether issues not grandfathered under the existing Franchise have impaired the Franchise's ability to meet current public need and necessity or the Operator's ability to meet business competition and receive a reasonable return on its investment in the system.

The parties shall use their best efforts to reach agreement. Failure of the parties to reach agreement on any item found by the City to negatively impact public need and necessity may result in notification by the City of its intent to commence the franchise renewal process. In the event negotiation does not result in agreement, the City and Operator agree that the City may initiate such review in advance of federal guidelines. Provided, however, the provisions of this Franchise shall continue in full force and effect until its expiration or the effective date of a new Franchise.

Section 35. Independent Contractors

This Franchise shall not be construed to provide that the Operator is the agent or legal representative of the City for any purpose whatsoever. The Operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner whatsoever.

Section 36. Franchising Costs

The Operator shall reimburse the City for franchising costs at a sum not to exceed \$2,500.00. Reimbursement required under this Section shall only become due and payable when the Operator's construction permits are

approved and allow the Operator to construct its Facilities in accordance with applicable state and federal law.

Section 37. Entire Agreement

This Franchise represents all of the covenants, promises, agreements, and conditions, both oral and written, between the parties. However, the City reserves the right to waive any of these requirements without affecting the applicability of other sections not so specifically waived. Waiver of any Franchise requirement by the City must be in writing in order to be effective.

Section 38. Successors or Assigns

This Franchise shall be binding upon the Operator, its heirs, successors, and assigns.

Section 39. Acceptance

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

Section 40. Notice

Written notices shall be deemed to have been duly served if delivered in person to the individual or entity for whom it was intended, or if delivered at or sent by registered or certified United States mail to the last business address known to the party who gives the notice. All notices and requests shall be addressed to the City of Edmonds and the Operator as follows:

CITY OF EDMONDS

BLACK ROCK CABLE

121 Fifth Avenue North

2544 Mt. Baker Highway

Edmonds, WA 98020

Bellingham, WA 98226

Section 41. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, provided, however, the Franchise granted by this Ordinance shall not become effective until the Operator files written acceptance thereof..

APPROVED:

MAYOR, GARY HAAKENSEN

ATTEST/AUTHENTICATED:

CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 07/13/2001

PASSED BY THE CITY COUNCIL: 07/31/2001

PUBLISHED: 08/15/2001

EFFECTIVE DATE: Upon receipt of written acceptance from Operator: 09/07/2001

ORDINANCE NO. 3371

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SUMMARY OF ORDINANCE NO. 3371

of the City of Edmonds, Washington

On the 31st day of July, 2001, the City Council of the City of Edmonds, passed Ordinance No. 3371. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO BLACK ROCK CABLE, INC. TO OPERATE AND MAINTAIN AN OPEN VIDEO SYSTEM IN THE CITY OF EDMONDS, SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 1st day of August, 2001.

CITY CLERK, SANDRA S. CHASE