

SEE  
ORW #312

ORDINANCE NO. 309

AN ORDINANCE of the Town of Yacolt, Clark County, Washington granting a non-exclusive franchise to Independent Telecom Investors, Inc., a Washington corporation, to construct, operate and maintain a cable television system in the Town of Yacolt; setting forth conditions accompanying the grant of the cable television system; defining violations; and providing for the effective date hereof.

WHEREAS, the Town Council of Yacolt initially considered this franchise ordinance at its regular meeting on September 6, 1988.

WHEREAS, the Town Council of Yacolt has held a public hearing on the adoption of this ordinance on the 18 day of October, 1988.

WHEREAS, the Town Council deems it in the best interests of the Town of Yacolt to enter into a franchise agreement between the Town and Independent Telecom Investors, Inc.

BE IT ORDAINED by the Town council of Yacolt, Washington as follows:

ARTICLE I. GENERAL PROVISIONS

1.1. PURPOSE

It is the purpose of this ordinance to grant a franchise to Independent Telecom Investors, Inc. and to regulate in the public interest the operation of a cable communications system and their use of the public streets by establishing regulations and procedures for the operation and termination of this franchise, by providing for subscriber rates and charges, by prescribing rights and duties of operators and users of the cable communications system and by providing generally for cable communications service to the citizens of Yacolt.

1.2. STATUTORY AUTHORITY

The Town of Yacolt is authorized and empowered pursuant to RCW 35.27.370 to adopt this ordinance.

1.3. DEFINITIONS

For the purpose of this ordinance, the following terms, phrases, words, abbreviations, and their derivations shall

have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

1.3.1. "Basic Service" shall mean that service regularly provided to all subscribers at a basic monthly rate including, but not limited to, the retransmission of local and distant broadcast television signal, non-premium satellite service, automated services, local origination and access services.

1.3.2. "Cable Television System" or "CATV System" shall mean a system employing antennae, microwave, wires, waveguides, coaxial cables or other conductors, equipment, or facilities designed, constructed, or used for the purpose of

(a) Collecting and amplifying local and distant broadcast, television, or radio signals and distributing and transmitting them;

(b) Transmitting original cablecast programming not received through television broadcast signals;

(c) Transmitting television pictures, film and videotape programs not received through broadcast signals, whether or not encoded or processed to permit reception by only selected receivers; and

(d) Transmitting and receiving all other signals; digital, voice, audio-visual.

1.3.3. "Company" shall mean Independent Telecom Investors, Inc., through its subsidiary Acorn Cable, Inc., a Washington Corporation.

1.3.4. "Converter Rental" shall mean the installation of a device supplied by the Company which permits subscribers to receive television, radio and other signals or communications provided by the Company over the cable system.

1.3.5. "Council" shall mean the governing body of the Town of Yacolt.

1.3.6. "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor thereof.

1.3.7. "Franchise or Franchise Agreement" shall mean the authorization granted to the Company hereunder in terms of a franchise, privilege, permit, or license to construct,

operate, and maintain a cable television system within the Town of Yacolt. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the Town as required by other ordinances and laws of the Town.

1.3.8. "Gross Subscriber Revenues" shall mean all revenue derived directly or indirectly by the company, its affiliates, subsidiaries, parent, and/or any person in which the Company has a financial interest, from providing cable television services within the Town, including, but not limited to, basic subscriber service monthly fees, pay-cable fees, installation and reconnection fees, leased-channel fees, converter rental, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on services furnished by the Company which are imposed directly upon any subscriber or user by the State of Washington, local or other governmental unit and collected by the company on behalf of said governmental unit.

1.3.9. "Installation" shall mean the connection of the system from feeder cable to subscribers' terminals.

1.3.10. "Premium Service" shall mean the provision by the Company of channels, including related services, over the cable system available to all subscribers where a charge is made to subscribers for each such channel or combination thereof in addition to the charge for basic service.

1.3.11. "Street" shall mean the surface of and the space above and below any public street, right-of-way, easement for public utilities, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, or drive, now or hereafter existing as such with the Town. For purposes of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Town.

1.3.12. "Subscriber" shall mean any person or entity receiving for a consideration, direct or indirect, any service of the Company's cable communications system.

1.3.13. "Technical Facilities" shall mean all real property and equipment fixtures used by the Company in the conduct of a CATV business in the Town under the authority of this franchise and includes, but is not limited to poles, cables, wires, microwave transmitters, antennae, and amplifiers.

1.3.14. "Town" shall mean the Town of Yacolt, Clark County, a municipal corporation of the State of Washington.

1.4. GRANT OF FRANCHISE

1.4.1. Grant. There is hereby granted by the Town to the Company the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets as now laid out or dedicated and all extensions thereof, and additions thereto, in the Town, wires, cables, underground conduits, manholes and other television conductors and fixtures as is necessary for the maintenance and operation in the Town of a CATV system for the interception, sale, and distribution of television and radio signals.

1.4.2. Franchise Authority. Unless otherwise approved by the Town Council, the franchise shall be for the territorial limits of the Town of Yacolt and for any area henceforth added thereto to such territorial limits during the term of the franchise.

1.4.3. Administration. By acceptance of this franchise, the Company hereby agrees to reimburse the Town for one-half of the legal and administrative costs incurred by the Town in preparation of this franchise agreement, not to exceed One Thousand and 00/100 Dollars (\$1,000.00). The Company also agrees to pay the Town's one-half portion of the legal and administrative costs incurred by the Town in preparation of this franchise agreement up to but not exceeding an additional One Thousand and 00/100 Dollars (\$1,000.00). The Town portion of the legal and administrative costs paid by Company shall be repaid to Company by crediting or offsetting franchise fees required to be paid by Company to the Town as set forth within this agreement.

1.5. NON-EXCLUSIVE GRANT

The right to use and occupy the streets, utility poles and other public ways for the purposes herein set forth, shall not be exclusive, and the Town reserves the right to grant a similar use in said streets to any other person, firm or corporation. Notwithstanding the following, no CATV system shall be allowed to occupy or use said public ways without a CATV franchise.

1.6. DURATION OF FRANCHISE

The franchise and rights herein granted shall take effect and be in force from and after the effective date for a term of fifteen (15) years, subject to the terms of this ordinance, provided that within sixty (60) days after the date of final approval of this franchise by the Town, the Company shall file with the Town council its unconditional acceptance of such franchise and promise to comply with and

BY JANUARY 1, 1989

abide by all its provisions, terms and conditions. Such written acceptance and promise shall be in writing and duly executed and shall be accompanied by a certified corporate resolution authorizing such acceptance and by an opinion of the Company's counsel as to the Company's good standing and due authorization and execution of such acceptance.

#### 1.7. RENEWAL

1.7.1. Renewal Procedure. At least thirteen months prior to the expiration of the franchise, the Company may submit a proposal for renewal to the Town Council. After giving public notice, the Town Council shall commence proceedings which will afford the public in the franchise area appropriate notice and participation for the purpose of identifying the future cable-related community needs and interests and reviewing the performance of the Company under the franchise during the then current franchise term.

A four month period shall be provided to the Town Council to complete public proceedings and to determine the Company's eligibility for renewal. Within or at the end of the four month period, the Town Council may renew the franchise, or issue a preliminary assessment that the franchise should not be renewed and, at the request of the Company or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding to consider whether:

(a) The Company has substantially complied with the material terms of the existing franchise and with applicable law;

(b) The quality of the Company's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the system, has been reasonable in light of community needs;

(c) The Company has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the Company's proposal; and

(d) The Company's proposal is reasonable to meet the future cable-related community needs and interest, taking into account the cost of meeting such needs and interests.

At the completion of a proceeding for renewal under this subsection, the Town shall issue a written decision granting or denying the proposal for renewal based upon the record. If the Town Council finds, after public hearing, that the Company's performance has been satisfactory, a new franchise

may be granted pursuant to the adoption of an ordinance for a period of fifteen (15) years. In the event the Company is determined by the Town Council to have performed unsatisfactorily, new applicants shall be sought and evaluated and a franchise award may be made by the Town.

#### 1.8. NOTICES

All notices from the Company to the Town pursuant to this franchise shall be to the Town Council, unless otherwise expressly provided. The Company shall maintain with the Town, throughout the term of its franchise, an address for service of notices by mail. The Company shall maintain a toll-free telephone number for the conduct of matters related to the franchise during normal business hours.

#### 1.9. PERFORMANCE BOND

1.9.1. Amount and Effect. Within thirty (30) days after the award of a franchise, the company shall file with the Town a performance bond in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) in favor of the Town. This bond shall be approved by the Town attorney and shall be maintained throughout the construction of the entire system and until six (6) months after completion and acceptance of construction. In the event the company fails to comply with any law, ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, including the Company's proposal which is incorporated into the franchise in section 3.6 infra, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the company, plus reasonable allowance for attorney's fees, up to the full amount of the bond.

1.9.2. Waiver or Reduction. The Town Council may, upon completion of construction of the full cable system, waive or reduce the requirement of the company to maintain said bond. However, the Town Council may require a performance bond to be posted by the Company for any construction subsequent to the completion of the initial service areas, in a reasonable amount and upon such terms as determined by the Town Council.

1.9.3. Required Endorsement. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond shall not be cancelled by the surety nor the

intention not to renew be stated by the surety until thirty (30) days after the receipt by the Town Council, by registered mail, of a written notice of such intent to cancel or not to renew."

#### 1.10. LIABILITY AND INSURANCE

1.10.1. Scope and Procedure. The Company shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the Town and the Company in the minimum amount of:

(a) Three Hundred Thousand and 00/100 Dollars (\$300,000.00) for property damage to any one person;

(b) One Million and 00/100 Dollars (\$1,000,000.00) for property damage in any one accident;

(c) One Million and 00/100 Dollars (\$1,000,000.00) for personal bodily injury to any one person; and

(d) Two Million and 00/100 Dollars (\$2,000,000.00) aggregate per single accident or occurrence. Said figures may be increased at the request of the Town Council to compensate for inflation.

Any insurance policy obtained by the Company in compliance with this section must be approved by the Town attorney and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the Town clerk during the term of the franchise, and may be changed from time to time to reflect changing liability limits. The Company shall immediately advise the Town Council of any litigation that may develop that would affect this insurance. Neither the provisions of this section nor any recovery by the Town under the insurance provided thereunder, shall be construed to limit or actually limit the liability of the Company under this franchise or for damages otherwise recoverable by the Town from the Company.

#### 1.11. INDEMNIFICATION

1.11.1. Scope. The Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the Town, its officers and Town employees against any and all claims, suits, actions, liability and judgments for damages, including but not limited to expenses for reasonable legal

fees and disbursements and liabilities assumed by the Town in connection therewith:

(a) To persons or property, in any way arising out of or through the acts or omissions of the company its servants, agents or employees, or to which the company's negligence shall in any way contribute; or

(b) Arising out of any claim for invasion of the rights of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation excluding claims arising out of or relating to Town programming, in connection with operation of the system; or

(c) Arising out of the Company's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to the Company in its business hereunder.

1.11.2. Conditions. The indemnity contained in subsection 1.11.1 is conditioned upon the following: The Town shall give the Company reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of subsection 1.11.1 and this subsection. Nothing herein shall be deemed to prevent the Town from cooperating with Company and participating in the defense of any litigation by its own counsel at its sole cost and expense.

## ARTICLE II. CATV SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES

### 2.1. USES PERMITTED BY COMPANY

This franchise authorizes and permits the Company to engage in the business of operating and providing a CATV system in the Town and for that purpose, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public right-of-way, such wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the CATV system and in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons, firms or corporations including, but not limited to any public utility or other Company franchised or permitted to do business in the Town. The authority in this section granted shall be subject to the advice, direction and consent of the Town Council.



## 2.2. CONSTRUCTION SCHEDULE

2.2.1. Permits. Within ten (10) days after acceptance of this franchise, the Company shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, pole contact contracts with the public utility companies serving the Town with electrical and telephone services, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of CATV systems or their associated microwave transmission facilities.

2.2.2. Completion of Construction. Construction shall be substantially completed and service available to all existing residences within six (6) months after the date of acceptance of this franchise.

2.2.3. Extension. The Town Council may grant an extension of the time limits set out above for good cause, shown, provided, however, that formal application for such extension must be filed within the time limits specified.

2.2.4. Due Diligence. Failure on the part of the Company to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein shall be grounds for termination of this franchise under and pursuant to the terms of section 3.2 infra, provided, however, that the Council may, upon formal application of the Company, in its discretion extend the time for the commencement and completion of construction and installation for additional periods in the event the Company, acting in good faith, experiences delays by reason of circumstances beyond its control

## 2.3. CONSTRUCTION AND TECHNICAL STANDARDS

The company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, state and municipal construction standards, FCC technical and construction standards, and any other standards the Company commits itself to comply with as part of its application. In addition, the Company shall provide the Town Council, upon request, with a written report of the results of the Company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

## 2.4. ADDITIONAL SPECIFICATIONS

Construction, installation and maintenance of the CATV system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and be bundled with due respect for engineering considerations.

The Company shall at all times comply with applicable national and state electrical codes. The system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located. Any antenna structure used in the CATV system shall comply with all construction, marking, and lighting of antenna structure requirements of the United States Department of Transportation. All working facilities, conditions, and procedures used during construction, installation and maintenance of the CATV system shall comply with standards of the Occupational Safety and Health Administration. Rf leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

## 2.5. USE OF STREETS

2.5.1. Interference with Persons and Improvements. The Company's system, poles, wires, and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the Town, county, or state may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements, or public property.

2.5.2. Minimum Interference with Public Ways. All transmissions and distribution structures, lines and equipment erected by the Company within the Town shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and as to cause minimum interference with the rights or reasonable convenience of property owners who are adjacent to any of the said streets, alleys or other public ways and places.

2.5.3. Undergrounding of Distribution Facilities. Underground placement of cable is the preferred method of distribution and shall be required in all areas currently

receiving underground telephone and electric service. If the telephone or electric wires are placed underground in the future, the Company must also place its wires underground. Should the Town require that all utility wires be underground, the Company shall be required to place its facilities underground pursuant to the same time and construction schedule adopted for other utilities.

2.5.4. Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the Town Council, replace and restore all paving, sidewalks, driveway, landscaping, or surface of any street or alley disturbed, in as good condition as before said work was commenced and in accordance with standards for such work.

2.5.5. Erection, Removal, and Common Uses of Poles. No poles or other wire-holding structures shall be erected by the Company without prior approval of the Town Council with regard to the location, height, types, and any other pertinent aspects of such structures. However, no location of any pole or wire-holding structure of the Company shall be a vested interest, and such poles or structures shall be removed or modified by the Company at its own expense whenever the Town Council determines that the public convenience would be enhanced thereby. Where poles or other wire-holding structures already existing for use in serving the Town are available for use by the Company, but the Company does not make arrangements for such use, the Town Council may require the Company to use such poles and structures if it determines that the public convenience would be enhanced thereby and that the terms of the use available to the Company are just and reasonable.

2.5.6. Relocation of the Facilities. In the event that at any time during the period of the franchise, the Town, county or state shall lawfully elect to alter, or change the grade of any street, alley or other public ways, the Company, upon reasonable notice by the proper governmental entity, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manhole covers and other fixtures at its own expense.

2.5.7. Cooperation with Building Movers. The Company shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance.

The Company shall be given no less than seven days' advance notice to arrange for such temporary wire changes.

2.5.8. Tree Trimming. The Company shall not remove any tree or trim any portion, either above, at or below ground level, or any tree within any public place without the prior consent of the Town. Regardless of who performs the work requested by the Company, the Company shall be responsible, and shall defend and hold the Town harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed or for any personal injury or property damage resulting from such activity.

## 2.6. OPERATIONAL STANDARDS

The Company shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period. Upon the reasonable request for service by any person located within the Town, the Company shall, within thirty days, furnish the requested service to such person within terms of its line extension policy. A request for service shall be unreasonable for the purpose of this section if no trunk line installation capable of servicing that person's block has as yet been activated.

The Company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the Company, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Town.

The Company shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this ordinance. Should the Town Council find, by resolution, that the Company has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the Company shall make such improvements. Failure to make such improvements within three months of such resolution shall constitute a breach of a condition.

## 2.7. CONTINUITY OF SERVICE MANDATORY

It shall be the right of all subscribers to continue receiving service so long as their financial and other

obligations to the Company are fulfilled. In the event that the Company elects to overbuild, rebuild, modify, or sell the system, or the Town Council gives notice of intent to terminate or fails to renew this franchise, the Company shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. Notwithstanding the foregoing, in the event the Company rebuilds, modifies or repairs the system, the Company may shut down the system for reasonable periods of time to accomplish such rebuilding, modification or repair. However, such rebuilding, modification or repair shall be accomplished with due diligence and speed and subscribers shall be entitled to a refund or rebate of subscriber charges consistent with the Company's policies for such times the system is shut down.

In the event of a change of franchisee, or in the event a new operator acquires the system, the Company shall cooperate with the Town, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, the Company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

In the event the Company fails to operate the system for seven consecutive days without prior approval of the Town Council or without just cause, the Town council may, at its option, operate the system or designate an operator until such time as the Company restores service under conditions acceptable to the Town Council or a permanent operator is selected. If the Town Council is required to fulfill this obligation for the Company, the Company shall reimburse the Town Council for all reasonable costs or damages in excess of the revenues from the system received by the Town council that are the result of the Company's failure to perform.

#### 2.8. LOCAL OFFICE: COMPLAINTS

During the term of this franchise, and any renewal thereof, the Company shall maintain a local business office within Clark County for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipment malfunctions and similar matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event, less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. The Company shall provide the means to accept complaint calls twenty-four hours a day, seven days a week.

Any service complaints shall be investigated by the Company within forty-eight hours of receipt. The company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspections by the Town Council.

As subscribers are connected or reconnected to the system, the Company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish concerning the Town office responsible for administration of the franchise with the address and telephone number of the office.

2.9. PREFERENTIAL OR DISCRIMINATORY PRACTICES

The Company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age, sex or handicap condition. The Company shall comply at all times with all other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to nondiscrimination. The Company shall strictly adhere to the equal employment opportunity requirements of the FCC, state statutes and local regulations, and as amended from time to time.

2.10. REQUIRED SERVICES AND FACILITIES-CAPACITY

2.10.1. Channel Capacity. The Company's cable distribution system shall be capable of carrying fifty (50) television channels. The cable system shall be operable and on-line for programming twenty-four hours a day, seven days a week.

2.10.2. Channel Numbers. The existing channel numbers and programming are as follows:

<u>Channel</u>	<u>Description of Channel</u>
1	
2	ABC
3	
4	Nickelodeon
5	CNN
6	CBS
7	ESPN
8	NBC
9	Discovery

10	Educational
11	USA
12	Independent
13	Independent (49)
14	WTBS
15	VH1
16	Nashville
17	Showtime
18	
19	The Movie Channel

Audio service is as follows:

- (1) FM radio service will also be available.

2.10.3. Program Changes. The Town accepts the Company's offer to provide broad categories of video programming, including children's, religious, news, sports, family, movies and programming designed for particular minority groups or interests, in formats and quality similar to that currently or subsequently provided and shown in the immediately preceding subsection. In return for the Town's acceptance of Company's offer, the Company shall have the flexibility and discretion to change and modify existing programming without approval of the Town, so long as the Company provides broad categories of video programming in minimum quantities and quality currently programmed and provided.

2.10.4. Public, Educational, and Governmental Channel. The Company shall reserve one (1) Public, Educational and Governmental (PEG) channel to be available to the public, the Town or local educational authorities. When the PEG channel is not in use by the public, Town, or local educational authorities, the Company reserves the right to program such PEG access channel. The Company shall not be responsible for broadcast facilities required by the PEG channel.

2.10.5. Drops. The Company shall provide one free drop to the Yacolt Town Hall and one free drop to the Fire District Hall. The free service provided by the drop shall include basic service and not include the premium channels.

2.10.6. Lock Boxes. The Company shall make available to all subscribers, by sale or lease, a device that allows the subscriber to prohibit viewing of a particular cable service at particular hours selected by the subscriber, commonly known as the a "lock box". The charges for such purchase or lease of the lock box and installation shall be set by the Company.

ARTICLE III. ADMINISTRATION AND REGULATION

3.1. RATES

3.1.1. Amount. The Company may charge subscribers for installation of the necessary cable and equipment, and for the supplying of cable service. The rates as set by the Company are subject to the following conditions:

(a) The rates charged by the Company to subscribers of its CATV system shall be fair and reasonable;

(b) There shall be no service or rate discrimination;

(c) There shall be no discrimination against any type of housing, i.e., apartment, condominium, townhouse, etc., or in any part of the Town of Yacolt;

(d) Rates shall be uniform or identical between similarly situated customers receiving the same service.

3.1.2. Notification of Rate Change. Within thirty (30) days after the effective date of this ordinance, the Company shall provide the Town with a comprehensive list of effective rates charged to each and every adjustment, modification or change of rates charged the subscribers, immediately upon implementation. Failure of the Company to comply with this provision shall constitute grounds for termination and cancellation of this franchise pursuant to the procedures of section 3.2.

3.1.3. Audit. The Town shall have the right to conduct such inquiry or audit as it deems proper for the purposes of judging the Company's rates and charges.

3.1.4. Company Practice and Policy; Deposits, Advance and Penalties. The Company shall set forth, in writing, the availability of and regulations governing its basic services, premium services, community channels, rates, and its billing practices and policies, which shall include, but not be limited to, the subjects set forth below, and shall furnish a copy thereof to each new subscriber, and to all subscribers at such time as there is a change in such practices, policies, regulations, services, rates, etc.:

(a) Nothing herein shall prohibit the Company from requiring advance payment for installation and/or service, or from requiring a deposit for Company or cable equipment utilized by the subscriber;

(b) Subject to provisions of applicable laws, nothing herein shall prohibit the Company from levying a charge for



late payment of a subscriber's account or terminating service for nonpayment, provided that the Company's billing practices and policy statement set forth the conditions under which an account will be considered overdue, and the subscriber receives at least five (5) days prior written notice of the Company's intent to disconnect for delinquency in payment;

(c) Subject to provisions of applicable law, nothing herein shall prohibit the Company from levying a charge for reconnecting service after terminating a subscriber's service for nonpayment, provided that the Company's billing practices and policy statement set forth the conditions and charges for reconnection, and the Company has followed its own practice and policy statement and complied with this ordinance in disconnecting the subscriber's service;

(d) In the event a subscriber's service is terminated, monthly charges for service shall be prorated on a daily basis, and where advance payment has been made by a subscriber, the appropriate refund shall be made by the Company to the subscriber within thirty (30) days of such termination;

(e) Rebates due subscribers as a result of loss of service shall be made to the affected subscribers by the Company either by direct payment or by appropriate credit entry on the next subsequent billing;

(f) No other advances, deposits, late fees, or penalty of any type or form shall be allowed or assessed by the Company unless specifically allowed by the franchise or approved by the Town Council.

3.1.5. Potential Federal Rate Regulation. It is expressly acknowledged and agreed by the Company and the Town that the FCC may determine that the Town of Yacolt is "not subject to effective competition" and subsequently prescribe such rules and regulations of basic rates as are needed for cable systems in such areas. If the Town of Yacolt is determined by the FCC to be an area "not subject to effective competition", the provisions of this section shall be considered amended and modified by the parties to comply with any subsequent FCC regulations regarding rates in such areas. Both the Town and the Company agree to modify or amend this franchise ordinance to comply with any such rate regulation possibly forthcoming by the FCC.

### 3.2. FORFEITURE AND TERMINATION

In addition to all other rights and powers retained by the Town under this franchise agreement, the Town reserves the

right to forfeit and terminate any franchise and all rights and privileges of the company hereunder in the event of a substantial breach of the terms and conditions of any franchise agreement or this ordinance. A substantial breach by the Company shall include, but shall not be limited to the following:

(a) Violation of any material provision of the franchise or this ordinance or any material rule, order, regulation or determination of the Town Council made pursuant to the franchise or this ordinance;

(b) Attempt to evade any material provision of the franchise or this ordinance or to practice any fraud or deceit upon the Town or its subscribers or customers;

(c) Failure to begin or complete system construction or system extension;

(d) Failure to provide the services promised in the company's application as incorporated herein;

(e) Failure to restore service after forty-eight consecutive hours of interrupted service, except when approval of such interruption is obtained from the Town Council; or

(f) Material misrepresentation of fact in the application for or negotiation of the franchise.

The foregoing shall not constitute a substantial breach if the violation occurs without fault of the Company or occurs as a result of circumstances beyond its control. The Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

The Town Council shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by the Company has occurred. If the Town Council shall determine the violation by the Company was the fault of the Company and within its control, the Town Council may, by resolution, declare that the franchise of the Company shall be forfeited and terminated unless there is compliance within such period as the Town Council may fix, such period not to be less than sixty days, provided no opportunity for compliance need be granted for fraud or misrepresentation. The issue of forfeit and termination shall automatically be placed upon the council agenda at the expiration of the time set by it for compliance. The Town Council may then terminate the franchise forthwith upon finding that the Company has failed

to achieve compliance or may further extend the period, in its discretion.

### 3.3. TRANSFER OF OWNERSHIP OR CONTROL

3.3.1. Conditions Generally. This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Town Council. This prohibition shall not prohibit encumbering, mortgaging or pledging the physical components of the system by the Company. The Company may, however, transfer or assign the franchise to a wholly-owned subsidiary of the Company and such subsidiary may transfer or assign the franchise back to the Company with such consent. The proposed assignee must show financial responsibility as determined by the Town Council and must agree to comply with all provisions of the franchise and this ordinance. The Town Council shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to the Company within sixty (60) days following receipt of written notice of the proposed transfer or assignment.

3.3.2. Town Council Approval. The Company shall promptly notify the council of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the company. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control as occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent of the shares of or interest in the Company, except that this sentence shall not apply in the case of a transfer of interest to any person or group already owning at least ten percent interest of the shares or interest in the Company. Every change, transfer, or acquisition of control of the Company shall make the franchise subject to cancellation unless and until the Town Council shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the Town Council may inquire into all qualifications of the prospective controlling party.

The consent or approval of the Town Council to any transfer of the Company shall not constitute a waiver or release of the rights of the Town under the original franchise and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the original franchise. In absence

of extraordinary circumstances, the Town Council will not approve any transfer or assignment of the franchise prior to substantial completion of construction of any proposed system. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the franchise agreement.

#### 3.4. AVAILABILITY OF BOOKS AND RECORDS

The Company shall fully cooperate in making available at reasonable times, and the Town Council shall have the right to inspect the books, records, maps, plans and other like materials of the company applicable to the CATV system at any time during normal business hours; provided, where volume and convenience necessitate, the Company may require inspection to take place on Company premises at the local office.

#### 3.5. COMPLIANCE WITH STATE AND FEDERAL LAWS

Notwithstanding any other provisions of the franchise, the Company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any service, in conflict with the terms of the franchise or of any law or regulation of the Town, then as soon as possible following knowledge thereof, the Company shall notify the Town Council of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Town or franchise.

If the Town Council determines that a material provision of the franchise is affected by any subsequent action of the state or federal government, the Town Council shall have the right to modify any affected provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of the franchise.

#### 3.6. INCORPORATION BY REFERENCE

The franchise application of Independent Telecom Investors, Inc., dated June 30, 1988, consisting of one (1) volume, is incorporated herein by this reference. A copy of this application is on file with the Council. Except as modified herein, Independent Telecom Investors, Inc. shall conform to the general plan and representations set forth in said application in all construction and service pursuant to this franchise. In construing and interpreting such

application, reference may be made to the aforementioned call for proposals and the assertions, arguments and statements, whether oral, if recorded and transcribed, or written, of representation of Independent Telecom Investors, Inc., made to the Town Council, prior to the award of this franchise.

### 3.7. VIOLATIONS

3.7.1. Other Facilities. From and after the effective date of this ordinance it shall be unlawful for any person to construct, install or maintain within any public street in the Town, or within any other public property of the Town, or within any privately-owned area within the Town which has not yet become a public street, but is designed or delineated as a proposed public street on any tentative subdivision map approved by the Town, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use or such street or property or area has first been obtained, and unless such franchise is in full force and effect.

3.7.2. Unauthorized Connection. It shall be unlawful for any person, firm or corporation or for the occupant of any premises to allow any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise with any part of the franchised CATV system within the Town for the purpose of enabling itself or others to receive any television signals, radio signals, pictures, programs or sound, without payment to the owner of said system. The existence of any connection as herein described within any premises or any article or property within premises shall provide prima facie proof that the occupant of the premises did allow the connection whether lawful or unlawful.

3.7.3. Tampering. It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cable, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sounds.

3.7.4. Pirating. A violation of this section shall constitute a misdemeanor, punishable by a fine not to exceed One Thousand and 00/100 Dollars (\$1,000.00) or by imprisonment in the town jail for a term not to exceed ninety days, or by both such fine and imprisonment.

### 3.8. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portion hereof. The Town Council hereby declares that it would have passed the ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Company. All ordinances and parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

### 3.9. FCC RULES

This franchise is governed by and subject to all applicable rules and regulations of the Federal Communications Commission. Should there be any modifications of the provisions of Section 76.31 of the FCC rules and regulations, as hereafter amended or recodified, which must be incorporated into this franchise, the Town and the Company agree that such further action shall be accomplished within one (1) year of the adoption or at the time of franchise renewal, whichever occurs first.

### 3.10. EFFECTIVE DATE

This ordinance shall go into effect upon passage and publication according to law.

### 3.11. FRANCHISE FEE

During the term of this franchise or any renewal thereof, the Company shall pay to the Town for the use of its streets, public places and other facilities, as well as the maintenance, improvements and supervision thereof and for the permission herein granted to operate a cable system within the Town, a franchise fee in an amount equal to five percent (5%) of the local gross revenues generated by the Company from its cable system operations in the Town of Yacolt. The franchise fee shall be paid in addition to any other tax or payment owed to the Town by the Company. The franchise fee shall be computed and paid monthly by the Company to the Town. With each payment the Company shall furnish the Town Clerk/Treasurer with a written statement, executed by an officer of the Company, verifying the amount of gross receipts of the Company within the Town for the

period covered by the payment. The Town's acceptance of any payments due under this section shall be considered a waiver by the Town of any breach of this franchise.

PASSED at a regular meeting of the Town council of the Town of Yacolt, Washington, this 1 day of November 1988, 1988.

*Jim Worthington*  
JIM WORTHINGTON, Mayor

ATTEST:

*Irene Christensen*  
IRENE CHRISTENSEN,  
Town Clerk/Treasurer

APPROVED AS TO FORM ONLY

MARK B. HANSEN, Town Attorney

AYES Councilmans Kaski, Grooms, Alexander

NAYES Councilman Jolma

ABSENT Councilman Messer