

ORDINANCE NO. 1832

AN ORDINANCE OF THE CITY OF DAYTON GRANTING TO TOUCHET VALLEY TELEVISION, INC., A WASHINGTON CORPORATION, A NON-EXCLUSIVE FRANCHISE FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, OPERATING, REPAIRING, REPLACING, UPGRADING, REBUILDING AND USING A CABLE TELEVISION SYSTEM IN THE PUBLIC STREETS, ALLEYS AND RIGHTS OF WAY OF THE CITY OF DAYTON TO PROVIDE CABLE SERVICE

WHEREAS, pursuant to RCW 35A.47.040, the City of Dayton is authorized to grant one or more non-exclusive franchises to construct, maintain, repair, replace, upgrade, rebuild and operate a cable system within the City of Dayton; and

WHEREAS, Touchet Valley Television, Inc. was granted a franchise by previous City Ordinance 1685, which by its own terms, expired in 2008, and through inadvertence and error on the part of both parties to the franchise was not renewed. Although the grantee never stopped operating or paying appropriate fees and taxes; and

Whereas, the City of Dayton and Touchet Valley Television, Inc. desire to come into compliance with State law and have reached an agreement pertaining to the issuance of a new franchise for the operation of a cable television system within the City of Dayton; and

WHEREAS, upon completion of informal negotiations with the grantee, the City of Dayton has determined that this franchise reasonably meets the current and future cable-related needs and interests of the community, taking into consideration the cost of such needs and interests; and

WHEREAS, in the acceptance that is attached hereto as Exhibit A, the grantee has agreed to be bound by the conditions herein set forth during the provision of cable services within the franchise area during the term of this franchise ordinance; and

WHEREAS, in consideration of the terms of this ordinance and the acceptance attached hereto as Exhibit A, the City of Dayton herein agrees to grant to the grantee a franchise as set forth in said acceptance and in this ordinance;

NOW, THEREFORE, the city council of the City of Dayton does hereby ordain as follows:

Section 1: Grant of Franchise: The City of Dayton hereby grants to Touchet Valley Television, Inc., hereinafter referred to as "Grantee", the right, privilege

and authority to install, construct, maintain, operate, repair, upgrade and replace the fiber optic cable(s) and related appurtenances (collectively referred to herein as "Facilities") in and under the right of ways specifically described in the attached document labeled Exhibit B, and incorporated herein by this reference for the purpose of providing cable television service to the citizens of the City of Dayton, Washington.

Section 2: Term: The term of this franchise is for **ten (10) years** commencing on the date of acceptance of the grantee as set forth in Section 3 below.

Section 3: Acceptance by Grantee: Within thirty (30) days after the passage of this ordinance by the City of Dayton, the grantee shall file an unqualified written acceptance thereof, with the City Clerk. Upon the failure to file such acceptance, this ordinance and all rights granted herein shall become null and void.

Section 4: Non-Exclusive Franchise: The right to use and occupy the right-of-way described in Exhibit B shall be non-exclusive and the grantee's use of the way shall not, in any manner, prevent the City from granting other franchises or uses in, along, over, through, under, below or across any public ways. The City reserves the right, at any time during the term of this franchise, to grant rights or franchises for such purpose to other person or corporations, as well as the right in its own name as a municipality to use said public ways for such purposes, in the event that the City shall hereafter decide to engage in the business of supplying cable television services for municipal or other uses.

Section 5: City Regulatory Authority: In addition to the provisions herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties, or exercise any other rights, powers, or duties required or authorized under the Constitution of the State of Washington, the laws of Washington or other City ordinances. This franchise does not confer on the grantee any right, title, or interest in the public property, streets or right of way of the City of Dayton, nor shall anything contained herein constitute a warranty of use or title. *If and when appropriate, grantee may apply for a permit or permits to use portions of the City right of way in accordance with the City of Dayton's right of way ordinances, regulations and laws as they exist now, or as they may be from time to time amended.* Facilities shall be constructed, repaired and maintained so as to interfere as little as reasonably possible with public ways or other traffic. Furthermore the grantee shall consult with the City of Dayton as to its operations and plans and coordinate in advance with the City of Dayton, the location and installation of new facilities and services within the public ways, as appropriate.

Section 6: Use Fee: No franchise or use fee is imposed for this franchise; however, the City of Dayton reserves its right to impose a fee and tax on the

grantee to the extent authorized by law. Provided, that grantee shall pay fees that cover the actual administrative expenses incurred by the City of Dayton which are directly related to reviewing and approving an authorization or permit, inspecting plans and actual construction of facilities, the preparation of a statement relating to State Environmental Policy Act pursuant to RCW 43.21C, or other matters herein. The time of city employee's shall be charged at their respective rate of pay, including overtime, if applicable, plus personnel benefits and reasonable overhead. Any other costs will be billed on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for which the City of Dayton claims reimbursement. The billing may be on a monthly basis, but the City shall make available to the grantee, itemization of costs at the conclusion of each project for informational purposes.

All bills, invoices, fees or costs to be paid by grantee under this ordinance, are due and payable within thirty (30) days of the date of the payment request.

Nothing provided herein shall exempt or otherwise limit the grantee's obligation to pay any tax required by the Dayton Municipal Code, or any other city ordinance.

The City reserves its right to charge site-specific charges for the use of the City of Dayton right of way for placement of personal wireless service equipment or facilities as provided in RCW 35.21.860(e), and for actual costs/damages associated with entering the City of Dayton's roadway.

Section 7: Termination: This agreement shall terminate upon the expiration of the term provided herein, or as set forth in Section 19 below entitled "Default".

Should the grantee elect to relocate all of its facilities to non-City of Dayton owned facilities, the subject right of way use agreement previously entered into between the parties shall be terminated, and of no further force and effect, effective as of the date the grantee provides written notice that it has fully relocated said facilities.

Section 8: Service to Governmental Entities: To the extent that the grantee makes the facilities and/or services available to other governmental agencies within the State of Washington, the grantee shall also make such facilities and services available to the City of Dayton at similar rates, or on similar terms and conditions, unless otherwise prohibited or restricted by State or Federal laws, regulations or tariffs.

Section 9: Indemnification: The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by grantee of its facilities. Grantee shall indemnify, defend and hold the City, its elected officials, officers, employees, agents and representatives harmless from and against all claims, demands, liens and all liability or damage of whatsoever kind, including

claims by grantee's own employees to which grantee might otherwise be immune under Title 51 RCW, on account of grantee's exercise of the rights granted herein, or by virtue of the City's permitting the grantee's use of the right of way use of the public ways within the City, and shall pay the costs of defense plus reasonable attorney fees for any claim demand or lien brought thereunder, including costs and fees incurred upon appeal. The City shall (a) give prompt written notice to grantee of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and grantee with respect to such claim, demand or lien, permit grantee to assume the defense of such claim, demand or lien with counsel satisfactory to the City. If such defense is not assumed by grantee, grantee shall not be subject to liability for any settlement made without its consent that shall not be unreasonably withheld or delayed. Notwithstanding any provision hereof to the contrary, grantee shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees. Should both parties be found at fault and/or negligent, the parties agree to be responsible for their share of damages, expenses, costs and judgment in proportion to their respective fault.

It is specifically and expressly understood that the indemnification provided herein constitutes grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the City and grantee.

The provisions of this indemnification clause shall survive the termination of this lease agreement.

Section 10: Planning, Design, Construction and Installation of Company Facilities:

10.1 All facilities installed or used under authority of this franchise shall be used, installed, constructed, reconstructed, repaired, replaced and maintained in accordance with applicable federal, state and city laws, codes, regulations, standards or procedures as they presently exist or as may be hereafter enacted, promulgated or amended. Grantee shall comply with all federal, state and local hazardous substance and environmental protection laws, rules, recommendations and regulations as they presently exist or as may be hereafter enacted, promulgated or amended. Should any conflict arise between the privileges expressed in this franchise and applicable federal, state and city laws, codes and regulations, the applicable federal, state and city laws, codes and regulations shall control. Grantee shall, at all times, employ ordinary care in the installation, abandonment, relocation, construction, maintenance and/or repair, utilizing methods and devices commonly accepted in its industry of operation to prevent failures and accidents that are likely to cause damage, injury or nuisance to persons or property. All of grantee's facilities in the public way shall be constructed and maintained in a reasonably safe and operational condition.

Grantee shall follow all safety codes and other applicable regulations in the installation, operation and maintenance of the facilities.

10.2 All facilities shall be located, constructed and maintained so they do not unreasonably interfere with the free passage of traffic, both vehicular and pedestrian, or the existing municipal infrastructure and facilities, including the City's sewer and water utility infrastructure. The owners of all utilities, public or private, installed in or on the public way prior to the installation of grantee's facilities shall, as determined by the City, have preference as to the positioning and location of such utilities so installed with respect to the grantee unless such facility has been abandoned or unused for a continuous period of one (1) year. Such preference shall continue regardless of realignment or change to the grade of any public way. This subsection does not grant any third party rights to persons or entities occupying the public way.

10.3 If, during the course of work on its facilities, grantee causes damage to or alters the public way or public property, grantee shall (at its own cost and expense and in a manner reasonably approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.

10.4 Grantee shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed facilities underground as may be required by city ordinance.

10.5 Grantee shall allow the City, at City's own expense (to include a pro rata share of the trenching costs), to share the trench of grantee to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with grantee's facilities or delay project completion.

10.6 City shall not erect structures, buildings or signs in a location that prevents grantee from accessing or maintaining its facilities.

10.7 Grantee shall maintain its facilities in a manner so as to provide reliable service and prevent injury to public property or property belonging to any person with the City. Grantee, solely at its own expense shall repair, renew, change and improve said facilities from time to time as may be necessary to maintain that same remain in good condition.

Section 11: Relocation of Facilities:

11.1 The City reserves the right to require grantee to relocate facilities within the public ways in the interest of public convenience, necessity, health, safety or welfare.

11.2 City shall notify grantee of any request to relocate grantee's facilities as early as practicable. City shall endeavor, but is not required, to cause such

relocation to be consistent with any applicable City capital facility plan, transportation improvement plan or transportation facilities program.

11.3 Whenever any third party requires the relocation of grantee's facilities within the public ways to accommodate such third party, grantee shall have the right as a condition of any such relocation to require, subject to the terms of grantee's tariff or its equivalent: (i) the preparation of plans for such relocation, and (ii) payment to grantee of any and all costs and expenses incurred by grantee in the relocation of the facilities. Where the relocation of grantee's facilities is due in part to development or improvement of a third party's property, which also results in construction of a City project, grantee's costs and expenses of relocation shall be proportionally allocated. For example, if 1,000 lineal feet of grantee's facilities must be relocated and 250 lineal feet of the relocated facilities are to facilities the third party development, then 25% of the cost of relocation shall be apportioned to the third party. The City shall not be responsible for any cost or expense associated with the relocation of grantee's facilities.

If the City requires the subsequent relocation of any facilities within five (5) years from the date of installation or relocation of such facilities performed at the City's request, the City shall bear the entire cost of such subsequent relocation.

The provisions of this section shall in no manner preclude or restrict grantee from making any arrangement it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 12: Abandonment of Grantee's Facilities: Within one (1) year of the termination of this franchise, or grantee's permanent cessation of the use of the grantee's facilities, or any portion thereof, the grantee shall remove the affected facilities or upon consent of the City, abandon the facilities in place. For below-ground facilities, the conduit may be abandoned in place, provided: (1) the City agrees in writing to abandonment in place for the particular facility; and (2) Grantee delivers plans to the City that depict the location of the abandoned conduit. The City and grantee agree that this section shall survive the expiration, revocation or termination of this franchise.

Section 13: Vacation: The City reserves the right to vacate any City street or right of way which is subject to rights granted by this franchise because the street right of way so vacated is no longer needed for public purposes. If grantee has facilities in such right of way, the City shall reserve an easement for grantee.

Section 14: Insurance Requirements:

Throughout the term of this Franchise, the Grantee shall, at its own cost expense, maintain comprehensive general liability insurance and provide the City certificates of insurance designating the City as additional insured and demonstrating that the Grantee has obtained the insurance required herein. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000) for bodily injury or death to any one person, One Million Dollars (\$1,000,000) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise.

The insurance obtained by grantee shall name the City, its officers, employees as additional insureds with regard to activities performed by or on behalf of grantee. Grantee's insurance shall be the primary insurance as respects to the City, its officers, officials, and employees except to the extent the City, its officers, officials or employees are negligent. Any insurance maintained by the City, its officers, officials or employees shall be in excess of Grantee's insurance and shall not contribute to it. The insurance certificate required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after sixty (60) days prior written notice, by U.S. Mail, has been given to the City. Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials or employees. Grantee may satisfy the obligations herein through a program of self-insurance.

Section 15: Performance Guarantee: The City reserves the right to adopt additional ordinances and regulations that may require grantee to provide a financial performance guarantee. Such a financial guarantee shall not be construed to limit the grantee's liability to the guarantee amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 16: No Waiver: Neither the City nor grantee shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

Section 17: Transfer of Franchise: Grantee shall not transfer or assign any rights under this franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of grantee which assume

all of grantee's obligations hereunder, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, grantee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this franchise to any financing entity, or agent on behalf of any financing entity to whom grantee (i) has obligations for borrowed money or in respect of guarantees thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect to guarantees thereof.

Section 18: Amendment: At any time during the term of this franchise, the City, through its City Council, or grantee, may propose amendments to this franchise by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this franchise shall be effective until mutually agreed upon by the City and grantee and formally adopted as an ordinance amendment, which is accepted in writing by grantee.

Section 19: Default: If grantee shall fail to comply with the terms of this franchise, the City may serve upon grantee a written notice specifying the non-compliance. Within thirty (30) days from the date such notice is received by grantee, the non-compliance shall be cured. If any failure to comply with this franchise by grantee cannot be reasonably corrected within said thirty (30) day period (grantee's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which grantee may so comply shall be extended by the City, in the City's sole discretion, for such time as may be reasonably necessary so long as grantee commences to promptly and diligently effect such compliance. If the breach is not cured within the specified time, or the grantee does not comply with the specified conditions, the City may, at its sole discretion, terminate the franchise. Within ten (10) days of receipt of notice of termination, grantee may seek appeal of the matter set forth in the notice of termination to the City Council. During the period of appeal, the notice of termination shall be stayed with this franchise continuing in full force and effect. The City Council shall render a written decision. The City may take any action that it believes necessary for the immediate protection of public health and safety without notice and opportunity to cure, or with such limited notice and opportunity to cure as it determines appropriate. Nothing herein is intended to waive a party's rights under this franchise, including the right to seek judicial relief. Should any party be the substantially prevailing party in a lawsuit to enforce any of the terms of this agreement then the substantially prevailing party shall be entitled to reimbursement from the other party its reasonable costs, expenses, attorney fees and expert witness fees, including such costs, expenses and fees incurred in any appeal.

Section 20: Choice of Law: This franchise shall be governed by and construed under Washington State Laws. Any litigation between the City and the grantee arising under or regarding this franchise shall occur, if in the state courts, in the Columbia County Superior Court, and if in the federal courts, in the United States District Court for the Eastern District of Washington.

Section 21: Construction Standards: (a) Grantee shall provide construction drawings for installation of cable television facilities and/or fiber optic communication lines. Construction drawings shall be approved by the director of public works of the designee prior to initiating construction, except in instances in which deviation may be allowed by the City of Dayton.

(b) Grantee must use traffic control signage, markings and flaggers, in accordance with the manual for uniform traffic control devices, and other applicable federal, state or local safety requirements. Grantee must cease work immediately if the director of public works or his designee determines that grantee's traffic safety measures do not comply with these requirements, and may not begin work until the compliant safety measures are in effect. The City of Dayton shall not be liable for any costs or claims associated with the delays occurring as a result of such work stoppage.

(c) All facilities shall be installed in conformance with the grantee's construction drawings approved by the director of public works, or his designee, prior to initiation of construction.

(d) City's enforcement of applicable laws, ordinances, rules, regulations, authorizations and resolutions shall be for the purpose of fulfilling the City's public trust and administering the primary use and purpose of public properties, and not for relieving grantee of any duty, obligation or responsibility for the competent design, construction, maintenance, and operation of its facilities. Grantee is responsible for the supervision, construction, and quality of the work done, whether it is by grantee, or by contractors, assignees, or agencies.

(e) Construction within the City's right of way shall be completed in the time frame as mandated by the City of Dayton's right of way ordinance, DNC 8-10. The director/superintendent of public works is authorized, at his discretion, to extend the time frame for completion of construction by no more than one hundred and eighty (180) days.

(f) During any period of work relating to grantee's facilities, all surface, structures and equipment, if any, shall be erected and used in such places and positions within or adjacent to the public right of way so as to minimally interfere with free passage of vehicular and pedestrian traffic, and the use of adjoining property.

(g) Underground utility trenches. Grantee agrees to make available and accept the co-location of other facilities within trenches evacuated or used by the

grantee in the public right of way, provided that the cost and expense of the work are fairly allocated between the parties. The City of Dayton may coordinate the co-location of underground utility services, subject to the exercise of reasonable engineering judgment and in compliance with federal and state laws and standards.

(h) Coordination. Grantee and the City of Dayton shall each exercise best reasonable efforts to coordinate construction work either party may undertake within the right of way so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, as a minimum, reasonable and diligent efforts to inform the other party, and other utilities with facilities within the affected right of way of the party's intent to undertake construction work. Grantee and the City of Dayton shall further exercise best reasonable efforts to minimize delay or hindrance to the other party's construction work undertaken with the right of way.

(i) Construction Notification. Grantee shall provide at least seven (7) days notice to all property owners adjacent to and potentially affected by the construction facilities.

(j) Tree Management. Grantee shall comply with the standards set by International Society of Arboriculture when working in and around street trees.

Section 22: Restoration After Construction: (a) Grantee shall, after installation, construction, relocation, maintenance, repair or abandonment of facilities within the area of this permit, restore all right of way, streets, storm drainage, vegetation, street trees and other public property in conformance with City Public Works Standards, City ordinances, and conditions of any application authorization. Grantee agrees to promptly complete all restoration work and promptly repair any damage caused by such work within the areas of this permit or other affected area at its sole cost and expense. Any street tree that is removed must be replaced at the direction of the Director of Public Works with another satisfactory specimen, planted and maintained in accordance with International Society of Arboriculture. In the event that the street tree cannot be replaced in the same location from which it was removed, grantee shall locate the replacement tree as instructed by the Director of Public Works.

(b) In the event that the Director of Public Works determines in his or her sole discretion that grantee's work to restore the surface area has failed within two (2) years of grantee's completion of such work or grantee's work to restore the public property has failed within one hundred eighty (180) days of grantee's completion of such work, grantee will repair, at its sole expense, that surface area or public property in accordance with the City's Public Works standards. The obligations in this section shall survive the expiration, revocation or termination of this permit.

Section 23: Damage and Non-Compliance: Any and all damage, or injury, done or caused to right of way, City facilities, or any portion thereof in the construction, operation, maintenance or repair of grantee's facilities shall be immediately repaired by grantee.

If it is discovered by the City that grantee has damaged, injured, or failed to restore the right of way in accordance with this agreement, the City shall provide grantee with written notice, including a description of actions the City believes necessary to restore the right of way. If the right of way is not restored within ten (10) days from the receipt of written notice, or other reasonable period, as approved by the Director of Public Works, the City, or its authorized agent, may restore the right of way. Grantee shall be responsible for all reasonable costs and expenses incurred by the City to repair and restore the right of way in accordance with this permit.

Section 24: Emergency Response: (a) Grantee shall provide a phone number and designate responsible officials to respond to emergencies. After being notified of an emergency, grantee shall cooperate with the City and make best efforts to immediately respond to minimize damage, protect the health and safety of the public and repair facilities to restore electric utility service.

(b) If grantee fails to take action within a reasonable time and conditions exist which require immediate action to prevent imminent injury or damages to persons or property, grantee shall be responsible to reimburse the City for its reasonable out of pocket and documented costs and any expenses associated with such actions.

Section 25: Relocation: Whenever the City undertakes or approves the construction of any water, sewer or storm drainage line (8" inside diameter or larger) or other street improvement project (including, without limitation, installation of traffic signals, street lights, sidewalks and pedestrian amenities wherein the facility so constructed or approved is or shall become, by gift, transfer, dedication or otherwise, a public facility owned, maintained or operated by the City) and such project necessitates the relocation of grantee's then existing facilities, the City shall:

(a) Provide grantee at least one hundred sixty (160) days prior to the commencement of such improvement project, written notice requiring such relocation; and

(b) Provide grantee with copies of pertinent portions of the plans and specifications for such street improvement project so that grantee may relocate its facilities to accommodate such street improvement project. No later than one hundred twenty (120) days after receipt of such notice and such plans and specifications grantee shall complete the relocation of such facilities as no charge or expense to the City so as to accommodate such improvement project at least ten (10) days prior to commencement of such improvement.

(c) If the City requires subsequent relocation of any facility within five years of the date of relocation of such facility pursuant to subsection (a) above, the City shall bear the entire cost of such relocation.

(d) As to any relocation of facilities wherein the cost and expense thereof is to be borne by grantee in whole or in part, in accordance with this section, grantee may, within 45 days, after receipt of written notice requesting such relocation, submit to the City written alternatives to such relocation. Upon receipt, the City shall evaluate such alternatives and shall advise grantee in writing if one or more of the proposed alternatives are suitable to accommodate the work which would otherwise necessitate relocation of grantee's facilities. The City shall give each alternative proposed by grantee, full and fair consideration. In no case shall the City arbitrarily reject any reasonable alternative. In the event that the City is satisfied, after due consideration, that there is no other reasonable alternative, grantee shall relocate its facilities as otherwise provided in this section. The City's determination shall be conclusive and not subject to any review.

(e) The provisions of this section shall in no manner preclude or restrict grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City where the facilities to be constructed by said person or entity are not or will not become City owned, operated or maintained facilities.

(f) Should grantee elect to relocate all of its facilities to non-City owned facilities, the subject Right of Way Use Agreement shall be terminated and be of no further force and effect, effective as of the date grantee provides written notice that it has fully relocated said facilities.

Section 26: Repairs: If the City requires the relocation (temporary or permanent) of grantee's facilities for the purpose of repair or maintaining any City owned, operated or maintained facility, grantee shall make such relocation at no cost to the City.

Grantee shall have the right to propose alternatives to such relocation to the same extent and subject to the same limitations as set forth in Section 25(d) above. The provisions of this section shall not preclude or restrict grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City where the facilities to be repaired or maintained by said person or entity are not or will not become City owned, operated or maintained facilities.

Section 27: Record of Installations:

(a) As a condition of this Right of Way Use Agreement, and at its sole expense, grantee agrees to provide the City a copy of all as-built plans, field locates, maps, plats, specifications and records, including revealing the final location and condition of its facilities within the right of ways. Such records shall be provided in a format acceptable to the City. With respect to excavations by grantee near any other facilities in the rights of way, grantee and the City shall

each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state law.

Grantee acknowledges that information submitted to the City may be subject to inspection and copying under the Washington Public Disclosure Act codified in chapter 45.26 RCW. Grantee shall mark as "CONFIDENTIAL" each page or portion thereof of any documentation/information which it submits to the City and which it believes is exempt from public inspection or copying.

The City agrees to provide grantee with a copy of any public disclosure request to inspect or copy documentation/information which grantee has provided to the City marked as "CONFIDENTIAL" prior to allowing any inspection and/or copying as well as provide grantee with a time frame, consistent with RCW 42.56.520, to provide the City with its written basis for non-disclosure of the requested documentation/information. In the event the City disagrees with grantee's basis for non-disclosure, the City agrees to withhold release of the requested documentation/information in dispute for a reasonable time solely determined by the City, so that grantee can file a legal action under RCW 42.56.540.

(b) Upon written request of the City, grantee shall provide the City with the most recent update available of any plan of potential improvements to its facilities that are subject to grantee's franchise agreement with the City; provided, however, any such plan submitted shall be for informational purposes only and shall not obligate grantee to undertake any specific improvements, nor shall such plan be construed as a proposal to undertake any specific improvements. The City agrees not to disclose such information unless required to do so pursuant to Chapter 42.17 RCW. In any event, the City agrees to notify grantee of the anticipated disclosure of such information at least five (5) days prior to such disclosure.

Section 28: Entire Agreement and Effect: This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, related to this subject matter shall be binding upon the parties upon execution and acceptance thereof.

This franchise supersedes, affirms and governs previous rights or claims of grantee to occupy the right of way. If any term of this franchise shall directly conflict with the code, ordinances, resolutions, rules, permits, licenses, policies or standards of the City, the term of this franchise shall control and govern.

Section 29: Notices: Unless otherwise specified herein, all notices from grantee to the City pursuant to or concerning this franchise shall be delivered to the City Clerk's office. Unless otherwise specified herein, all notices from the City to grantee pursuant to or concerning this franchise shall be delivered to:

Touchet Valley Television, Inc.
107 S. 1st Street
Dayton, WA 99328

and such other office as grantee may advise the City of by written notice.

Section 30: Severability: If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such termination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise or any renewal or renewals thereof.


Section 31: Police Powers: Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. Grantee shall not by this franchise obtain any vested rights to use any portion of the City right of way except for the locations approved by the City and then only subject to the terms and conditions of this franchise.

Section 32: Effective Date: This ordinance shall be in full force and effect five (5) days after publication of the ordinance or a summary thereof occurs in the official newspaper of the City of Dayton as provided by law.

PASSED by the City Council of the City of Dayton, Washington
this 22ND day of APRIL, 2013.

City of Dayton

Touchet Valley Television, Inc.



Craig George, Mayor



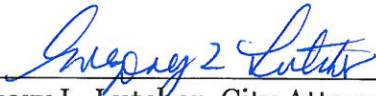
David Klingenstein, Owner

Attest:



Trina Cole, City Clerk-Treasurer

Approved as to form:



Gregory L. Lutch, City Attorney
WSBA #04806
