# Title 10   FRANCHISES

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## Chapter 10.04   Ordinance 367—General Telephone Company

SECTION 1. There is hereby granted by the Town of Oakesdale, to the General Telephone Company of the Northwest, Inc., its successors and assigns, the right and privilege to operate a telephone and telegraph business within said Town of Oakesdale (Town, hereinafter), and to place, erect, lay, maintain and operate in and under the streets and alleys, avenues, thoroughfares and public highways within the said Town, poles, wires and other appliances and conductors for the transmission of electricity for telephone and telegraph purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, and at such heights as required by law, or at the option of the Grantee, its successors and assigns, may be laid underground in pipes conduits or otherwise protected and such other apparatus may be used as may be necessary or proper to operate and maintain same.

SECTION 2. It shall be lawful for said General Telephone Company of the Northwest, Inc. (General, hereinafter), its successors and assigns, to make all needful excavation in any of such streets, alleys, avenues, thoroughfares and public highways in said Town, for the purpose of placing, erecting and maintaining poles or other supports or conductors for said wires, or laying cables or repairing, renewing or replacing the same; said work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise, be adopted from time to time by the Town, and to comply with all State and Federal laws applicable.

SECTION 3. Whenever General, its successors and assigns, shall disturb any of the streets, alleys or public highways for the aforesaid purposes, it or they shall restore the same to good order and condition as soon as practical without unnecessary delay, and failing to do so, the Town shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed. Upon the failure of such repairs and restoration of streets being completed, and upon the failure by General, its successors and assigns, to make such repairs, the Town shall cause such repairs to be made at the expense of General. The Town shall be furnished maps of all underground cables.

SECTION 4. Nothing in this ordinance shall be construed in any way to prevent the proper authority of the Town from sewering, grading, planking, rocking, paving, repairing, altering and improving any of the public highways, alleys, avenues, thoroughfares and public highways within the limits of the Town in or upon which the poles, wires or other conduits of General shall be placed, but all such work or improvements shall be done, if possible, so as not to obstruct or prevent the free use of said poles, wires, conductors, pipes or other apparatus. It being further understood that a written notice addressed to the office of General will be given at least 30 days before proceeding with such work where same affects General.

SECTION 5. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the wires, cables or other plant of General, its successors and assigns, for the passage of buildings, machinery or other objects, General, its successors and assigns, shall temporarily rearrange, remove, lower or raise its wires, cable or other plant as the necessities of the case require; provided, however, that the person or persons desiring to move any such building, machinery or other objects shall pay the entire actual cost to General, of changing, altering, moving, removing or replacing its wires, cables or other plant so as to permit such passage, and shall deposit in advance with General its successors and assigns, a sum equal to such cost as estimated by General, its successors and assigns, and shall pay all damages and claims of any kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of said wires, cables or other plant, except as may be occasioned through the negligence of General so as to permit such passage. General shall be given not less than 7 days written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such building or objects over and along the streets and shall bear the approval of said Town by the Town Mayor or other official as may be designated. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause General, its successors and assigns, unnecessary expense and waste of time. The provisions of this section shall be carried out in accordance with the ordinances of said Town regulating such matters.

SECTION 6. General, its successors and assigns, hereby agrees and covenants to indemnify the Town from any injury existing from, or any casualty or accident to person or property by reason of, any neglect or failure to keep said poles, wires and other appliances and conductors in a safe condition and for all valid claims against Town for damages, caused by said poles, wires and other appliances and conductors.

SECTION 7. In consideration of the rights and privileges hereby granted, the Town shall have and General hereby grants to it the right and privilege to suspend and maintain on poles placed by General in the streets and other places of the Town any and all wires which said Town may require exclusively for its own use for fire alarm and police telegraph purposes or, if said wires are placed underground, the joint use of one duct in each conduit run of the underground system of General free of charge to said Town, and all such wires shall be placed upon the poles or in the conduit so as not to interfere with telephone service and shall not carry currents of voltage dangerous to telephone plant or telephone users and all installations, maintenance and repairs shall be subject to the rules, regulations and supervision of General. The Town agrees, in consideration of the establishment of this service and the furnishing of these facilities, to hold General entirely free and harmless from all liability from any claim or damages which may arise out of the operation of these special services. The Town also agrees that General in no way guarantees the operation of any facilities utilizing any equipment supplied by the Town over which General does not have full and complete control.

SECTION 8. The rights, privileges and franchise hereby granted shall continue and be in full force for a period of 10 years from the date of filing by General of its unconditional acceptance thereof with the Town Clerk of the Town. Such acceptance shall be filed within 60 days after the date of passage of this ordinance.

Passed by the City Council of Oakesdale this 8th day of May, 1978.

## Chapter 10.08   Ordinance 385—The Washington Water Power Co.

SECTION 1. The Washington Water Power Company, a corporation organized under the laws of the State of Washington, its successors and assigns, hereinafter called "Grantee," be and it is hereby granted, for the term of twenty-five (25) years from and after passage of this Ordinance, the right, privilege and franchise to construct, erect, maintain, operate, remove and use wires, poles, plant and all necessary or desirable appurtenances thereto for transmitting and distribution of electricity for electric light, heat, and power, and also to use its wires, poles and properties for telephone purposes in its private business, and to install, construct, maintain and remove conduits over, on, along, under and across the streets, alleys and ways within the incorporated limits as they now exist or as they may hereafter be changed of the Town of Oakesdale.

SECTION 2. There is further given in connection herewith, unto the Grantee, its successors and assigns, the right during the life of this franchise, to cut and trim any and all trees growing in, on, or over the streets or alleys of the Town that might or may interfere with any wires, poles, conduits or other apparatus of the Grantee, its successors or assigns.

SECTION 3. The poles, wires and other apparatus mentioned herein shall be constructed, erected and maintained in accordance with the laws of the Town of Oakesdale and the State of Washington relating to electrical construction, and any rules or regulations adopted by any agency of the State of Washington having jurisdiction over electrical construction in the Town of Oakesdale and also said construction shall be in such manner as to prevent and guard against accidents or damages as nearly as possible to any persons who may be properly using said streets and alleys.

SECTION 4. The said Grantee herein shall have and is hereby given the right and privilege to make any and all necessary or proper excavations and obstructions in any of the streets, alleys and properties of the Town of Oakesdale for the purpose of building, erecting, repairing, removing, maintaining or changing any of the poles, wires, conduits, crossarms or other appliances or apparatus used or to be used in connection with the above purposes. Whenever the Grantee, its successors and assigns, shall excavate in or obstruct any of the streets, alleys or ways of the Town of Oakesdale for the purposes aforesaid, it shall return the same to the order and condition that they were in before they were excavated or obstructed, as soon as practical and within a reasonable time after such excavation or obstruction, and that the Grantee herein, its successors and assigns, shall at all time hold the Town free and clear from any and all damages that may result to any person, persons, firm or firms, corporation or corporations, or to any property of the same, by reason of any erection, construction, maintenance or operation of any of the things therein authorized to be constructed and maintained by it.

SECTION 5. The Town reserves the right to remove any such wires, poles, or apparatus herein provided for in case of general conflagration and necessity therefor, or in other cases of emergency. The Town in such case shall not be held liable for any damages to the Grantee, its successors and assigns, on account of any cutting away or removal of any poles, wires, or other appliances under the last-named circumstances; provided, however, that the Town shall indemnify and hold harmless the Grantee, its successors and assigns, against any and all property damage, personal injury, death, or other liability to third parties sustained as a result of the negligent exercise of such reserved emergency powers.

SECTION 6. The Grantee, on request of the Council of the Town, shall remove or raise its wires so as to permit the removal of any house or building when the same may be necessary to permit the removal of said building, on, over, and along the streets, alleys or public highways of the said Town to the point of destination; provided, that the party to whom a permit has been granted to remove any such building on, over, and along any of the streets or alleys of the Town shall pay to the Grantee hereunder the cost incurred in removing or changing its wires and facilities so as to permit the removal of said building as aforesaid.

SECTION 7. In consideration of the rights, privileges and power herein granted to the Grantee herein, its successors and assigns, it, the said Grantee, its successors and assigns, shall at all times keep and maintain a plant of sufficient size and capacity to supply the Town and the inhabitants thereof with such an amount of electricity as they may reasonably require, and shall, in the absence of accident or misfortune from some cause beyond its control, furnish a continuous twenty-four (24) hour service, and should the said plant, or any part thereof, become broken, injured or destroyed, the same shall be replaced as soon as it is reasonably practical. The Grantee shall also furnish to the Town under applicable rate schedule to be used within the incorporated limits of the Town as many street lights and of such candle as may be designated by the authorities of the Town.

SECTION 8. The Grantee shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of the Grantee's business and to prescribe the forms for application for service and contracts to be executed by applicants. Service shall be supplied to the Town and its inhabitants in accordance with the Grantee's rules and regulations filed or hereafter filed with the regulatory body of the State of Washington having jurisdiction over the Grantee.

SECTION 9. The Grantee may be directed to install its wire underground upon request of the Town and those property owners to be especially benefited thereby after a public hearing and finding by the Town Council that the area wherein underground facilities are requested is a feasible and practical area for underground installation, and the installation is required in the public safety, interest or convenience. In the event the underground electric facilities are to be installed, the difference between the cost of constructing and installing the wires and related facilities above ground, and the cost of constructing and installing the wires and related facilities underground, shall be borne proportionately by each property owner in the area, public or private, specially benefited thereby. Whenever the Grantee determines to place its wires underground in any portion of the Town, permission to do so is hereby granted. The Grantee, its successors and assigns, shall file with the Town Engineer a complete set of plans and specifications for such work and shall lay the necessary pipes or conduits for the same in such manner as not to interfere with any existing pipes in such streets. Such work shall be done subject to the supervision of the proper authorities of said Town.

SECTION 10. The rates and charges applicable for electric service furnished by the Grantee, its successors and assigns, shall be as filed with the regulatory body of the State of Washington having jurisdiction and in effect during the term of this franchise.

SECTION 11. The Grantee, its agents and employees, shall have the right and power of ingress and egress upon its customers' properties for the purpose of installing, servicing and maintaining its facilities, and for the purpose of maintaining, testing and reading its meters.

SECTION 12. It is understood that this franchise is not an exclusive franchise, and the said Town of Oakesdale reserves unto itself the right to grant other franchises for the purpose for which this one is granted.

SECTION 13. This franchise and all of its provisions shall be void, inoperative and of no force and effect whatsoever, unless the said Grantee named herein shall, within thirty (30) days after the passage and publication thereof, file with the Clerk of the Town of Oakesdale its acceptance thereof in writing.

SECTION 14. The franchise hereby granted may be revoked by the Town by a duly enacted ordinance in the event the Grantee shall fail after thirty (30) days' written notice to comply with any of the terms, conditions or obligations imposed upon the Grantee hereunder.

PASSED the 5th day of January, 1981.

## Chapter 10.12   ORDINANCE 533—CABLE FRANCHISE—NORTHWEST CABLE LIMITED PARTNERSHIP\* [[]](#BK_DD4D8DC1B0790575E2E2580FD5BA7AB0)

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SECTION 1. Definitions. For the purpose of this chapter, the following terms, phrases, word abbreviations and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include future tense, words in the plural include the singular number and words in the singular number include the plural number.

1.1 "Town" shall mean the town of Oakesdale, Washington, a municipal corporation of the state of Washington.

1.2 "Franchise" shall mean and include the authorization granted to grantee for the privilege to construct, operate and maintain a CATV system in the town.

1.3 "Grantee" shall mean Northwest Cable Limited Partnership.

1.4 "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 hereinafter existing as such within the town.

1.5 "Property of grantee" shall mean all property owned, installed or used by grantee in the conduct of a CATV business in the town under the authority of this franchise.

1.6 "CATV" shall mean a cable television system as hereinafter defined.

1.7 "Cable television system" means a system, composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, laser beams or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable audio and/or visual radio, television, electronic or electrical signals to and from persons, subscribers and locations in the town.

1.8 "Subscribers" shall mean any person or entity receiving for any purpose the CATV service of the grantee.

1.9 "Gross basic subscriber revenue" shall include all receipts derived by grantee from basic subscriber services including charges resulting from the carriage broadcast signals and Federal Communications Commission mandated, non-broadcast services within the town; provided, however, that to the extent receipts or disbursements relating to the following items are included in the above gross basic subscribed revenues they shall be deducted therefrom.

A.  Federal excise tax, state and town sales tax;

B.  Receipts from "ancillary" or "auxiliary" services which include, but are not limited to, advertising, leased channels and programming supplied, or a pay program or pay channel charge basis;

C.  Receipts received by grantee where grantee is acting as a collection agent, and the whole of the sums collected are delivered to a third party;

D.  Refunds made to subscribers;

E.  Installation or reconnect fees.

(Ord. 533 §1(part), 1998).

SECTION 2. Grant of franchise. There is hereby granted by the town to the grantee the right and privilege to construct, erect, operate and maintain in, 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, cable, underground conduits, manholes and other television conductors and fixtures and to attach the same to the utility poles of the town as necessary for the maintenance and operation in the town of a CATV system for the interception, sale and distribution of television and radio signals.

(Ord. 533 §1(part), 1998).

SECTION 3. Non-exclusive grant. The right to use and occupy said street, utility poles and other public ways for the purpose 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. This section will not require the town to grant similar use if in its opinion the needs of the town are best served by only one grant.

(Ord. 533 §1(part), 1998).

SECTION 4. Duration of franchise. The franchise and rights herein granted shall take effect and be in force from and after the effective date of this chapter and upon filing of the acceptance by the grantee and shall continue in force and effect for a term of five years after the effective date of this chapter, subject to earlier termination of said franchise as provided by Section 28, below. Provided, however, that the grantee shall be entitled to renew the franchise, upon the terms and conditions set forth herein for an additional term of five years, if, and only if, grantee is in full compliance with the terms and conditions of this franchise at the time of renewal. In order to exercise the option to renew the franchise, grantee must give notice of such intent to the city not less than ninety days prior to the termination date of the initial five year term.

(Ord. 533 §1(part), 1998).

SECTION 5. Uses permitted by grantee. This franchise authorizes and permits the Grantee 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 or over, under, upon, across and along any public right of way to attach the same to the utility poles of the town, 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 grantee 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.

(Ord. 533 §1(part), 1998).

SECTION 6. Reserved.

**Editor's note—** Ord. No. 584, § 1, adopted December 18, 2006, repealed § 6, which pertained to franchise tax imposed and derived from Ord. No. 533, 1998.

SECTION 7. Reserved.

**Editor's note—** Ord. No. 584, § 1, adopted December 18, 2006, repealed § 7, which pertained to payment of franchise tax and derived from Ord. No. 533, 1998.

SECTION 8. Placement of facilities. It is the intent of the town that the number of utility poles within the town not be increased by the granting of this franchise.

8.1 The wires, cables and other equipment of grantee shall, in areas of the town served by overhead electrical service be attached to and utilize the utility poles.

8.2 In all sections of the town where wires, cables and other like facilities for electrical service are placed underground, the grantee shall place its wires, cable or other like facilities underground to the maximum extent that the existing technology reasonably permits Grantee to do so. Amplifiers in Grantee's transmission and distribution lines may be in appropriate housing on the surface of the ground as approved by the town.

8.3 Should it be reasonably necessary for the grantee to erect any utility pole to support grantee's wires, cables or other equipment, then the location and placement of the same shall be as determined by both parties.

(Ord. 533 §1(part), 1998).

SECTION 9. Conditions of street occupancy. All transmission and distribution structures, lines and equipment erected by the grantee 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 to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places. The CATV system shall be constructed and operated in compliance with all Town, State, and National construction and electrical codes and shall be kept current with new codes. The Grantee shall install and maintain its wires, cables, fixtures and other equipment in such a manner that they will not interfere with any installations of the Town or of a public utility serving the Town.

9.1 In the case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the Town, replace and restore such street, sidewalk, alley, public way or paved area in as good a condition as before the work involving such disturbance was done.

9.2 If at any time during the period of this Franchise, the Town shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way or install underground utilities, the Grantee, upon reasonable notice by the Town, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

9.3 Any poles or other fixtures placed in any public way by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way.

9.4 The Grantee 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 or raising or lowering of wires shall be paid by the person requesting the same; and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

9.5 The Grantee shall, at its own expense protect, support, temporarily disconnect, relocate in the same street or other public place or remove from the street or other public place any property of the Grantee when required by the Town, by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lights and tracts or any type of structures or improvements by public agencies.

9.6 Grantee shall have the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks and public places of the Town so as to prevent the branches of such trees from coming into contact with the Grantee's facilities.

(Ord. 533 §1(part), 1998).

SECTION 10. LIABILITY AND INDEMNIFICATION. The Grantee shall pay and by the acceptance of this Franchise the Grantee specifically agrees that it will pay all damages and penalties that the Town may legally be required to pay as a result of granting this Franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements and all other damages arising out of the installation, operation or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

10.1 The Grantee shall pay and by its acceptance of the Franchise specifically agrees that it will pay all expenses incurred by the Town in defending itself with regard to all damages and penalties mentioned in Section 10, above. These expenses shall include all out-of-pocket expenses, such as attorney fees and shall include the reasonable value of any services rendered by the Town Attorney or his assistants or any employees of the Town.

10.2 The Grantee shall maintain, and by its acceptance of this Franchise specifically agree that it will maintain throughout the terms of this Franchise liability insurance insuring the Town and the Grantee with regard to all damages mentioned in Section 10, above, in the minimum amounts of $300,000, paid per occurrence with a $1,000,000, excess umbrella.

10.3 The Grantee shall maintain, and by its acceptance of this Franchise specifically agree that it will maintain throughout the term of this Franchise a faithful performance bond running to the Town issued by a corporate surety qualified to do business in the State of Washington, in the penal sum of $5,000, or such other sum as the Laws of the State of Washington shall require of a General Contractor, whichever is greater, conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise.

(Ord. 533 §1(part), 1998).

SECTION 11. SAFETY REGULATIONS. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries or nuisances to the public.

11.1 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.

(Ord. 533 §1(part), 1998).

SECTION 12. OPERATIONAL STANDARDS. The Grantee shall operate and maintain its cable television system in full compliance with the standard set forth by the Federal Communications Commission.

(Ord. 533 §1(part), 1998).

SECTION 13. LOCAL OFFICES: COMPLAINTS. The Grantee shall maintain a business office or agent or toll free telephone number which subscribers may telephone during regular hours without incurring added message or toll charges so that CATV maintenance services shall be promptly available. Should a subscriber have an unresolved complaint regarding the quality of cable television service, equipment, malfunctions or similar matters. The subscriber shall be entitled to meet jointly with the Town and a representative of the Grantee within thirty (30) days to fully discuss and resolve such matters.

(Ord. 533 §1(part), 1998).

SECTION 14. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED. The Grantee shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage; provided that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further that connection and service charges may be waived or modified during promotional campaigns of Grantee.

(Ord. 533 §1(part), 1998).

SECTION 15. PROCEDURES. Any inquiry, proceeding, investigation or other action taken or proposed to be taken by the Town in regard to the operation of the Grantee's cable television system shall be taken only after thirty (30) days' public notice of such action or proposed action is published in a newspaper having general circulation in the Town; a copy of such action or proposed action is served directly on Grantee; and, the Grantee has been given an opportunity to respond in writing and/or at hearing as may be specified by the Town, and members of the general public have been given opportunity to respond in writing to the action or proposed action.

15.1 The public notice required by this action shall state clearly the action or proposed action to be taken, the time provided for responses, the address to which such responses should be addressed, and such other procedures as may be specified by the Town. If a hearing is to be held, the public notice shall give the date and time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Grantee shall be a necessary party to any hearing conducted in regard to its operations.

(Ord. 533 §1(part), 1998).

SECTION 16. LINE EXTENSIONS. Cable television services shall be installed or extended to all existing or newly annexed areas within the Town when either of the following conditions are met:

16.1 Density per contiguous mile from existing cable facilities has achieved a density of at least seventy-five (75) living units per mile of cable plant.

16.2 Twenty-five (25) living units per contiguous mile of cable facilities have requested cable television service.
Extensions into new subdivisions shall be at partial expense of the developer. As of the effective date of this Chapter, and notwithstanding the provisions of any other section of this Franchise, the minimum improvements which a developer shall make or agree to make, at its sole cost, shall include provisions for a Cable Television substructure including trench and installed conduit and pedestals suitable for installation of Cable Television distribution facilities. Developer's agreement shall be given in writing prior to the approval by the Town of any final subdivision map. Developer shall bear all costs of installing underground conduit and pedestals in order to make Cable Television service available to each separate lot within the division. The developer may engage the Franchised Cable Television operator within the Town to perform the foregoing construction or may engage an independent contractor of its choice to do so. If an independent contractor is engaged, construction shall be subject to final approval of the Franchised Cable Television operator within the Town. The Town Council shall have authority to promulgate such policy or policies as it deems are required to affect the implementation of this Section 16.

(Ord. 533 §1(part), 1998).

SECTION 17. RATES. The Town reserves the right to regulate the rates charged by the Grantee, for its service should the Town Council, for any reason deem it necessary. Should the Town assume rate regulation, no action shall be taken by the Town Council with respect to the Grantee's rates until after thirty (30) day public notice and the Grantee has been given an opportunity to be heard by the Town Council with regard thereto.

17.1 The Town shall have the right to conduct such inquiry or audit as it deems proper for the purpose of judging the Grantee's rates and at the option of the Town Council may assess the cost of such investigation or audit against the Grantee, which costs shall be paid within thirty (30) days after the presentation to the Grantee by the Town.

17.2 By the acceptance of this Franchise, Grantee specifically agrees that its rates and charges to its subscribers for television, radio signals or other related services shall be fair, reasonable and consistent with consideration both to the welfare of the citizens of the Town, and the entitlement of a commercial enterprise to a reasonable return for its risk, services and investments.

17.3 The Grantee shall receive no consideration whatsoever in connection with its service except in conformance with this section.

(Ord. 533 §1(part), 1998).

SECTION 18. APPROVAL OF TRANSFER. The Grantee shall not sell or transfer its plant, system or franchise to another, other than a parent company or a subsidiary of the Grantee in which the Grantee is a stockholder without Town Council approval; provided, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the Town clerk an instrument duly executed reciting the fact of such, assignment or lease accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Council approval will not be unreasonably withheld and neither this Section nor other Sections of this Franchise shall preclude the assignment of certain rights in the system by the company for the purpose of financing.

(Ord. 533 §1(part), 1998).

SECTION 19. NEW DEVELOPMENTS. It shall be the policy of the Town liberally to amend this Franchise application of the Grantee, when necessary to enable the Grantee to take advantage of developments in the field of transmission of television and radio signals that will afford it an opportunity more effectively or economically to serve the customers.

(Ord. 533 §1(part), 1998).

SECTION 20. NUMBER OF CHANNELS. The Grantee's cable distribution system shall be capable of carrying thirty (30) television channels. Grantee shall reserve one Public Channel to be programmed by the Town for its use if the Town so desires. When not in use by the Town, the Grantee reserves the right to program the Town Channel.

(Ord. 533 §1(part), 1998).

SECTION 21. MISCELLANEOUS PROVISIONS. When not otherwise prescribed herein, all matters herein required to be filed with the Town shall be filed with the Town Clerk.

21.1 In cases of an emergency or disaster, the Grantee shall, upon request of the Town make available its facilities to the Town for emergency use during the emergency or disaster period.

(Ord. 533 §1(part), 1998).

SECTION 22. ADDITIONAL CABLE CHARGES. Should a potential subscriber want a cable outlet in their home or place of business, the Grantee agrees to furnish up to 200 feet of hook-up cable and associated terminal equipment for the standard $25.00 hook-up charge. Any additional cable or associated hook-up equipment to amplifiers will be paid by the subscriber.

(Ord. 533 §1(part), 1998).

SECTION 23. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Grantee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power of the Town. The Town reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be deemed necessary to the exercise of police power. Such regulation shall be reasonable and not destructive to the rights herein granted and not in conflict with the laws of the State of Washington or other local laws or regulations.

(Ord. 533 §1(part), 1998).

SECTION 24. VIOLATIONS. From and after the effective dates of this Chapter 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 that has not yet become a public street, but is designated 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 of such street or property or area has first been obtained, and unless such Franchise is in full force and effect.

24.1 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 a Franchised CATV system within this Town for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs or sound without payment to the owner of the said system.

24.2 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 sound.

(Ord. 533 §1(part), 1998).

SECTION 25. PENALTIES. Any person violating or failing to comply with any of the provisions of Section 24, of this Chapter shall be guilty of a civil infraction; each day of violation or failure to comply shall be a separate offense.

(Ord. 533 §1(part), 1998).

SECTION 26. MAPS AND PLATS. Grantee shall file with the Town true and accurate maps or plats of all existing and proposed installations.

(Ord. 533 §1(part), 1998).

SECTION 27. FORFEITURE OF FRANCHISE. In addition to all other rights and powers pertaining to the Town by virtue of the Franchise or otherwise, the Town reserves the right to terminate and cancel this Franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee;

A.  Violates any provision of this Franchise or any rule, order or determination of the Town, or Town Council made pursuant to this Franchise, except where such violation is without fault or through excusable neglect;

B.  Becomes insolvent, unable or unwilling to pay its debts or is adjudged a bankrupt.
Such termination and cancellation shall be by Ordinance duly adopted after sixty (60) days notice to the Grantee and shall in no way affect any of the Town's rights under this Franchise or any provision of law. In the event that such termination and cancellation depend upon a finding of fact, such finding of fact as made by the Town Council or its representative shall be conclusive. Provided, however, that before this Franchise may be terminated and canceled under this Section, the Grantee must be provided with an opportunity to be heard before the Town Council.

(Ord. 533 §1(part), 1998).

FOOTNOTE(S):

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\* Prior ordinance history: Ords. 398 and 470. [(Back)](#BK_9A09D8728ED2525BC57D342AD30A9C56)

## Chapter 10.16   Ordinance 109—Spokane & Inland Railway Company

SECTION 1. Consent, permission and authority is hereby given to the Spokane & Inland Railway Company, a corporation, organized and existing under the laws of the State of Washington, its successors and assigns, to lay down, construct and maintain, over a right of way with one or more tracks as it shall find convenient, its railway, side tracks and switches to be operated by electricity, steam and other mechanical power, upon, along, across and over the streets and alleys within the corporate limits of the town of Oakesdale, commencing on private property north of block sixteen (16) of McCoy's Addition to the town of Oakesdale; running thence southerly along and upon First Street and block Fifteen (15) of said W. C. McCoy's Addition to the town of Oakesdale, running thence in a southeasterly direction on private property, and crossing in its course the alley in block fifteen (15) of said W. C. McCoy's addition, and Henry Street to Front Street; running thence south on Front Street, and crossing in its course William Street, Jackson Street and Bartlet Street to block twelve (12) of McCoy's Addition to the town of Oakesdale; thence on private property, and crossing in its course the alley in said block twelve (12), Steptoe Avenue, Washington Street, the alley in block fourteen (14) of said McCoy's addition, Montana Street and Pearl Street to the east city limits of the said town of Oakesdale.

The route over which the right herein granted is to extend is definitely indicated upon the map or plat of said line now on file in the office of the clerk of the town of Oakesdale, and marked "Spokane & Inland Railway Company, Map of Oakesdale," to which map or plat reference is hereby made.

SECTION 2. The right is likewise granted to erect and maintain along said streets the necessary poles to carry wires to provide such electric energy for said company in the operation of its railway, and to string upon said poles the necessary wires therefor and to string telephone wires upon said poles to be used by the company in its operation and in its own business; said poles, however, to be not less than one hundred twenty-five (125) feet apart, except where poles have been erected and used for other purposes, in which ca to be not less than one hundred feet (100) apart. No poles shall be erected in the center of the streets, or in a position to obstruct travel.

SECTION 3. Where any streets crossed by said tracks, now are or hereafter shall be graded and opened to travel, the spaces between the rails for at least 12 inches on the outside of each outer rail to such width upon such street as the city council may from time to time direct, shall be closely and securely laid with plank of suitable thickness to bring the top of the same flush with the rails of such tracks Such plank shall be securely fastened down, and shall be kept and maintained in good repair by the said railway company, its successors and assigns.

SECTION 4. The engines, cars or trains of the said railway company shall not be allowed to stand upon any street crossing in such manner as unreasonably to interfere with travel along said street.

SECTION 5. The said railway company, its successors and assigns, shall at all times hold the city harmless from any damages growing out of, or by reason of any cut, fill, or excavation made by said railway company, or by reason of the construction, maintenance and operation of said railway over the streets and alleys of the town.

SECTION 6. The said railway company shall within twenty days from the adoption of this ordinance file with the clerk of the town of Oakesdale, its acceptance of the franchise hereby granted, subject to the conditions herein set forth.

SECTION 7. This ordinance shall take effect and be in force ten days after its passage and publication.

## Chapter 10.20   CABLE TV FRANCHISE REGULATION

Sections:

[10.20.010 Adoption by reference.](#BK_24F6FA4A16F9AFC4A9D746A51DDE390C)

10.20.010   Adoption by reference.

The following regulations of the Federal Communications Commission, as they now exist, or as they may hereafter be amended, are adopted by the town by this reference, and shall be considered part of the Oakesdale Municipal Code as if set forth here in full:

|  |  |
| --- | --- |
| 76.900  | Temporary freeze of cable rates.  |
| 76.901  | Definitions.  |
| 76.905  | Standards for identification of cable systems subject to effective competition.  |
| 76.906  | Presumption of no effective competition.  |
| 76.910  | Franchising authority certification.  |
| 76.911  | Petition for reconsideration of certification.  |
| 76.912  | Joint certification.  |
| 76.913  | Assumption of jurisdiction by the Commission.  |
| 76.914  | Revocation of Certification.  |
| 76.915  | Change in status of cable operator.  |
| 76.916  | Petition for recertification.  |
| 76.920  | Composition of the basic tier.  |
| 76.921  | Buy-through of other tiers prohibited.  |
| 76.922  | Rates for the basic service tier and cable programming services tiers.  |
| 76.923  | Rates for equipment and installation used to receive the basic service tier.  |
| 76.924  | Cost accounting and cost allocation requirements.  |
| 76.925  | Costs of franchise requirements.  |
| 76.930  | Initiation of review of basic cable service and equipment rates.  |
| 76.931  | Notification of basic tier availability.  |
| 76.932  | Notification of proposed rate increase.  |
| 76.933  | Franchising authority review of basic cable rates and equipment costs.  |
| 76.934  | Small system review.  |
| 76.935  | Participation of interested parties.  |
| 76.936  | Written decision.  |
| 76.937  | Burden of proof.  |
| 76.938  | Proprietary information.  |
| 76.940  | Prospective rate reduction.  |
| 76.941  | Rate prescription.  |
| 76.942  | Refunds.  |
| 76.943  | Fines.  |
| 76.944  | Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.  |
| 76.945  | Procedures for Commission review of basic service rates.  |
| 76.950  | Complaints regarding cable programming service rates.  |
| 76.951  | Standard complaint form; other filing requirements.  |
| 76.952  | Information to be provided by cable operator on monthly subscriber bills.  |
| 76.953  | Limitation of filing a complaint.  |
| 76.954  | Initial review of complaint; minimum showing requirement; dismissal of defective complaints.  |
| 76.955  | Additional opportunity to file corrected complaint.  |
| 76.956  | Cable operator response.  |
| 76.957  | Commission adjudication of the complaint.  |
| 76.960  | Prospective rate reductions.  |
| 76.961  | Refunds.  |
| 76.962  | Implementation and certification of compliance.  |
| 76.963  | Forfeiture.  |
| 76.964  | Advance written notification of rate increases.  |
| 76.970  | Commercial leased access rates.  |
| 76.971  | Commercial leased access terms and conditions.  |
| 76.975  | Commercial leased access dispute resolution.  |
| 76.977  | Minority and educational programming used in lieu of deregulated commercial leased access capacity.  |
| 76.980  | Charges for customer changes.  |
| 76.981  | Negative option billing.  |
| 76.982  | Continuation of rate agreements.  |
| 76.983  | Discrimination.  |
| 76.984  | Geographically uniform rate structure.  |
| 76.985  | Subscriber bill itemization.  |

(Ord. 506 §1, 1993).

## Chapter 10.24   ORDINANCE 578—ELECTRICAL FACILITIES—AVISTA CORPORATION

Sections:

[10.24.010 Grant.](#BK_F021BDFB70588F45AD54FB578DBD0C6A)

[10.24.020 Term.](#BK_9B85CC55950694E6E90D958860C7EE7B)

[10.24.030 Trimming/removal of trees.](#BK_6A3440F0D522D5C851C8A52353397911)

[10.24.040 Right of excavation.](#BK_0A761A4338014F54CEA2C78A7F9EBF75)

[10.24.050 Non-interference with existing facilities.](#BK_BB55267087329BCD44F0BBB11B4DF10B)

[10.24.060 Necessary construction/maintenance by grantor.](#BK_BABE88E3DF4FB85429D8E8CA95ADC2FC)

[10.24.070 Conduct of grantee's business.](#BK_668367DF68A4CD6E293B0ACCAFCAD1A2)

[10.24.080 Rights of ingress/egress.](#BK_8BE78DEAE32C3877A919D85390406493)

[10.24.090 Vacation of properties by grantor.](#BK_582600A71878653843F15309C52BDA15)

[10.24.100 Relocation of facilities.](#BK_3BEC03232AF4FD0D39870CA1956A820E)

[10.24.110 Preservation of grantor's rights to control.](#BK_3262B8F5BDF97DF008D5DB1E4E88A07C)

[10.24.120 Undergrounding of facilities.](#BK_C8B9EEA8453D3EB0D040CB6A88082013)

[10.24.130 Emergency removal by grantor.](#BK_19FAD2638E301DE557EBD6B5A6BC9096)

[10.24.140 Non-exclusive franchise.](#BK_B352DD1D56F7CDB7C34A5239CB738D6F)

[10.24.150 Forfeiture.](#BK_1CFABD51A4BA2034B0F698986BF68461)

[10.24.160 Expansion of grantee's facilities.](#BK_2299D8ECE141401749A8B369400C2AE3)

[10.24.170 Change of boundaries of grantor.](#BK_D94379312195DCF879DE85063F21765E)

[10.24.180 Prior franchises superseded.](#BK_BB8936E0BB70E248BA07306CD646DB89)

[10.24.190 Assignment of franchise.](#BK_0395B11C35CEF54E667937A82D693A09)

[10.24.200 Effect of invalidity.](#BK_5238C54116250EB5686F7DBFEFE8D5EA)

[10.24.210 Equality of franchise fees and costs.](#BK_D16DD64834AF4857751D83D1F66DD371)

[10.24.220 Franchise as contract.](#BK_7C17148D176A37363550DD5FE1FE913F)

[10.24.230 Indemnity.](#BK_81558EB29FDB16326A29990FCF00C8BD)

[10.24.240 Abandonment of franchise.](#BK_04581986B9CABD75FCE58F8D47FABF16)

[10.24.250 Acceptance of franchise.](#BK_4FFCD48615DC9FE857058B276CDE4B52)

10.24.010   Grant.

Grantor hereby grants to grantee, its successors and assigns, the right, power, privilege and authority to enter upon all roads, rights of way, streets, alleys, public places lying within the boundaries of grantor and owned or maintained by grantor, to locate, construct, operate and maintain poles, wires, underground cables and all necessary or desirable appurtenances for the purposes of transmitting and distributing electricity. This franchise shall allow for the placement of such facilities as may be necessary to provide services within the town and surrounding areas.

(Ord. No. 578, § 1, 6-5-06)

10.24.020   Term.

The rights, privileges and franchise hereby granted to, and conferred upon the grantee shall, unless this franchise be sooner terminated as herein provided, extend for a term of twenty-five years from the date of written acceptance hereof by the grantee.

(Ord. No. 578, § 2, 6-5-06)

10.24.030   Trimming/removal of trees.

The right of grantee to maintain its facilities and appurtenances shall include the right to utilize an integrated vegetation management program. Grantee or grantee's contractor may prune all trees and vegetation which overhang a public right-of-way, property or place, whether such trees or vegetation originate within or outside said right-of-way, property or place, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees or vegetation that obstructs or may obstruct the grantee's facilities. Such pruning shall comply with the American National Standard for Tree Care Operation (ANSI A300) and be conducted under the direction of an arborist certified with the International Society of Arboriculture or equivalent professional organization. A growth inhibitor treatment may be utilized for trees and vegetation species that are fast growing and problematic. Nothing contained in this section shall prevent grantee, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang public rights of way that may interfere with grantee's facilities.

(Ord. No. 578, § 3, 6-5-06)

10.24.040   Right of excavation.

For the purpose of carrying into effect the privileges granted hereunder, grantee is authorized to make all reasonable and necessary excavations in the streets, alleys, roads and rights-of-way within the franchised area; provided, except in the case of emergencies where injury or property losses are threatened, all such excavations shall be upon not less than fifteen days prior written notice to grantor and, with respect to excavations in streets or roads, only after consultation with grantor's supervisor of public works. All excavations shall be carried with reasonable dispatch and with as little interference or inconvenience to the rights of the public, it being understood that the priority use of the streets, roads, alleys, and rights-of-way shall be for public travel. Grantor shall restore all streets, alleys, roads, rights-of-way and public grounds to such standards as directed by the grantor for conditions of safety and use after excavation. All oiled or paved streets, roads, or alleys upon which any excavation is conducted shall be at a minimum patched with the same or substantially same material with which the street, road, or alley is oiled or paved so as to produce a homogeneous surface after the work is completed. In case any obstruction caused by grantee shall remain longer than seven days after notice to remove it, or in case of neglect by grantee to safeguard any dangerous places, grantor may remove or cause to be removed such obstruction, or safeguard such dangerous places, at grantee's expense.

(Ord. No. 578, § 4, 6-5-06)

10.24.050   Non-interference with existing facilities.

All construction, installation, repair or relocation of lines and appurtenances performed by grantee along or under the roads, rights of way or properties subject to this franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures irrigation ditches and structures located therein, nor with the grading or improvement of such roads, rights of way or other public property subject to this franchise.

(Ord. No. 578, § 5, 6-5-06)

10.24.060   Necessary construction/maintenance by grantor.

The laying, construction, operation and maintenance of grantee's lines and appurtenances authorized by this franchise shall not preclude the grantor, its agents or its contractors, from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of grantee, provided that grantee shall be given not less than five days' notice of said blasting or other work, and provided further that the grantor, its agents and contractors shall be liable for any damages, including any consequential damages to third parties, caused by said work to any installations belonging to grantee.

(Ord. No. 578, § 6, 6-5-06)

10.24.070   Conduct of grantee's business.

The grantor shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of the grantee's business. Service shall be supplied to the grantor and its inhabitants in accordance with all applicable state and local laws, rules, and regulations, and in accordance with the grantee's rules and regulations and tariffs filed or hereafter filed with the appropriate regulatory body of this state having jurisdiction over the grantee.

(Ord. No. 578, § 7, 6-5-06)

10.24.080   Rights of ingress/egress.

Grantor shall not interfere with grantee's right to enter onto its customers' properties for the purpose of installing, servicing and maintaining its facilities, including the testing and reading of service meters.

(Ord. No. 578, § 8, 6-5-06)

10.24.090   Vacation of properties by grantor.

If, at any time, the grantor shall vacate any road, right of way or other public property which is subject to rights granted by this franchise, to the extent permitted by law, such vacation shall be subject to the reservation of an easement in favor of grantor for the purpose of operating and maintaining the facilities of the grantee and other public utilities for the term of this franchise and any renewals or extensions of this franchise. Such easement shall also expressly prohibit any use of the vacated properties which will interfere with grantor's ability to provide grantee's full enjoyment of its rights under this franchise. Grantor shall also continue to permit grantee to operate and maintain its facilities in or on the vacated property consistent with and subject to this franchise.

(Ord. No. 578, § 9, 6-5-06)

10.24.100   Relocation of facilities.

Grantor shall notify grantee of any intended or expected requirement or request to relocate grantee's facilities as early as practicable, but not later than one hundred twenty days prior to any such relocation when the requirement or request reasonably could have been foreseen by that date. Grantor shall endeavor to cause any such relocation to be consistent with any applicable long term development plan or projection of grantor or approved by grantor. If, at any time, the Grantor shall cause or require the alteration or the improvement (the "improvement") of any road, highway or right-of-way wherein grantee maintains facilities subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage or sanitary sewer facilities, the grantee upon written notice from the grantor shall, with all diligent speed, change the location or readjust the elevation of its system and other facilities so that the same shall not interfere with such work and so that such equipment and facilities shall conform to such new grades or routes as may be established. The relocation of grantee's facilities anywhere within the public right-of-way shall be at the sole expense of grantee unless: (i) the improvement was not paid for solely by public funds, in which case the Grantor agrees to make reasonable efforts to facilitate an agreement between the adjoining and/or affected property owners or developers to pay for the costs of relocation; or (ii) grantor has failed to provide the required advanced notice, in which case any and all increased costs caused by the failure to provide such shall be paid by grantor.

(Ord. No. 578, § 10, 6-5-06)

10.24.110   Preservation of grantor's rights to control.

The grantor, in granting this franchise, does not waive any rights which it may now have or may hereafter acquire with respect to road rights of way or other property of grantor under this franchise, and this franchise shall not be construed to deprive the grantor of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the grantor's roads, rights of way and other public property covered by this franchise.

(Ord. No. 578, § 11, 6-5-06)

10.24.120   Undergrounding of facilities.

Grantor, subject to applicable laws, rules, regulations and tariffs, may require grantee to place those portions of any new installation of distribution lines underground which would otherwise pose a significant public safety hazard if place/above ground. Likewise, grantor may require any new distribution lines to be placed underground if such placement would serve the public interest and convenience, but only if the underground installation is feasible and practical, and the installation cost is not significantly greater than installing the lines above-ground.

(Ord. No. 578, § 12, 6-5-06)

10.24.130   Emergency removal by grantor.

The grantor reserves the right to remove any such wires, poles, or apparatus (grantee's facilities") herein provided for in case of general conflagration or in other cases of extreme emergency where there is neither the time nor the opportunity for grantee to perform such work. Grantor shall use reasonable care in the exercise of such emergency powers. Grantor shall indemnify and hold harmless the grantee, its successors and assigns, against any and all property damage, personal injury, death, or other liability to third parties sustained as a result of the negligent exercise of such reserved emergency powers.

(Ord. No. 578, § 13, 6-5-06)

10.24.140   Non-exclusive franchise.

This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit the grantor from granting other franchises of a like nature or franchises to other public or private utilities under, along, across, over and upon any of grantor's roads, rights of way or other property of grantor subject to this franchise and shall in no way prevent or prohibit the grantor from constructing, altering, maintaining or using any of said roads, rights of way, drainage structures or facilities, irrigation structures or facilities, or any other property of grantor or affect its jurisdiction over such property to make all necessary changes, relocations, repairs, maintenance, etc., insofar as the grantor may deem fit.

(Ord. No. 578, § 14, 6-5-06)

10.24.150   Forfeiture.

If grantee shall willfully violate or fail to comply with any of the provisions of this franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given grantee under the provisions of this grant, then grantee shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the grantor; provided, however, the grantor shall give ninety days' written notice of its intention to revoke or annul the franchise during which period grantee shall have the opportunity to remedy any breach.

(Ord. No. 578, § 15, 6-5-06)

10.24.160   Expansion of grantee's facilities.

Any facilities and appurtenances in streets, alleys, rights of way and public places, incidental to the franchise system, that have been, or are at any future time acquired, leased, or utilized in any manner by grantee are thereupon to be deemed authorized by and shall be subject to all provisions of this franchise.

(Ord. No. 578, § 16, 6-5-06)

10.24.170   Change of boundaries of grantor.

Any subsequent additions or modifications of the boundaries of the grantor, whether by annexation, consolidation or otherwise, shall be subject to the provisions of this franchise as to all such areas. Grantor shall notify grantee of the precise scope of any change of boundaries not less than sixty days prior to such change becoming effective.

(Ord. No. 578, § 17, 6-5-06)

10.24.180   Prior franchises superseded.

This franchise shall update and supersede all prior electric franchises for the above stated purpose heretofore granted to Avista Corporation or its predecessors, by grantor, or its predecessors, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by this franchise.

(Ord. No. 578, § 18, 6-5-06)

10.24.190   Assignment of franchise.

Grantee, its successors and assigns, shall have the right to sell, transfer or assign this franchise. All provisions, conditions, regulations and requirements herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

(Ord. No. 578, § 19, 6-5-06)

10.24.200   Effect of invalidity.

The franchise is granted pursuant to the laws of the state of Washington relating to the granting of such rights and privileges by grantor. If any article, section, sentence, clause, or phrase of this franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the franchise or any of the remaining portions. The invalidity of any portion of this franchise shall not abate, reduce, or otherwise affect any obligation required of grantee.

(Ord. No. 578, § 20, 6-5-06)

10.24.210   Equality of franchise fees and costs.

In the event that grantor charges or imposes upon grantee any fees, taxes, or other costs in connection with the issuance, maintenance, existence, continuation, or use of the franchise, or the public rights-of-way governed hereby, granted pursuant to this document, then grantor shall impose equivalent charges, fees, taxes or costs upon any other franchisee in the same business or competing with grantee.

(Ord. No. 578, § 21, 6-5-06)

10.24.220   Franchise as contract.

This franchise shall have the effect of and shall be a contract between grantor and grantee and shall be the measure of the rights and liabilities of the grantor as well as of grantee.

(Ord. No. 578, § 22, 6-5-06)

10.24.230   Indemnity.

Grantee agrees to defend, indemnify and hold harmless the grantor, its appointed and elected officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys fees, that the grantor may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the construction, installation, maintenance, condition or operation of the grantee's equipment or facilities, or appurtenances thereto, connected with this franchise, that now or may hereafter be upon, under, over, in, across or along, the highways, roads, alleys, bridges or other public ways or places of the grantor; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the grantor.

Grantor agrees to defend, indemnify and hold harmless the grantee, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys fees, that the grantee may sustain, incur, become liable for, or be required to pay, as a consequences of or arising from the negligent acts or omissions of the grantor, its officers, employees or agents; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the grantee.

(Ord. No. 578, § 23, 6-5-06)

10.24.240   Abandonment of franchise.

Grantee may at any time abandon the rights and authorities granted hereunder, provided that six months' written notice of intention to abandon is given to grantor.

(Ord. No. 578, § 24, 6-5-06)

10.24.250   Acceptance of franchise.

Grantee may notify grantor in writing of its acceptance of this franchise within thirty days of the approval of this franchise by grantor.

(Ord. No. 578, § 23, 6-5-06)

## Chapter 10.28   ORDINANCE 605—PORT OF WHITMAN

On April 18, 2011, the Oakesdale Town Council adopted Ordinance No. 605. The ordinance grants to the Port of Whitman (the "franchisee") a nonexclusive franchise to locate, construct, operate, and maintain poles, wires, fiber optic lines, underground cables, and appurtenances ("facilities") over, under, along and across the Town's rights of way and public property. The ordinance provides in part:

•  the term of the franchise will be 25 years;

•  conflicts between the franchise provisions and the Town's exercise of its lawful police powers will be resolved in the Town's favor;

•  underground facilities location will be subject to review and approval by the Town;

•  franchisee must relocate its facilities whenever the Town deems it necessary for any governmental purpose;

•  if the Town grants use of its right-of-ways or public places to others, or if the Town abandons a right-of-way which contains franchisee's facilities, such action shall be subject to franchisee's franchise grant;

•  construction of facilities must comply with applicable laws and building codes, and any property of others damaged by the work must be repaired or restored;

•  franchisee shall hold the Town harmless for damage to franchisee's underground facilities occasioned by emergency repairs to the Town's underground utilities, provided notice reasonable under the circumstances has first been provided to franchisee;

•  installation of franchisee's facilities underground shall be preferred to above-ground installation;

•  the franchise shall not be assigned without the Town's consent;

•  franchisee must maintain public liability insurance, and shall indemnify the Town against damages or penalties arising out of any act or omission by franchisee; and

•  the ordinance provides procedures for early termination of the franchise in the event of franchisee's material breach of any terms or conditions of the franchise, or in the event of other occurrences.

The full text of the ordinance will be mailed upon request to the Town Clerk.

(Ord. No. 605, 4-18-11)