

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Approval of Integra Telecom Holdings, Inc.'s purchase of ownership interests of franchisee Electric Lightwave, LLC
DEPARTMENT:	City Attorney's Office
PRESENTED BY:	Flannary P. Collins, Assistant City Attorney

PROBLEM/ISSUE STATEMENT:

The City of Shoreline granted Electric Lightwave, LLC a franchise to provide telecommunications services within the City. Section 32 of the franchise agreement requires that the City approve any assignment of the franchise prior to its occurrence.

FINANCIAL IMPACT:

No financial impact will result from approving this purchase of ownership interests.

DISCUSSION:

The City of Shoreline granted a 10 year franchise to Electric Lightwave, LLC ("ELI") in July 1996 to provide telecommunication services within the City. Section 32 of the franchise agreement requires City approval of any assignment of the franchise, which occurs when 50% or more of the beneficial interests are obtained by other parties. According to the franchise agreement, the franchisee must inform the City prior to any change in control of the company, and the City must review such transfer of control.

ELI has informed the City that Integra Holdings, Inc. ("Integra") has agreed to purchase all of the outstanding ownership interests in ELI from Citizens Communications Company and its wholly owned subsidiary, CU Capital, LLC. Although Integra is purchasing the ownership interests in ELI, ELI will remain intact, and will retain the responsibilities associated with the franchise.

Staff has reviewed the information submitted by Integra and recommends the City approve the transfer. Integra is a privately-held Oregon-based company providing local, long-distance, and Internet services to small and mid-sized businesses in Washington, Oregon, Utah, Minnesota and North Dakota. Further, the City's right-of-way inspectors indicate that the City has received no complaints regarding ELI. By signing the consent form, the City is: (1) consenting to the assignment of the franchise agreement to Integra; (2) waiving any event of default that may be deemed to occur as a result of the transaction; (3) confirming there is no creation or acceleration of the City's rights or

remedies under the Franchise Agreement; and (4) agreeing that the franchise agreement will remain in full force and effect.

For the Council's information, on June 12, 2006, approval of a new franchise for ELI will be before Council. Typically, the approval of purchase of ownership interests and approval of the new ELI franchise would be included on the same Council agenda. However, ELI has indicated that the approval of the purchase of ownership interests is urgent since municipality approval is required before the transaction can be finalized.

RECOMMENDATION

Staff recommends that Council authorize the City Manager to approve Integra Telecom Holding, Inc.'s purchase of Citizens Communications Company and CU Capital, LLC's ownership interests in City franchisee Electric Lightwave, LLC.

Approved By: City Manager  City Attorney 

ATTACHMENTS

Attachment A: Letter and consent form approving Integra's purchase of ownership interest of ELI

Attachment B: Integra's new release

Attachment C: Electric Lightwave Franchise Agreement

March 14, 2006

City of Shoreline
Director of Public Works
17544 Midvale Ave. NE
Shoreline, WA 98133

Re: Franchise Agreement (the "Agreement"), dated July 3, 1996, between City of Shoreline and Electric Lightwave, LLC (formerly, Electric Lightwave, Inc.) ("ELI") – Consent

Ladies and Gentlemen:

We are excited to inform you that Integra Telecom Holdings, Inc., an Oregon corporation, has agreed to purchase all of the outstanding ownership interests in ELI from Citizens Communications Company and its wholly owned subsidiary, CU Capital LLC (the "Transaction"). For more information about Integra and the Transaction, please see the press release issued by Integra and attached to this letter. You can also learn more about Integra at <http://www.integratelecom.com>. Following the closing of the Transaction, ELI will remain in existence and continue to be the party to the Agreement. ELI will, of course, continue to perform its obligations under the Agreement.

Pursuant to Section 32 of City Ordinance No. 85 of the Agreement, your consent may be required in the event of a change in control of the outstanding ownership interests in ELI. We hereby request that you (i) consent to the deemed assignment of the Agreement to Integra pursuant to the Transaction, (ii) waive any event of default that may be deemed to occur as a result of the Transaction, (iii) confirm that no creation or acceleration of your rights and remedies under the Agreement will arise as a result of the Transaction, and (iv) agree that the Agreement will remain in full force and effect on the same terms and conditions after the closing of the Transaction. If you so agree, please execute one copy of this letter and return it to the undersigned at the following fax number: 360-816-0999.

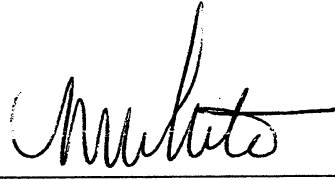
Your consent and confirmation will become effective as of the closing of the Transaction and will have no effect unless the closing occurs. We will promptly notify you of the closing. If you have any questions or need any further assistance, please do not hesitate to call Dan Norfleet at 360-816-5377. Thank you very much for your cooperation and prompt attention.

[Signatures follow on next page]



In WITNESS WHEREOF, the parties have executed this letter as of the date first above written.

ELECTRIC LIGHTWAVE, LLC

By: _____

Name: Melinda White

Title: Vice President and General Manager

Consented to and Agreed to and acknowledged as of _____, 2006.

City of Shoreline

By: _____

Name:

Title:

Attachment

Task 61



Integra Telecom News Release

Integra Telecom Buys Electric Lightwave

Acquisition of Customers and Eight Metropolitan Area Networks Expand Service Area, Solidify Integra's Market Strength.

\$450 Million Financing Ranks as One of the Largest on List of National Telecom Deals.

Portland, Ore. - February 7, 2006 - Integra Telecom, Inc., a provider of local, long-distance and Internet services for small and mid-size businesses, today announced that it has signed an agreement to purchase Electric Lightwave, Inc. (ELI) for \$243 million in cash plus the assumption of approximately \$4 million in capital lease obligations.

Under the terms of the agreement, Integra will purchase ELI, including its assets and customers, from Citizens Communications (NYSE:CZN). The parties expect to complete the transaction in the third quarter of 2006 upon obtaining necessary governmental and other approvals.

Acquisition Solidifies Market Strength

With the acquisition of ELI's network assets and customer base, Integra will become the most cash profitable and one of the largest competitive local exchange carriers (CLECs) in the West. Combined, the companies will have more than \$300 million in annual revenue and more than \$100 million in pro-forma 2006 EBITDA, before any merger synergies.

Approximately 60 percent of the two companies' revenues derive from geographic markets and networks that overlap, creating the opportunity for significant network efficiencies and synergies. The acquisition will increase the number of Integra's metropolitan service areas from 18 to 23 and expand the number of states in which it serves from five to eight.

Most importantly, the combined companies will enjoy important strategic advantages resulting from ELI's eight-market, 2,200 route mile (160,000 fiber miles) metropolitan area network, with direct fiber access into over 580 major commercial buildings. Many other competitive local exchange carriers are scrambling to find network alternatives in response to recent FCC rules that increase the cost of leasing network from the Bell companies. Integra, by acquiring ELI's metropolitan area network, becomes one of the first to insulate itself from this unpredictable landscape of telecom regulation.

"These robust metropolitan fiber networks will substantially increase our operating strength and provide a meaningful and sustainable competitive cost advantage over other local carriers that rely exclusively on leasing network from the Bell companies," said Dudley Slater, chief executive officer of Integra Telecom.

In addition to the metropolitan area networks, Integra will also own and operate ELI's unique 4,700-mile, long haul network - one of the largest of its kind in the western United States. The unique value of this network is evidenced by a blue-chip list of other carriers that lease connectivity from ELI to access their customers.

"We are eager to enhance this network and strengthen our relationships with those that rely on the connectivity we provide," added Slater.

Benefits to Customers

"I'm delighted for our customers," continued Slater. "We will be offering a stronger regional and local telecommunications network alternative, and we will be better equipped to offer unique and powerful high-bandwidth data products, which are increasingly important to the business customers we serve."

Upon completing the integration, Integra will expand the product sets and services currently offered by ELI to include those offered by Integra, including those that are tailored to the smaller business customer. Doing so will increase the addressable markets in the important new service areas that come with the ELI acquisition: Phoenix, Ariz.; Boise, Idaho; Sacramento, Calif.; as well as Olympia and Spokane, Wash. Today, Integra serves tens of thousands of customers,

representing 10-15 percent of the small to mid-sized businesses, within most of the metropolitan areas in Oregon, Washington, Utah, Minnesota and North Dakota. "We look forward to introducing ELI customers to Integra's high-touch brand of service where we staff customer service and other customer 'touching' personnel locally in each major market we serve," said Slater.

"This is an excellent opportunity for ELI employees and customers," said Dan McCarthy, executive vice president and chief operating officer of Citizens Communications. "Integra is a carrier we respect with a proven track record of success."

Integra Telecom Markets Served Post-ELI:

OREGON

- ▶ Portland, Salem, Eugene

WASHINGTON

- ▶ Vancouver, Seattle, Tacoma, Bellevue, Everett, Spokane* and Olympia*

UTAH

- ▶ Salt Lake City, Ogden, Provo

MINNESOTA

- ▶ Minneapolis, St. Paul, Baxter, St. Cloud, Prior Lake

NORTH DAKOTA

- ▶ Fargo, Grand Forks

ARIZONA

- ▶ Phoenix*

IDAHO

- ▶ Boise*

CALIFORNIA

- ▶ Sacramento*

(* New Markets with Acquisition)

Industry Consolidates: Leaders Emerge

"Successful CLECs like Integra are consolidating the industry, creating formidable regional competitors. Integra has the best operating metrics in its sector," stated Carlyn Taylor, senior managing director of FTI Consulting, Inc., an industry advisory firm, who along with FTI's investment banking entity, FTI Capital Advisors, LLC, served as financial advisor to Integra for this transaction.

"The support Integra has received from the financial community is an endorsement of its strong year-over-year financial performance, its operational efficiency, and the financial markets' confidence in Integra's ability to integrate a large acquisition. FTI expects that the combined company will have a leading operating cash flow margin in the US CLEC sector. This transaction will strongly position Integra for future consolidation transactions as well as continued organic growth."

\$450 Million is Among Largest National Telecom Deal in Sector

Integra raised a total of \$450 million in the transaction of which approximately \$243 million will be used to purchase ELI, \$175 million to refinance Integra's current loan obligations and the remainder for excess operating cash, transition expenses and fees. The \$450 million financing package includes two facilities. On the first lien facility, CIBC World Markets Corp. will act as Sole Lead Arranger and Co-Bookrunner with Goldman Sachs Specialty Lending Group, LP acting as Co-Bookrunner and Administrative Agent. Goldman Sachs Specialty Lending Group, LP will co-underwrite the second lien facility with various investors.

"Among competitive local exchange carriers, this ranks as the second largest acquisition transaction and the largest new financing in several years, since Integra is both refinancing its existing debt and raising capital for the purchase price," stated Taylor. Since 2000, only the \$656 million acquisition of Dallas-based Allegiance Telecom by XO Communications of Reston, Virginia was larger.

Top Five Telecom Debt Issuances Among Competitive Local Exchange Carriers: 2004-2006

Company	Public/Private	Date	Amount
Integra Telecom	Private	February 2006	\$450 Million
Conversant	Private	April 2005	\$225 Million
ITC Deltacom	Public	July 2005	\$205 Million
Time Warner Telecom Public	Public	November 2005	\$200 Million
XO Communications	Private	August 2004	\$200 Million

When the transaction is finalized the combined company will remain headquartered in the Portland, Oregon metropolitan area. "We are fortunate in that the integration of the two companies will be enhanced by the fact that we are both headquartered in the same metro-area. We feel like we know the ELI employees well; we value the experience and capabilities they bring and we look forward to working together to grow the combined company," added Slater.

Company Growth and Notable Achievements

Integra expects to close 2005 with \$155 million in revenue and 280,000 lines in service representing a 12 percent increase on both metrics from 2004. The Company's record of increasing operating leverage is enhanced as Integra expects to report \$47 million in 2005 EBITDA, representing 31 percent growth over its 2004 EBITDA of \$36 million. In 2004, during an extended period when lenders to the telecommunications industry accepted partial repayment through financial restructuring or bankruptcies, Integra closed on a \$170 million refinancing deal that established it as the first major competitive local exchange carrier to repay in full all of its original debt funding since the downturn in the capital markets in 2000. In early 2003, Integra became the first facilities-based CLEC in the 14-state Qwest Communications service territory to be cash profitable - a key indicator of a business's health.

About Electric Lightwave

Electric Lightwave is a facilities-based integrated communications provider of Internet, data, voice and dedicated access services to enterprise businesses and carriers. In operation since 1990, the company currently owns and operates eight Metropolitan Area Networks, a nationally acclaimed Tier One Internet and Data network, and a high-speed long-haul, fiber-optic network that interconnects major markets in the West. Headquartered in Vancouver, Wash., the company is a wholly owned subsidiary of Citizens Communications Company (NYSE:CZN). More information about Electric Lightwave, LLC may be found at www.eli.net.

About Integra Telecom

Integra Telecom is a fast-growing, integrated communications carrier dedicated to providing a better choice for small and mid-sized businesses. Integra is a privately held company headquartered in Portland, Ore., employing more than 600 and serving over 280,000 access lines. Integra was recently recognized as one of Oregon's Most Admired Companies by an independent survey sponsored by The Portland Business Journal, and it has been listed on Inc. Magazine's list of the fastest growing private companies in the U.S. four out of the past five years. Primary equity investors in the company include Bank of America Capital Partners, Boston Ventures and Nautic Equity Partners. Integra Telecom is a registered trademark of Integra Telecom Inc.

ORDINANCE NO. 85

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING ELECTRIC LIGHTWAVE, INC., A DELAWARE CORPORATION, A NON-EXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant nonexclusive franchise agreements; and

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to Electric Lightwave, Inc., for the operation of a telecommunications system within the City right-of-way; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. The following terms contained herein, unless otherwise indicated, shall be defined as follows:

- 1.1 City: The City of Shoreline, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.
- 1.2 Days: Calendar days.
- 1.3 ELI: Electric Lightwave, Inc. a Delaware corporation, and its respective successors and assigns.
- 1.4 Facilities: All wires, lines, cables, conduits, equipment, and supporting structures, located in the City's right-of-way, utilized by the grantee in the operation of activities authorized by this Ordinance. The abandonment by grantee of any facilities as defined herein shall not act to remove the same from this definition.
- 1.5 Grantee: As incorporated or used herein shall refer to ELI.
- 1.6 Permittee: A person who has been granted a permit by the Permitting Authority.
- 1.7 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all

references to Permitting Authority shall include the designee of the department or agency head.

- 1.8 Person: An entity or natural person.
- 1.9 Public Works Director: The head of the Public Works department of the City, or in the absence thereof, the head of the Development Services Group of the City, or the designee of either of these individuals.
- 1.10 Right-of-way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.

Section 2. Franchise Granted.

- 2.1 Pursuant to RCW 35A.47.040, the City hereby grants to ELI, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of ten (10) years, beginning on the effective date of this Ordinance.
- 2.2 This franchise shall grant ELI the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to construct, operate, maintain, replace, and use all necessary equipment and facilities for a telecommunications system, in, under, on, across, over, through, along or below the public right-of-way located in the City of Shoreline, as approved under City permits issued by the Permitting Authority pursuant to this franchise and City ordinances.

Section 3. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any right-of-way. Such franchise shall in no way prevent or prohibit the City from using any right-of-way or other public property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new right-of-ways or other public properties of every type and description.

Section 4. Relocation of Telecommunications System Facilities.

- 4.1 ELI agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any right-of-way its facilities when so required by the City, provided that ELI shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right-of-way upon approval by the City, any facilities required to be temporarily disconnected or removed.
- 4.2 If the City determines that a public project necessitates the relocation of ELI's existing facilities, the City shall:
 - 4.2.1 At least sixty (60) days prior to the commencement of such project, provide ELI with written notice requiring such relocation; and

- 4.2.2 Provide ELI with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for ELI's facilities.
- 4.2.3 After receipt of such notice and such plans and specifications, ELI shall complete relocation of its facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.
- 4.3 ELI may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise ELI in writing if any of the alternatives is suitable to accommodate the work that otherwise necessitates the relocation of the facilities. If so requested by the City, ELI shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by ELI full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, ELI shall relocate its facilities as provided in this Section.
- 4.4 The provisions of this Section shall in no manner preclude or restrict ELI from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay a City construction project.
- 4.5 Whenever any person shall have obtained permission from the City to use any right-of-way for the purpose of moving any building or other oversized structure, ELI, upon fourteen (14) days written notice from the City, shall raise or remove, at the expense of the Permittee desiring to move the building or structure, any of ELI's facilities that may obstruct the movement thereof; provided, that the moving of such building or structure shall be done in accordance with regulations and general ordinances of the City. Where more than one path is available for the moving of such building or structure, the path of least interference, as determined by the City, shall be utilized.

Section 5. ELI's Maps and Records. As a condition of this franchise, and at its sole expense, ELI agrees to provide the City with as-built plans, maps, and records that show the vertical and horizontal location of its facilities within the right-of-way using a minimum scale of one inch equals one hundred feet (1"=100'), measured from the center line of the right-of-way, which maps shall be in hard copy plan form acceptable to the City and in Geographical Information System (GIS) or other digital electronic format acceptable to the City. This information shall be provided between one hundred twenty (120) and one hundred eighty (180) days of the effective date of this Ordinance and shall be updated upon reasonable request by the City.

Section 6. Incorporation By Reference. Shoreline City Ordinance No. 83, Establishing Minimum Requirements, Procedures, And Application Information For Franchises Within Shoreline, is hereby incorporated herein by this reference. In the event of a conflict between Ordinance No. 83 and this Ordinance, this Ordinance shall control over any conflicting provisions incorporated by this Section.

Section 7. Undergrounding. ELI hereby affirms its understanding and agreement that its activities within the City must comply with Shoreline City Ordinance No. 82, Establishing Minimum Requirements And Procedures For The Underground Installation Of Electric And Communication Facilities Within Shoreline, and in exchange for an exemption from the requirements of Section 6(b) of that ordinance, and in accord with Section 6(b)(1) thereof, ELI hereby agrees and covenants to the following:

- 7.1 Information - ELI shall provide to the City of Shoreline, or any entity that has noticed ELI of a joint trenching project under Section 12 of Shoreline City Ordinance No. 82, all reasonably requested information regarding the nature and location of facilities installed, owned, operated, or maintained by ELI within a proposed undergrounding area. Said information will be provided within a reasonable period of time, not to exceed thirty (30) days following the request.
- 7.2 Notice - ELI shall respond to any notification pursuant to Section 12 of Shoreline City Ordinance No. 82, within 45 days following such notification with written commitment either to participate in the proposed project or to remove its facilities.
- 7.3 Cost - ELI agrees to bear its proportionate share of all costs common to participants in any joint trenching project and to bear the entire cost of all materials and labor particularly necessary for the underground installation of its facilities and, upon the completion of that installation, the removal of the overhead facilities replaced thereby.

Section 8. Excavation And Notice Of Entry.

- 8.1 During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the right-of-way so as to interfere as little as possible with the safe and unobstructed passage of traffic and the unobstructed use of adjoining property. ELI shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or state law, including RCW 39.04.180, for the construction of trench safety systems.
- 8.2 Whenever ELI excavates in any right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its facilities, it shall apply to the City for a permit to do so in accord with the ordinances and regulations of the City requiring permits to operate in the right-of-way. In no case shall any work commence within any right-of-way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, ELI shall not unnecessarily obstruct the passage or use of the right-of-way, and shall provide the City with plans, maps, and information showing the proposed and final location of any facilities in accord with Section 5 of this Ordinance.
- 8.3 At least ten (10) days prior to its intended construction of facilities, Grantee shall inform all residents in the affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.
- 8.4 At least twenty-four (24) hours prior to entering right-of-way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal

facilities, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by the Grantee. The Grantee shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of underground facilities (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

Section 9. Emergency Work, Permit Waiver. In the event of any emergency where any facilities located in the right-of-way are broken or damaged, or if ELI's construction area for their facilities is in such a condition as to place the health or safety of any person or property in imminent danger, ELI shall immediately take any necessary emergency measures to repair or remove its facilities without first applying for and obtaining a permit as required by this franchise. However, this emergency provision shall not relieve ELI from later obtaining any necessary permits for the emergency work. ELI shall apply for the required permits not later than the next business day following the emergency work.

Section 10. Recovery of Costs. ELI shall be subject to all permit fees associated with activities undertaken pursuant to this franchise or other ordinances of the City. If the City incurs any costs and/or expenses for review, inspection or supervision of activities undertaken pursuant to this franchise or any ordinances relating to a subject for which a permit fee is not established, ELI shall pay the City's costs and expenses. In addition, ELI shall promptly reimburse the City for any costs the City reasonably incurs in responding to any emergency involving ELI's facilities.

Section 11. Dangerous Conditions, Authority for City to Abate.

- 11.1 Whenever installation, maintenance or excavation of facilities authorized by this franchise causes or contributes to a condition that appears to substantially impair the lateral support of the adjoining right-of-way, public or private property, or endangers any person, the Public Works Director may direct the Grantee, at the Grantee's expense, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.
- 11.2 In the event the Grantee fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and the Grantee shall be responsible to reimburse the City for its costs.

Section 12. Safety.

- 12.1 The Grantee, in accordance with applicable federal, state, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.
- 12.2 All of Grantee's facilities in the right-of-way shall be constructed and maintained in a safe and operational condition.
- 12.3 The City reserves the right to ensure that the Grantee's facilities are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist, the City will notify the Grantee in writing of said violation and establish a reasonable time for the Grantee to take the necessary action to correct the violation. If the correction is not made within the established time frame, the City, or its authorized agent, may make the correction. The Grantee is responsible for all the costs and expenses incurred by the City in correcting the violation.

Section 13. Tree Trimming. Upon approval of the City and in accordance with City ordinances, the Grantee shall have the authority to trim trees and other plant life upon and overhanging the right-of-way to prevent interference with the Grantee's facilities. The Grantee shall provide at least seven (7) days written notice to the owner of the property on which any tree or plant life Grantee desires to trim is located. Said notice may be in the form of a doorknob hanger and shall contain a contact name, address, and telephone number where the property owner can obtain information from the Grantee regarding its tree trimming plans and express concerns regarding the trimming of the trees or plant life on their property. The Grantee shall make a good faith effort to conform with property owners' requests regarding trimming trees or plant life on their property. The Grantee shall be responsible for debris removal from any trimming activities. If such debris is not removed within twenty-four (24) hours, the City may, at its sole discretion, remove such debris and charge the Grantee for the cost of removal and disposal.

Section 14. Franchise Fee - City's Reservation of Rights. Pursuant to RCW 35.21.860, the City is currently precluded from imposing a franchise fee on a telephone business as defined in RCW 82.04.065, except for administrative expenses or any tax authorized under RCW 35.21.865. ELI has represented to the City that its operations as authorized under this franchise qualify as a telephone business as defined by RCW 82.04.065. Based on this representation, the City will not impose a franchise fee under the terms of this Ordinance. However, if the statutory prohibition on imposing a franchise fee is repealed, the City reserves its right to impose a franchise fee on ELI for purposes other than to recover its administrative expenses or taxes. The amount of any franchise fee imposed under this paragraph shall be as agreed by the parties and equal that charged to telecommunications providers.

Section 15. Authorized Activities. The franchise granted herein is solely for the operation of a telephone business as defined by RCW 82.04.065. The Grantee is required to

obtain a separate franchise for any operations that include activities other than providing signal carrying capacity.

Section 16. Indemnification.

- 16.1 ELI hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person, including claims by ELI's own employees to which ELI might otherwise be immune under Title 51 RCW, arising from injury, sickness, or death of any person or damage to property of which the negligent acts or omissions of ELI, its agents, servants, officers or employees in performing activities authorized by this franchise. ELI further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person (including claims by ELI's own employees, including those claims to which ELI might otherwise have immunity under Title 51 RCW) arising against the City solely by virtue of the City's ownership or control of the right-of-ways or other public properties, by virtue of ELI's exercise of the rights granted herein, or by virtue of the City's permitting ELI's use of the right-of-way or other public property based upon the inspection or lack of inspection of work performed by ELI, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of ELI, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any right-of-way or other public place in performance of work or services permitted under this franchise. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, ELI shall satisfy the same.
- 16.2 Inspection or acceptance by the City of any work performed by ELI at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.
- 16.3 In the event ELI refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and ELI's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of ELI, then ELI shall pay all of the City's costs and expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause as well as any judgment against the City.
- 16.4 Should a court of competent jurisdiction determine that this franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to

persons or damages to property caused by or resulting from the concurrent negligence of ELI and the City, its officers, employees and agents, ELI's liability hereunder shall be only to the extent of ELI's negligence. It is further specifically and expressly understood that the indemnification provided in Section 16 constitutes ELI's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 17. Insurance.

- 17.1 ELI shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to ELI, its agents or employees. ELI shall provide an insurance certificate, together with an endorsement naming the City, its elected officials, employees, agents, and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any facilities pursuant to this franchise, and such insurance shall evidence:
- 17.1.1 Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per accident for bodily injury and property damage; and
 - 17.1.2 Commercial General Liability insurance policy, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.
- 17.2 Any deductibles or self-insured retentions must be declared and approved by the City. Payment of deductible or self-insured retention shall be the sole responsibility of ELI.
- 17.3 The insurance obtained by ELI shall name the City, its elected officials, employees, agents, and volunteers as insureds with regard to the activities these persons perform by or on behalf of ELI. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. ELI's insurance shall be primary insurance for the City, its elected officials, employees, agents, and volunteers. Any insurance maintained by the City, its elected officials, employees, agents, and volunteers shall be excess of ELI's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

17.4 Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its elected officials, employees, agents, and volunteers.

Section 18. Abandonment of ELI's Facilities. No section of cable or portion of the facilities laid, installed, or constructed in the right-of-way by ELI may be abandoned by ELI without the express written consent of the City. Any plan for abandonment or removal of ELI's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work.

Section 19. Restoration after Construction.

19.1 ELI shall, after any abandonment approved under Section 18, or any installation, construction, relocation, maintenance, or repair of facilities within the franchise area, restore the right-of-way to at least the condition the same was in immediately prior to any such abandonment, installation, construction, relocation, maintenance or repair. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. ELI agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

19.2 If it is determined that ELI has failed to restore the right-of-way in accord with this Section, the City shall provide ELI 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 in accord with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the right-of-way. ELI is responsible for all costs and expenses incurred by the City in restoring the right-of-way in accord with this Section. The rights granted to the City under this paragraph shall be in addition to those otherwise provided by this franchise.

Section 20. Commencement of Construction. Initial construction of the facilities contemplated by this franchise ordinance shall commence no later than August 30, 1996, provided that such time limit shall not apply to delays caused by acts of God, strikes, eminent domain litigation, or other occurrences over which ELI has no control. ELI agrees to work in good faith with the City to develop the market demand to justify and create opportunities for ELI to install facilities necessary to service all commercial areas within the City within five (5) years of the effective date of this franchise.

Section 21. Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this franchise, ELI shall furnish a bond executed by ELI and a corporate surety authorized to do a surety business in the State of Washington, in a sum to be set and approved by the Director of Public Works as sufficient to ensure performance of ELI's obligations under this franchise. The bond shall be conditioned so that ELI shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this franchise, and to erect or replace any defective work or materials discovered in

the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

Section 22. Recourse Against Bonds and Other Security. So long as the bond is in place, it may be utilized by the City for the following purposes, including, but not limited to, reimbursement of the City by reason of ELI's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 11 of this Ordinance or to correct franchise violations not corrected by ELI after notice, and monetary remedies or damages assessed against ELI due to default or violations of the requirements of City ordinances:

- 22.1 In the event ELI has been declared to be in default by the City and if ELI fails, within thirty (30) days of mailing of the City's default notice, to pay the City any penalties, or monetary amounts, or fails to perform any of the conditions of this franchise, the City may thereafter obtain from the performance bond an amount sufficient to compensate the City for damages. Upon such withdrawal from the bond, the City shall notify ELI in writing, by First Class Mail, postage prepaid, of the amount withdrawn and date thereof.
- 22.2 Thirty (30) days after the City's mailing of notice of the bond forfeiture or withdrawal authorized herein, ELI shall deposit such further bond, cash, or other security, as the City may require, which is sufficient to meet the requirements of this Ordinance.
- 22.3 The rights reserved to the City with respect to any bond are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the City may have.

Section 23. Modification. The City and ELI hereby reserve the right to alter, amend or modify the terms and conditions of the franchise upon written agreement of both parties to such amendment.

Section 24. Remedies to Enforce Compliance. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel ELI to comply with the terms of this franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a breach or revocation of the franchise.

Section 25. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the location, elevation, and manner of construction and maintenance of any fiber optic cable or other facilities by ELI. ELI shall promptly conform with all such regulations, unless compliance would cause ELI to violate other requirements of law.

Section 26. Cost of Publication. The cost of the publication of this Ordinance shall be borne by ELI.

Section 27. Acceptance/Liaison. After the passage and approval of this Ordinance and within thirty (30) days after such approval, this franchise shall be accepted by ELI by its filing with the City Clerk an unconditional written acceptance thereof. ELI's written acceptance shall include the identification of an official liaison that will act as the City's contact for all issues regarding this franchise. ELI shall notify the City of any change in the identity of its liaison. Failure of ELI to so accept this franchise within said period of time shall be deemed a rejection thereof by ELI, and the rights and privileges herein granted shall, after the expiration of the thirty (30) day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 28. Survival. All of the provisions, conditions and requirements of Sections 4, Relocation of Telecommunications System Facilities; 8, Excavation And Notice Of Entry; 11, Dangerous Conditions; 16, Indemnification; 18, Abandonment of ELI's Facilities; and 19, Restoration After Construction, of this franchise shall be in addition to any and all other obligations and liabilities ELI may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to ELI for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of ELI and all privileges, as well as all obligations and liabilities of ELI shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever ELI is named herein.

Section 29. Most Favored Community. In the event that the Grantee enters into any agreement, franchise or other understanding with an other city, town, or county in the State of Washington and which provides terms or conditions more favorable to the city, town, or county than those provided in this franchise, such as, but not limited to, free or reduced fee hookups, access or service, the City of Shoreline shall be entitled to request at the City's option, and the Grantee shall be required to execute, an amendment to this franchise that incorporates the more favorable terms and conditions.

Section 30. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise Ordinance. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

Section 31. WUTC Tariff Filings, Notice Thereof. If the Grantee intends to file, pursuant to Chapter 80.28 RCW, with the Washington Utilities and Transportation Commission (WUTC), or its successor, any tariff affecting the City's rights arising under this franchise the Grantee shall provide the City with fourteen (14) days written notice.

Section 32. Assignment. This franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or

otherwise, without the written approval of the City. The City's approval shall not be unreasonably withheld or delayed. Any costs associated with the City's review of any transfer proposed by the Grantee shall be reimbursed to the City by the new prospective franchisee, if the City approves the transfer, or by the Grantee if said transfer is not approved by the City.

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

32.2 Except as otherwise provided herein, the Grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Grantee's company. Every change, transfer, or acquisition of control of the Grantee's company shall cause a review of the proposed transfer. In the event that the City denies its consent and such change, transfer or acquisition of control has been effected, the City may cancel the franchise. Approval shall not be required for mortgaging purposes or if said transfer or assignment is from the Grantee to another person or entity controlling, controlled by, or otherwise under common control with the Grantee.

Section 33. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

Electric Lightwave, Inc.
Legal Affairs Department
8100 NE Parkway Drive, Suite 150
Vancouver, WA 98662
Office 360-892-1 000
Fax 360-253-8934

City of Shoreline
Director of Public Works
17544 Midvale Ave. NE
Shoreline, WA 98133
Office 206-546-1700
Fax 206-546-2200

Section 34. Alternate Dispute Resolution. If the parties are unable to resolve disputes arising from the terms of this franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to an alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

Section 35. Entire Agreement. 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, shall be binding upon the parties upon execution and acceptance hereof.

Section 36. Effective Date. This ordinance shall take effect and be in full force five (5) days after the date of publication and upon acceptance by the Grantee. The City Clerk is hereby directed to publish this ordinance in full.

PASSED BY THE CITY COUNCIL ON JUNE 24, 1996.

Mayor Connie King

ATTEST:

Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

Janet Garrow
Interim City Attorney

Date of Publication: June 28, 1996
Effective Date: July 3, 1996