

**FRANCHISE AGREEMENT FOR
ELECTRIC LIGHTWAVE, INC.**

Clerk's C-98-58
Receiving R-98-61
Number 081
Date 7/28/98
City _____
Clerk _____

THIS FRANCHISE is given the 20th day of APRIL, 1998, by the City of Maple Valley, King County, Washington, a municipal corporation organized under the laws of the State of Washington, to Electric Lightwave, Inc., a Delaware corporation.

I. Recitals.

1. In order to maintain control over the use of City of Maple Valley right-of-ways by fiber optic and telecommunications providers operating within the City of Maple Valley, it is appropriate to enter into franchise agreements with such telecommunications providers.

2. Electric Lightwave, Inc., a competitive local exchange carrier (CLEC), has negotiated this Franchise Agreement with the City of Maple Valley, and this Franchise is acceptable to both parties.

II. Definitions. Where used in this franchise agreement (the "Franchise"), the following terms shall mean:

1. "Franchisee" means Electric Lightwave, Inc., a Delaware Corporation, and its respective successors and assigns.

2. "City" means the City of Maple Valley, a municipal corporation of the State of Washington.

3. "Franchise Area" means: any, every and all of the public roads, streets, avenues, alleys, highways, grounds and rights-of-way of the City as now laid out, platted, dedicated or improved; and any, every and all public roads, streets, avenues, alleys, highways, grounds, and rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended; provided, the Franchisee Area shall not include or convey any right to Franchisee to install facilities on or to otherwise use City owned or leased properties outside the Franchise Area.

4. "Facilities" means Franchisee's fiber optic cables, wires, lines, conduits, strands, communication and signal lines, vaults and all necessary or convenient facilities and appurtenances of franchisee, located in, upon, above or under the Franchise Area.

III. Facilities Within Franchise Area. The City does hereby grant to Franchisee the right, privilege, authority, and franchise to:

1. Construct, connect and install Facilities, maintain, repair, replace, enlarge, operate and use Facilities in, upon, above, under, along, across, and through the Franchise Area for purposes of providing telecommunication services; and

2. Charge and collect tolls, rates and compensation for such telecommunication and telephone services and such uses as authorized by the Federal Communications Commission (FCC) and/or the Washington Utilities and Transportation Commission (WUTC).

IV. Use — Maintenance of Facilities in Franchise.

1. Franchisee's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as to provide for safety of persons and property, not interfere with the free passage of traffic, in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City. Attempts shall be made to give priority to the use of those rights-of-way in the Franchise Area where construction of the Facilities can be coordinated with other City and private construction activities, will least impact the existing condition of the Franchise Area, will least impact traffic during construction, and will least impact adjacent neighborhoods during construction and after installation.

2. Whenever it shall be necessary for Franchisee to engage in any work within the Franchise Area, Franchisee shall apply for all necessary City permits and authorizations to do such work, and shall, except where expressly provided otherwise herein, comply with all requirements and conditions of this Franchise and such permits and authorizations, including but not limited to location restrictions, working hour restrictions, traffic control, and restoration, repair or other work to restore the surface of the Franchise Area, as nearly as practicable, to its condition prior to such work, or as otherwise required by the Community Development Department as a condition of the permit. Such permits and authorizations shall also be subject to any other applicable City ordinances, resolutions, codes, policies, and standards. After the work is completed, Franchisee shall provide to the City upon request and at no cost, a copy of all as-built plans, maps, and records of the Facilities. Nothing provided herein shall in any way limit the City's authority to otherwise exercise its police powers or other lawful authority.

3. Franchisee shall, after construction, maintenance or repair of its Facilities, restore any disturbed right-of-way to City specifications and standards generally applicable to all utilities utilizing City right-of-way. In the case of landscaping, restorations shall be at least to the original condition. All concrete encased recorded monuments which have been disturbed or displaced by such work shall be restored pursuant to City standards and specifications. Franchisee agrees to promptly complete restoration work and to promptly repair any damage caused by such work to the right-of-way at its sole cost and expense. Work involving excavation or related disturbance of the ground surface shall be accompanied by a performance bond in an amount equal to 1.3 times the bid value of the work. In addition, a maintenance bond in an amount equal to ten percent (10%) of the net bid value of the work shall remain in

effect for one (1) year following completion of the work. In the event Franchisee fails to restore the Franchise Area to its condition as required herein, the City reserves the right to make such repairs or restoration to such Franchise Area and bill Franchisee for the cost of such restoration, including the cost of labor and equipment. Franchisee shall pay such bill to the City within thirty (30) days. In the event of non-payment thereafter, Franchisee shall pay the City's reasonable attorneys' fees and other costs incurred in collecting such amount.

V. Facilities Availability. To the extent that Franchisee makes facilities and/or services available to other governmental entities within the State of Washington, Franchisee shall also make comparable facilities and services available to the City subject to similar terms and conditions unless otherwise prohibited or restricted by state or federal laws, regulations, or tariffs.

VI. Technological Changes. The City may elect to review, at intervals not less than three years, Franchisee's Facilities in light of reasonable City needs and interests. Should such review identify a needed change in facilities, franchisee shall meet and confer with representatives of the City.

VII. City Reservation of Rights. City further reserves unto itself the right and power at all times to exercise its police powers as specifically pertain to the time, manner, and placement of Franchisee's Facilities.

VIII. Relocation of Facilities.

1. Whenever the City undertakes (as a public works project or causes to be undertaken at City expense) the construction of any public works improvement within the Franchise Area and such public works improvement necessitates the relocation of Franchisee's then existing Facilities within the Franchise Area, the City shall:

A. Provide Franchisee written notice requesting such relocation no later than 90 days prior to the City's commencement of activities requiring such relocation; and

B. Provide Franchisee with copies of pertinent portions of the City's plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, Franchisee shall relocate such Facilities within the Franchise Area as designated by the Director of Public Works in accordance with the City's Public Works Standards at Franchisee's sole expense.

2. Whenever any person or entity, other than the City, requires the relocation of Franchisee's Facilities to accommodate the work of such person or entity within the Franchise Area; or, the City requires any person or entity to undertake work (other than work undertaken as a public works project or at the City's cost and expense) within the

Franchise Area and such work requires the relocation of Franchisee's Facilities within the Franchise Area, then Franchisee shall have the right as a condition of any such relocation to require such person or entity to:

A. Make payment to Franchisee, at a time and upon terms acceptable to Franchisee, for any and all reasonable costs and expenses incurred by Franchisee in the relocation of Franchisee's Facilities; and

B. Indemnify and hold Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Franchisee's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Franchisee's Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Franchisee's Facilities.

3. Any condition or requirement imposed by the City upon any person or entity, other than Franchisee (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of Franchisee's Facilities within the Franchise Area shall be a required relocation for the purposes of Paragraph B of this section.

4. Nothing in this Section VIII "Relocation of Facilities" shall require Franchisee to bear any cost or expense in connection with the location or relocation of any Facilities then existing under benefit of easement or other recorded rights or licenses and not within the Franchise Area.

IX. Undergrounding of Facilities. Franchisee acknowledges that the City will adopt, at some time in the future, a master telecommunications ordinance that will require undergrounding of facilities. Franchisee agrees to comply with the requirements of such undergrounding regulations which may later be imposed.

X. Reimbursement of Costs/Franchise Fees.

1. Pursuant to RCW 35.21.860, Franchisee shall reimburse and pay to the City the amount of actual reasonable, customary, and documented administrative expenses incurred by the City which are directly related to the receipt and approval of a permit, license and franchise, to the inspection of plans and construction, and to the preparation of documents and statements prepared pursuant to Chapter 43.21C of the RCW. As such expenses are incurred by the City, the City shall submit to Franchisee statements/billings for such expenses. Franchisee shall make payment to the City in reimbursement of such expenses within thirty (30) days of the receipt of such statements/billings. In the event of non-payment thereafter, Franchisee shall pay the City's reasonable attorneys' fees and other costs incurred in collecting such amount.

2. Also pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee on a telephone business as defined in RCW 82.04.065. Franchisee hereby warrants that its operations, as authorized under this Franchise, are those of a telephone business as defined in RCW 82.04.065. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. However, the City hereby reserves its right to impose a franchise fee on Franchisee for purposes other than to recover its administrative expenses or taxing, if Franchisee's operations, as authorized by this Franchise, change so that not all uses of the Franchise are those of a telephone business as defined in RCW 82.04.065; or, if statutory prohibitions on the imposition of such fees are rescinded or amended. In the event of a change of franchise use, the City reserves its right to require that Franchisee obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate Franchisee's operations, as allowed under applicable law.

XI. Indemnification. Franchisee shall indemnify and hold the City, its elected and appointed officials, employees, and agents (collectively referred to as "City"), harmless from any and all claims, actions, injuries, demands, liabilities, losses, costs, and damages (collectively referred to as "damages") made against City on account of bodily injury to persons or property, to the extent such damages are caused by the negligence or willful misconduct of Franchisee or its agents, servants, independent contractors, or employees in exercising the rights granted Franchisee in this Franchise; provided, however, that in the event any claim for such damages be presented to or filed with the City, the City shall promptly notify Franchisee thereof, and Franchisee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim, provided further, that in the event any suit or action is filed against the City based upon any such claim or demand, the City shall likewise promptly notify Franchisee thereof, and Franchisee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

XII. Termination. If Franchisee shall fail to comply with the provisions of this Franchise, the City may serve upon Franchisee a written order to so comply within thirty (30) days from the date such order is received by Franchisee. If Franchisee is not in compliance with this Franchise after expiration of the thirty (30) day period, the City may declare an immediate termination of this Franchise, provided however, if any failure to comply with this Franchise by Franchisee cannot be corrected with due diligence within the thirty (30) day period (Franchisee's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then Franchisee may apply to the City for an extension of time within which Franchisee may so comply, the City's approval of any extension of time applied for by Franchisee not to be unreasonably withheld.

XIII. Nonexclusive Franchise. This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit or prevent the City from granting other and further franchises over, upon, and along the Franchise Area. This Franchise shall not prohibit or prevent the City from using the Franchise Area or

affect the jurisdiction of the City or any of its powers, rights or privileges over the same or any part thereof. However, any such future Franchisee shall (a) not install new facilities that unreasonably interfere with Franchisee's Facilities or operations, and (b) if unreasonable interference occurs, City shall require future Franchisee to immediately take all steps necessary to eliminate such interference at its sole cost and expense.

XIV. Franchise Term. This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Franchise, with up to two (2) ten-year term extensions thereafter, as follows: the term extensions would be automatic unless, not less than ninety (90) days prior to the termination of the current terms or extension, either side gives notice of its intention to terminate or renegotiate the terms of the Franchise. It is further provided, however, that Franchisee shall have no rights under this Franchise nor shall Franchisee be bound by the terms and conditions of this Franchise unless Franchisee shall, within thirty (30) days after the effective date of the Franchise as defined in Section XXVI herein, file with the City its written acceptance of the Franchise.

XV. Assignment. Franchisee may assign its rights, benefits, and privileges in and under this Franchise, subject to and conditioned upon approval of the City, which approval will not be unreasonably withheld or delayed. Any assignee shall, no later than thirty (30) days of the date of any proposed assignment, file written notice of intent to assign the Franchise with the City together with the assignee's written acceptance of all terms and conditions of the Franchise and promise of compliance. Notwithstanding the foregoing, Franchisee shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits, and privileges in and under this Franchise to the Trustee for its bondholders and assign to any subsidiary, parent, affiliate or company having common control with Franchisee so long as notice of same is provided to the City and provided Franchisee remains fully liable to the City for compliance with all the terms and conditions hereof until such time as the City shall consent to such assignment as provided above.

XVI. Insurance. Franchisee shall obtain and keep in force during the term of the Franchise commercial general liability insurance policies with insurance companies which initially have an A. M. Best's rating of "A-VI" or better, and who are approved by the insurance commissioner of the State of Washington pursuant to Title 48 RCW.

Prior to the execution of the Franchise, Franchisee shall purchase a commercial general liability insurance policy meeting the requirements set forth herein. Franchisee shall file with the City a copy of the policy addendum declaring the City an additional insured, and a certificate of insurance evidencing such policies to be in force. The certificate shall be accompanied by such policy endorsements as are necessary to comply with the requirements set forth herein. Franchisee's failure to fully comply with the requirements regarding insurance will be considered a material breach of the Franchise and shall be cause for termination of the Franchise pursuant to Section XII herein.

Such insurance shall name the City as an additional insured and shall provide coverage to the City and its elected and appointed officials, employees, agents and professional consultants, including its consulting engineers and attorney. The coverage so provided shall protect against claims from bodily injuries, including accidental death, as well as claims for property damages which may arise from any act or omission of Franchisee, its subcontractors, agents, or employees.

The insurance shall be maintained in full force and effect at Franchisee's sole expense throughout the term of the Franchise.

The City shall be given at least forty-five (45) days written notice of cancellation, non-renewal, material reduction or a material modification of such insurance coverage. Such notice to the City shall be by certified mail.

The coverages provided by Franchisee's insurance policies shall be primary to any insurance maintained by City except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by City that might relate to this Franchise shall be in excess to Franchisee's insurance and shall not contribute with or to it.

Franchisee's insurance policies shall protect each insured in the same manner as though a separate policy has been issued to each. Inclusion of more than one insured shall not affect the rights of any insured with respect to any claim, suit or judgment made or brought by or for any other insured or by or for any employee of any other insured.

Franchisee's insurance policies shall not contain deductible or self-insured retentions in excess of \$10,000 unless approved by City in writing.

The provision of the coverage in the stated amount shall not be construed to relieve Franchisee from liability in excess of such limits.

Franchisee shall maintain Worker's Compensation Insurance and/or Longshore and Harbor Workers insurance as required by state or federal statute. Franchisee's Labor and Industries account number shall be noted on the certificate of insurance.

The contractual coverage of Franchisee's insurance policies shall be sufficiently broad enough to ensure the provisions of the indemnity/hold harmless clause of the Franchise subject to the terms and conditions of the insurance policies.

Types and limits of insurance required:

1. Commercial General Liability
\$2,000,000 combined Single Limit Bodily Injury and Property Damage
Employees and Volunteers as Additional Insured
Premises and operations

Broad form property damage including underground, explosion and collapse hazard (XCU)
Products completed operations (through guaranty period)
Blanket Contractual
Subcontractors
Personal Injury with EE exclusion deleted
Employers liability (Stop gap)

2. Automobile Liability
\$1,000,000 per accident bodily injury and property damages liability, covering any owned automobile, hired automobiles, non-owned automobile
3. Umbrella Liability
\$2,000,000 per occurrence
\$2,000,000 aggregate

XVII. Safety.

1. Franchisee shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any work therein. The services of the City's or City's consultant personnel in conducting construction review of Franchisee's work relating to the Franchise is not intended to include review of the adequacy of Franchisee's work methods, equipment, scaffolding or trenching, or safety measures in, on or near such Franchise Area or job site. Franchisee shall provide safe access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

2. Franchisee shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes. Franchisee's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW.

XVIII. Arbitration. In the case of any dispute or question arising between the parties that could result in the award of monetary damages to either party, the parties shall submit the dispute or question to binding arbitration; provided, that this arbitration provision shall not apply to any dispute or question involving decisions by the City concerning public policy. Unless otherwise provided by law, the parties may agree on one arbitrator. If the parties cannot agree on one arbitrator, there shall be three arbitrators, one appointed in writing by each party and the third chosen by the two named arbitrators. The decision of the arbitrator under this paragraph shall be final and binding on the parties.

XIX. Attorneys' Fees. In the event that either party commences litigation or arbitration proceedings against the other party relating to the performance or alleged breach of this Franchise, the prevailing party shall be entitled to all costs, including reasonable

attorneys' fees incurred, relating to such litigation, including those incurred in the event of any appeal.

XX. Forum. Any litigation filed by either party arising out of or relating to this Franchise shall be filed in King County Superior Court.

XXI. Franchise Expiration. In the event the use of any Franchise property is permanently discontinued or no Franchise has been obtained therefor upon expiration of this Franchise, or within six (6) months after any termination of this Franchise, Franchisee shall promptly remove from the Franchise Area all of its Facilities at Franchisee's sole cost and expense except those installations that the City may permit to be temporarily or permanently abandoned. If Franchisee is unable to effect removal within that six month period due to unavoidable delays or events beyond its control (including, without limitation, Acts of God, labor strikes, or the failure or delay of a governmental jurisdiction to issue permits necessary to effect such removal), then Franchisee may apply to the City for an extension of time to effect such removal, the City's approval of any extension of time not to be unreasonably withheld.

XXII. Security Device to Ensure Performance. Franchisee shall, within ten (10) days after its acceptance of this Franchise, file with the City Planning/Building/Public Works Department and at all times thereafter maintain in full force and effect a bond effective for a one-year period, with automatic renewals unless otherwise canceled upon thirty (30) days written notice to the City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise, then there shall be recovered jointly and severally from the principal and surety of such bond any damages suffered by City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of facilities hereinabove described, up to the full amount of the said bond, said condition to be a continuing obligation for the duration of this Franchise and thereafter until Franchisee has discharged all of its obligations within the City which may have arisen from the acceptance of such Franchise by Franchisee or from its exercise of any such privilege herein granted. The bond shall be in the amount of Fifteen Thousand Dollars (\$15,000.00). In the event of substantial change in volume of street space occupied by Franchisee's Facilities, the City may permit or may require a corresponding change in the amount of such security device or escrow account.

XXIII Franchise Subject to Future Ordinance. Franchisee acknowledges that the City may develop rules, regulations, and specifications for the use of the public rights-of-way and/or public facilities which shall be applicable to-all users of said rights-of-way and public facilities, and such rules, regulations and specifications, when finalized, shall govern Franchisee's activities hereunder as if they were in effect at the time this Franchise was executed by the City; PROVIDED, however, that in no event shall such rules, regulations or specifications (i.) materially interfere with or otherwise adversely affect Franchisee's right to install Facilities or to transmit or receive radio signals from Equipment installed pursuant to and in accordance with this Franchise; (ii.) authorize Franchisee to install or erect personal wireless service facilities, but may only authorize installation of minor facilities or antennae contemplated hereunder; or (iii) increase

Franchisee's financial obligations under this Franchise or impose new financial obligations not already contemplated by this Franchise.

XXIV. Miscellaneous.

1. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

2. Franchisee agrees, as a condition of the granting of this Franchise, that it shall comply with all applicable laws of the State of Washington, and shall pay, in a timely manner, all taxes, fees and costs legally imposed on Franchisee in connection with the activities, properties, and operations of the Franchise.

XXV. Severability. If any section, sentence, clause or phrase of this Franchise 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. 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.

XXVI. Effective Date. This franchise shall take effect and be in full force on the 20th day of April, 1998.

XXVII. Notice. Any notice or information required or permitted to be given to the parties under this Franchise Agreement may be sent to the following addresses unless otherwise specified.

City of Maple Valley
P.O. Box 320
Maple Valley, WA 98038

Electric Lightwave, Inc.
ATTN: Legal Department
8100 NE Parkway Dr.
Suite #150
Vancouver, WA 98662

Electric Lightwave, Inc.
ATTN: Senior OSP Engineer
1218 - 3rd Ave. Suite 915
Seattle, WA 98101

AUTHORIZED BY THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY,
WASHINGTON this ___ day of _____, 1998.

CITY OF MAPLE VALLEY


Mike Cecka, City Manager

ATTEST:

Irvalene Moni, City Clerk

APPROVED AS TO FORM:

_____
Lisa Marshall, City Attorney

UNCONDITIONAL ACCEPTANCE

The undersigned, on behalf of **ELECTRIC LIGHTWAVE, INC.**, hereby accepts all of the rights and privileges of the above granted franchise, expressly subject to all the terms, conditions, and obligations contained therein.

DATED: 27TH, APRIL, 1998.

ELECTRIC LIGHTWAVE, INC.

By: _____
Its: VP - RETAIL