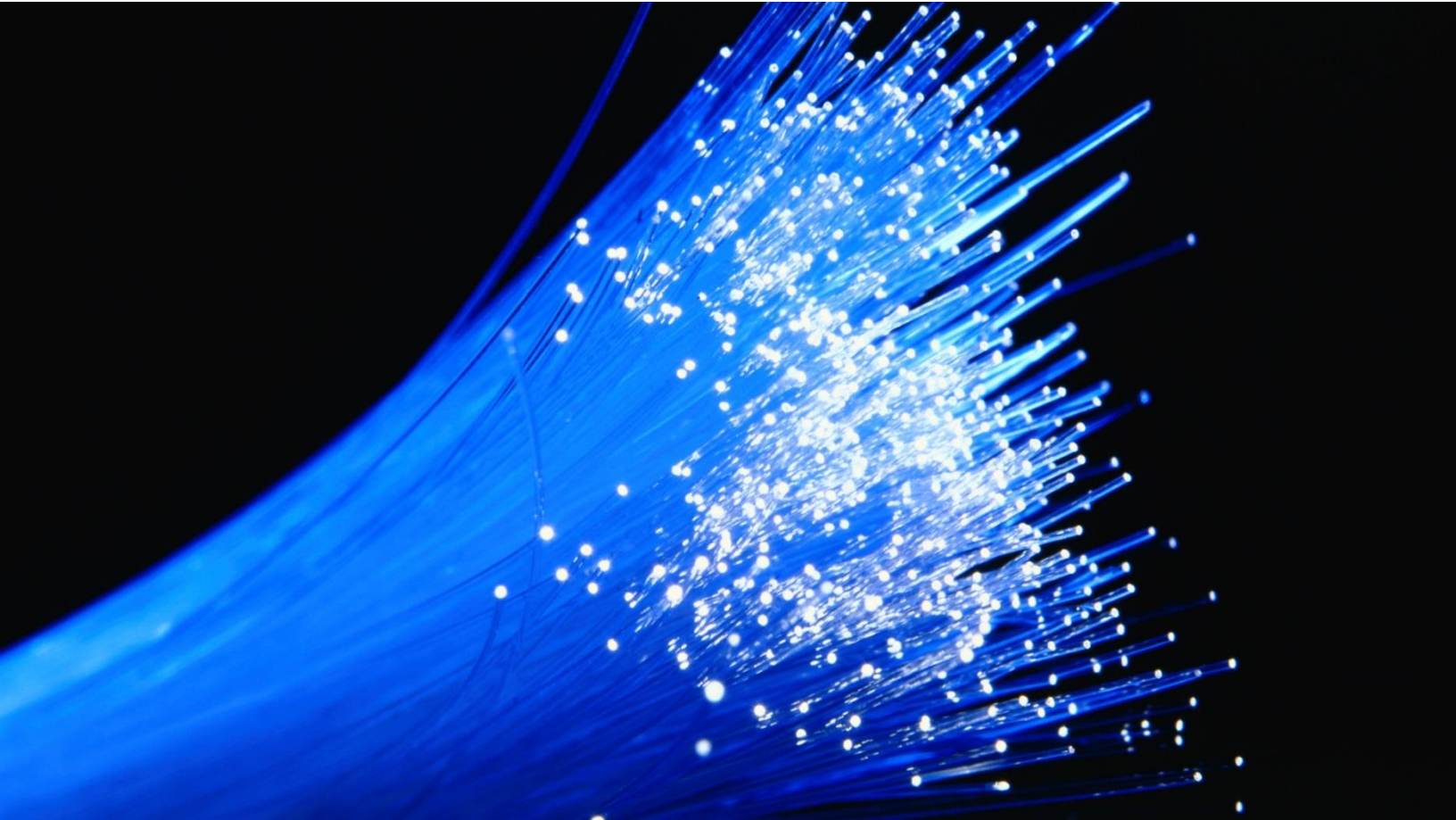


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## **Alignment of Click! Policy Goals with Partner Proposals**

**Prepared for the City of Tacoma and Tacoma Public Utilities  
March 2019**

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## 1 Introduction

The City of Tacoma and Tacoma Public Utilities (TPU) currently are considering proposed term sheets from two potential partners that propose to lease the Click! assets: Wave Broadband and Rainier Connect. This report provides background on the process that brought the City and TPU to this point, and summarizes the proposals' alignment with the policy goals adopted by the Tacoma City Council and TPU Utility Board for Click!.<sup>1</sup>

## 2 Summary and Recommendation

We recommend the City and TPU proceed to detailed IRU negotiations with Rainier Connect.

While both term sheets meet and exceed the City and TPU's policy goals and represent potentially optimal market outcomes, Rainier Connect offers far higher compensation to the City and TPU, a stronger opportunity for TPU oversight of any sale or transfer of the IRU, and modestly better terms with respect to customer service and low-income affordability.

Even with our recommendation to negotiate first with Rainier Connect, we note that both term sheets represent substantial achievements: They both **meet or exceed the City and TPU's policy goals**, and they both represent an **unprecedented private sector commitment to net neutrality, privacy, non-transfer to an entity with substantial market share, and low-income affordability**. In short, the terms sheets represent a significant achievement that I believe will be widely recognized among communities that care about these issues, and that will thus serve as models for other communities.

Both entities are stable, capable competitors. They both provided financial data to demonstrate their capacity to meet IRU obligations, and both have solid technical and business track records. In addition, both Wave Broadband and Rainier Connect have long histories of providing competitive services—and both are headquartered in the Tacoma/Seattle region, with substantial local operations.

Wave is a large, private equity-backed, enterprise that is part of the sixth-largest broadband company in the United States. As such, it should easily be able to scale to meet the obligations

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<sup>1</sup> The Council and Board in early 2018 adopted a list of 12 goals designed to reflect policy success over the life of Click!'s operations. Those goals formed the basis of the RFI /Q process and of all subsequent discussions with the respondents. These goals are: Public ownership of assets; equitable access; low-income affordability; net neutrality; open access; competition; safeguard City and TPU use; financial stability; economic development & educational opportunity; job options for Click! staff & protection of intellectual property; consumer privacy; and consumer goodwill.

contemplated in the term sheet and thus represents a very low risk proposition for the partnership.

Rainier Connect is a smaller, family-owned enterprise with far less scale and resources, and thus entails some more risk for TPU and the City than would a partnership with Wave. Rainier Connect does appear to have the capability to scale up operations to meet its proposed obligations.

Even though Wave's scale and capacity offer lower risk in execution, there is a higher likelihood of a sale or transfer of Wave's IRU interest in Click! to another company than there would be with Rainier Connect, which has been owned by the same family since its founding. In addition, Rainier Connect offered TPU far more robust terms for oversight and approval of the sale or transfer of the IRU. As a result, a partnership with Rainier Connect will mean that the IRU is less likely to change hands and, in the event it does, TPU will have more input and oversight of the new partner.

While there are many areas of similarity between the terms negotiated with Wave Broadband and Rainier Connect, there also are a few key differences between the two term sheets (which are discussed in more detail in Section 4, below):

1. **Financial stability:** Rainier Connect proposes to pay the City a lease fee of \$2.5 million per year, increasing to \$3 million annually in year 6; in contrast, Wave proposes to pay a net lease fee of \$1 million per year (i.e., \$1.5 million, less \$500,000 for electricity costs).
2. **Low-income affordability:** Rainier Connect participates in the federal Lifeline subsidy program, which reimburses qualified low-income customers \$9.25 per month for broadband services; Wave does not participate in the Lifeline program.
3. **Competition:**
  - a. Rainier Connect commits not to sell its lease interest in Click! to any entity with more than 25 percent market share, while Wave commits not to sell to any entity with more than 33 percent market share.
  - b. Rainier Connect agreed that TPU can decline a transfer of IRU interests based on a violation of any of the 12 policy principles or based on the legal, technical, or financial capacity of the transferee; Wave agreed that TPU can decline a transfer based on the legal, technical, or financial capacity of transferee.
4. **Consumer goodwill:** Rainier Connect offers exceptional customer service guarantees, while Wave offers good customer service guarantees.

### 3 Background and Process

The City and TPU have undertaken a multi-year, multi-stakeholder process to strategically plan for Click!’s future that is a model for good public process – open, competitive, and community-focused. The process has included extensive stakeholder outreach, community engagement, transparency, and competition. All entities had opportunity to submit ideas and proposals for the partnership. The submitted proposals were made publicly available early in the process and reports and recommendations were presented in open meetings so the community has known throughout the process what is contemplated.

#### 3.1 The RFI/Q Process

From 2017 to mid-2018, CTC, as consultant to the City and TPU, worked with City and TPU staff to conduct an evaluative process to consider potential paths forward for Click!—focused on meeting two key requirements: First, identifying the best means to achieve policy goals into the future, and second, identifying the best means to cover Click!’s operating costs. (TPU had also conducted extensive analysis of these and other options in the two years preceding CTC’s involvement, and CTC had opportunity to review those analyses).

Over the course of the year, we considered the benefits and challenges of multiple models, including:

- Status quo with additional efficiencies
- Municipal ISP (“All In”)
- Utility model (tax-supported)
- Public-private collaboration

In 2018, to test the collaboration model, the City and TPU issued a request for information and qualifications (RFI/Q) to gather input and proposals from likely partners. Of the five responses the City and TPU received, two (from Wave Broadband and Yomura Fiber) aligned with the 12 policy goals. The remaining three responses were fundamentally non-aligned with the policy goals.

Following in-person meetings and the delivery of written feedback, the three non-responsive proposers were offered the opportunity to revise their proposals. Only one of the proposers chose to revise its approach:

- Rainier Connect revised its proposal to align with the City and TPU’s policy goals by taking on financial risk it had not originally proposed to undertake
- Wyverd declined to revise its proposal and notified us that it would not participate in negotiations unless it would be able to buy Click! outright

- Advanced Stream did not substantially revise its proposal, which, like its earlier proposal, involved assumption of all risk by the City and TPU, even as Advanced Stream gained full control over the network. In our view, this approach resulted in a substantial increase in financial risk to the City and TPU relative to the status quo

### 3.2 Transitioning from Information Gathering to Negotiations

In August 2018, the Council and Board directed the Click! team (made up of representatives of CTC, TPU, and the City) to test the responsive proposals through negotiations. The twin goals of the negotiations were to develop an agreement that would meet the policy goals and shift financial risk to the partner.

In parallel, throughout the fall of 2018, the City and TPU facilitated a formal stakeholder engagement process—consulting with community members, Click! customers, and Click! employees. Through that outreach process, the stakeholders affirmed all of the policy goals, and noted three key goals as their top priorities:

- Public ownership
- Competition
- Low-income affordability

### 3.3 Negotiations Resulted in Two Finalists with Technical Capacity, Financial Capacity, and Willingness to Meet the Policy Goals

From fall 2018 to the present, the negotiating team engaged in discussions with the three responsive finalists (i.e., the two bidders that originally submitted responsive proposals and a third that revised its initial proposal). As of the date of this memo, the status of each is as follows:

1. **Yomura Fiber:** Promising discussions ended because of incompatibility regarding control of fiber to meet power utility security regulations
2. **Wave Broadband:** Extensive discussions led to a completed term sheet
3. **Rainier Connect:** Extensive discussions led to a completed term sheet

## 4 Comparison of Wave Broadband and Rainier Connect Term Sheets

The following discussion and tables highlight the key points of each term sheet, arranged according to the Council and Board’s 12 policy goals. Bold text in the tables represent notable differences between the two sets of terms.

#### 4.1 Public Ownership of Assets

Both term sheets contemplate a 20-year IRU with two 10-year extensions possible, assuming the partner company is in compliance (Table 1). Both companies made commitments to upgrade the Click! assets throughout the network footprint to DOCSIS 3.1 technology, which is the state-of-the-art in cable operations. Within 36 months, both would upgrade substantially all of the Click! footprint (including the entire City of Tacoma), and the network would be gigabit-capable throughout.

Both companies also committed that the Click! assets would be owned by TPU—including not just the existing assets but also any assets the partner upgrades with its own capital within the Click! footprint. In other words, TPU will not only retain ownership of the existing network but will also take ownership of all upgrades the partner makes to the network with its own capital over the entire period of the partnership.

Table 1: Comparison of Wave and Rainier Connect Term Sheets – Public Ownership of Assets

Wave	Rainier Connect
20-year IRU with two 10-year extensions possible	20-year IRU with two 10-year extensions possible
Upgrade to DOCSIS 3.1 (gigabit speeds) to minimum of 75% within 24 months and minimum of <b>95%</b> within 36 months	Responsible for <b>ubiquitous</b> upgrades to DOCSIS 3.1 within 36 months
TPU will own both existing and all new & upgraded outside plant assets in Click! service area	TPU will own both existing and all new & upgraded outside plant assets in Click! service area

#### 4.2 Equitable Access

Both companies have committed to substantially the same provisions—that they will offer like services at like prices across the service area, and that they will offer services on an equitable basis (Table 2). Everyone within the Click! service area will have access to the same service at the same prices. Neither company would be able to selectively choose not to serve a given area.



Table 2: Comparison of Wave and Rainier Connect Term Sheets – Equitable Access

Wave	Rainier Connect
Will offer like services, at like prices, across entire Click! service area	Will offer like services, at like prices, across entire Click! service area
Will not decline service to any customer in good standing and services will be available on equitable basis throughout Click! service area	Will not decline service to any customer in good standing and services will be available on equitable basis throughout Click! service area

### 4.3 Low-Income Affordability

The terms for low-income affordability are somewhat similar between the two companies, and Wave made a strong commitment—but Rainier Connect’s offer was stronger in a significant way (Table 3). Rainier Connect participates in the federal Lifeline program, which offers low-income Americans a \$9.25 monthly subsidy to purchase broadband services. That subsidy, added to Rainier Connect’s commitment to offer substantially reduced-cost broadband service to households eligible for TPU’s electric service low-income program, represents a significant benefit to low-income residents for the duration of the long-term agreement.

Wave also agreed to offer a substantially reduced-cost broadband service and already does so in other markets where it serves residential customers. However, Wave does not participate in the federal Lifeline program, which would further subsidize service to lower-income members of the community.

Both companies also committed to providing free wired or Wi-Fi broadband service to at least 30 locations within the Click! service area that serve low-income members of the community, such as food banks and homeless shelters. The locations will be determined in collaboration with TPU, and the commitment will continue for the entirety of the partnership.

Table 3: Comparison of Wave and Rainier Connect Term Sheets – Low-Income Affordability

Wave	Rainier Connect
Will offer substantially reduced-cost broadband service to households eligible for TPU electric service low-income program	Will offer substantially reduced-cost broadband service to households eligible for TPU electric service low-income program
Will provide free wired or Wi-Fi service to at least 30 locations within Click! service area that provide services to low-income members of the community	Will provide free wired or Wi-Fi service to at least 30 locations within Click! service area that provide services to low-income members of the community
	Will offer federal <b>Lifeline subsidy</b> (\$9.25 per month) to qualified low-income consumers

#### 4.4 Net Neutrality

These provisions are almost identical (Table 4). Both companies are making important and substantial commitments to being net neutral for the duration of the agreement. Given the uncertain regulatory status of net neutrality nationally, **this is an important outcome that secures the critical policy of net neutrality for Tacoma for decades to come.**

Table 4: Comparison of Wave and Rainier Connect Term Sheets – Net Neutrality

Wave	Rainier Connect
Will operate network on neutral basis	Will operate network on neutral basis
Customers will be fully informed about services	Customers will be fully informed about services
Customers will have access to internet content, applications, and services without intentional degradation	Customers will have access to internet content, applications, and services without intentional degradation
No blocking of lawful websites	No blocking of lawful websites
No discrimination against lawful network traffic	No discrimination against lawful network traffic
No paid prioritization	No paid prioritization

#### 4.5 Open Access

Open access has been an area of real innovation in Tacoma, which has enabled strong levels of competition, thus securing the important goals of open access to benefit consumers through the benefits of competition. Both companies made a commitment that they will provide the same policies and practices within the Click! service area as they do in terms of their wholesaling of services in other markets (Table 5). These terms secure the goal of competition and choice for the community, even though the form of wholesaling that TPU’s eventual partner selects may not be identical or even similar to the current form of open access utilized by Click!.

Table 5: Comparison of Wave and Rainier Connect Term Sheets – Open Access

Wave	Rainier Connect
Will provide wholesale services consistent with its practices and policies in other markets	Will provide wholesale services consistent with its practices and policies in other markets

## 4.6 Competition

Both term sheets preserve Click!’s remarkable track record of creating competition in the market (Table 6). They do so not only by enabling a capable partner to operate the Click! assets and compete with Comcast and CenturyLink in the Click! service area, but also by restricting the sale or transfer of the partner’s rights to use the Click! network.

The term sheet with Rainier Connect commits that the company it will not sell or transfer its rights to use the Click! assets without TPU’s agreement—and TPU can decline based on concerns that a new partner will violate any of the 12 principles, or based on a lack of financial, legal, or technical capacity of the entity. Further, Rainier Connect committed not to sell to an entity that has 25 percent or more market share in data services in the Click! service area. This combination represents a remarkable level of oversight and control over who may become a successor partner.

The term sheet with Wave is also strong relative to what we see elsewhere in the country, but not as strong as the Rainier Connect terms. Wave committed to TPU being able to decline the transfer or sale of its rights to use the Click! assets based on the financial, legal, or technical capacity of the entity. And Wave committed not to sell to an entity that has 33 percent or more market share in data services in the Click! service area.

These terms secure the provisions of the agreement for the entirety of the agreement (i.e., 20 years, 30 years, or 40 years, depending on extensions). Thus, **while the industry will change in ways that we cannot anticipate over the next 20 to 40 years, TPU will have input and oversight into who might be its successor partner.** And the agreement preventing sales to entities that already have a large market share **will enable TPU to restrict the potential of an incumbent to acquire the rights to operate Click! and grow market share to a non-competitive level.**

Table 6: Comparison of Wave and Rainier Connect Term Sheets – Competition

Wave	Rainier Connect
Will not sell, grant, or transfer IRU without TPU’s agreement; TPU can decline <b>based only on legal, technical, &amp; financial capacity</b> of entity to meet IRU obligations	Will not sell, grant, or transfer IRU without TPU’s agreement; <b>TPU can decline if transfer violates any of the 12 policy principles or based on legal, technical, &amp; financial capacity</b> of entity to meet IRU obligations
Will not sell to any entity that has residential fixed data market share of <b>33%</b> or more in Click! service area	Will not sell to any entity that has residential data market share of <b>25%</b> or more in Click! service area
Will require assignee to comply with IRU terms, including 12 policy goals	All IRU terms transfer to purchasing entity

#### 4.7 Safeguard City and TPU Use

The term sheets are identical, and secure all of the City and TPU’s requirements for ensuring the security of electric assets (Table 7). Under both term sheets, Tacoma Power will maintain all fiber assets on routes it considers to be critical to the security of its electric assets and operations. Under both term sheets, the partner company will maintain all coaxial cable and any fiber on “non-critical” routes (i.e., routes that are not critical to TPU operations). In addition, both TPU and the City of Tacoma own and operate considerable fiber independent of the Click! fiber; none of that internal-use fiber is subject to the partnership and only the Click! fiber will become available to the partner.

Table 7: Comparison of Wave and Rainier Connect Term Sheets – Safeguard City and TPU Use

Wave	Rainier Connect
IRU does not include fiber used by Tacoma Power or CityNet	IRU does not include fiber used by Tacoma Power or CityNet
Tacoma Power will maintain critical fiber routes	Tacoma Power will maintain critical fiber routes
Wave will maintain coaxial cable	Rainier Connect will maintain coaxial cable
Wave will maintain new fiber on non-critical routes	Rainier Connect will maintain new fiber on non-critical routes

#### 4.8 Financial Stability

There are considerable differences between the two term sheets in regard to compensation terms (Table 8).

Wave proposes to pay TPU \$1.5 million per year during the IRU term—including \$500,000 to be applied to Wave’s electricity cost. TPU’s annual net revenue would thus be \$1 million.

Rainier Connect will pay \$2.5 million in the first year, increasing incrementally to \$3 million over the first five years, and then remaining at \$3 million annually for the duration of the agreement. TPU’s annual net revenue will be \$2.5 million in year one, increasing to \$3 million by year five.

In addition, both term sheets include commitments to making \$1.5 million annual investments in the Click! assets in the Click! service area. The companies have committed to different language about the standards to which they will upgrade the network over time, but both terms represent considerable investment in the Click! service area.

Under the term sheets, all dollar amounts noted here will be adjusted annually for inflation.

Table 8: Comparison of Wave and Rainier Connect Term Sheets – Financial Stability

Wave	Rainier Connect
Will pay TPU approximately <b>\$1.5 million</b> annually each year of the IRU term, of which <b>\$500,000</b> will be applied to Wave’s electricity costs	Will pay TPU <b>\$2.5 million</b> in the first year, increasing incrementally to <b>\$3 million</b> annually beginning in year six
Net revenue to TPU: <b>\$1 million</b>	Net revenue to TPU: <b>\$2.5 million, increasing to \$3 million</b> over the first five years
Will invest \$1.5 million each year to deliver service that <b>meets or exceeds federal definition of broadband</b>	Will invest \$1.5 million each year to <b>maintain state-of-the-art network</b>

#### 4.9 Economic Development & Educational Opportunity

Both companies proposed to work with the TPU to develop internship programs centered around the network operations (Table 9). Both also committed to working with TPU to support economic development efforts related to using broadband to attract new businesses to the City.

Table 9: Comparison of Wave and Rainier Connect Term Sheets – Economic Development & Educational Opportunity

Wave	Rainier Connect
Will work with TPU to develop internship program to provide work opportunity and training for students and residents of Tacoma, including veterans	Will work with TPU to develop internship program to provide work opportunity and training for students and residents of Tacoma, including veterans
Will work with TPU to assist City economic development department to support efforts to attract businesses	Will work with TPU to assist City economic development department to support efforts to attract businesses

#### 4.10 Job Options for Click! Staff

Both companies committed to making good-faith efforts to interview and hire Click! employees (Table 10).

Table 10: Comparison of Wave and Rainier Connect Term Sheets – Job Options for Click! Staff

Wave	Rainier Connect
Will make good-faith effort to interview Click! employees interested in employment	Will make good-faith effort to interview Click! employees interested in employment
Will potentially make job offers prior to execution of the IRU	Will potentially make job offers prior to execution of the IRU

### 4.11 Consumer Privacy

With regard to consumer privacy, both companies agreed to comply with the City Council’s resolution around data privacy on the Click! network—prohibiting the collection or sale of personal information from a consumer without express written approval (Table 11).

While the FCC in 2016 acted to protect consumer privacy with respect to ISPs, that action was reversed by Congress in 2017 under the Congressional Review Act, and while Congress is currently considering privacy legislation, that legislation is likely to apply to platform companies (such as Facebook) rather than to ISPs. Given this regulatory uncertainty, which is likely to continue for some period of time, the commitments in the term sheets mean that **consumers in the Click! service area will have a more robust guarantee regarding privacy than consumers almost anywhere else in the United States.**

Table 11: Comparison of Wave and Rainier Connect Term Sheets – Consumer Privacy

Wave	Rainier Connect
Will comply with City Council Resolution No. 39702, which prohibits ISPs that serve as retail broadband data providers on the Click! network from collecting or selling personal information from a customer without express written approval	Will comply with City Council Resolution No. 39702, which prohibits ISPs that serve as retail broadband data providers on the Click! network from collecting or selling personal information from a customer without express written approval

### 4.12 Consumer Goodwill

A framework for consumer protection around data does not exist on most broadband networks (unlike in cable television, where the franchise mechanism secures customer protection processes and standards); as a result, these terms would make Tacoma one of the few communities in the country that has enforceable consumer protection commitments for broadband data service (Table 12).

While both companies offered strong language, Rainier Connect’s terms are stronger—committing to meeting standards more frequently, and to beginning repairs more quickly (i.e., within 24 hours of a service disruption). Rainier Connect also committed to locating its customer service staff in Tacoma.

Table 12: Comparison of Wave and Rainier Connect Term Sheets – Consumer Goodwill

Wave	Rainier Connect
24/7 customer service contact options	24/7 customer service contact options
Will schedule installation and service appointments within maximum 4-hour time block during normal business hours	Will schedule installation and service appointments within maximum 4-hour time block during normal business hours
Will meet standards <b>at level consistent with its operations elsewhere</b>	Will meet standards <b>at least 90 percent of the time</b>
—	<b>Will begin repair of service interruptions within 24 hours</b>
Will give 30 days’ notice for changes	Will give 30 days’ notice for changes
Will maintain a physical presence in Tacoma, including a store open during normal business hours and Saturday mornings	Will maintain a physical presence in Tacoma, including a store open during normal business hours and Saturday mornings. <b>Customer service staff will be located in Tacoma</b>

## 5 Conclusion

Both public-private partnership **term sheets protect the public interest** across all of the policy goals—including equity, net neutrality, data privacy, low-income affordability, and robust competition. Key points include:

- Click! is not being sold. TPU will not only **retain ownership** of the existing network but will also take ownership of all upgrades the private partner makes to the network.
- The private partner will **upgrade the network to gigabit speeds** across its entire footprint within three years.
- The private partner will make enforceable commitments to:
  - Respect **net neutrality**.
  - Respect user **privacy**.
  - Offer substantially **reduced-cost products** to low-income members of the community.
  - Meet robust **customer service standards**.
  - Offer services and pricing **equitably** across the entire network footprint.
- Both potential private partners’ commitments to competition include a **guarantee not to sell its lease interest in Click! to any entity that has a significant market share in Tacoma**.