

ATTACHMENT A
MHCRC RECOMMENDED FRANCHISE
Approved October 2, 2008

CABLE FRANCHISE AGREEMENT

BETWEEN THE

**CITIES OF FAIRVIEW, GRESHAM, TROUTDALE, AND WOOD VILLAGE AND
MULTNOMAH COUNTY, OREGON**

AND

VERIZON NORTHWEST INC.

2008

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THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Cities of Fairview, Gresham, Troutdale, and Wood Village, each a municipal corporation duly organized under the applicable laws of the State of Oregon, and Multnomah County (each one a “Jurisdiction”) and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (“Grantee”).

WHEREAS, Grantee has requested a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, each Jurisdiction is a “franchising authority” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Grantee is in the process of upgrading its telephone system by installing a Fiber to the Premises Network (“FTTP Network”) in the Franchise Area for the transmission of Cable and Non-Cable Services;

WHEREAS, Grantee’s FTTP Network will occupy the Public Rights-of-Way within each Jurisdiction, and Grantee desires to use portions of the FTTP Network once installed to provide Cable Services in the Franchise Area;

WHEREAS, Grantee’s provision of Cable Services will further longstanding Jurisdiction goals of providing for facilities-based, competitive Cable Services alternatives for cable customers in Grantee’s Service Area, but require a substantial upgrade of existing telephone facilities and a level of investment by Grantee warranting a reasonable period of certainty in providing for initial cable customer service standards commensurate with those applicable to the incumbent cable operator;

and

WHEREAS, the Jurisdictions and Grantee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of each Jurisdiction’s grant of a franchise to Grantee, Grantee’s promise to provide Cable Services to residents of the Franchise/Service Area pursuant to and consistent with the Communications Act pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged.

THE PARTIES DO HEREBY AGREE AS FOLLOWS:

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1. DEFINITIONS

Except as otherwise provided herein, for the purpose of this Franchise and all exhibits attached hereto, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Franchise. In addition, the definitions below shall apply. The word “shall” is always mandatory and not merely directory.

1.1. *Access Channel*: A video Channel, which Grantee shall make available to the Jurisdictions without charge for non-commercial PEG use for the transmission of Video Programming not under Grantee’s editorial control.

1.2. *Additional Service Area*: Shall mean any portion of the Franchise Area not included in the Initial Service Area.

1.3. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.4. *Basic Service*: Any service tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.5. *Cable Regulatory Commission or Commission*: The Mt. Hood Cable Regulatory Commission, or its successor agency, as designated by the legislative body of each Jurisdiction.

1.6. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.7. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7). Subject to Section 3.6.3 and Section 3.9, the Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services to Subscribers within the Franchise Area and shall not include (i) the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or (ii) Non-Cable Services.

1.8. *Capital Cost*: The expenditure of funds for services, products or other resources, whose useful life can be expected to exceed a period of one (1) year or longer.

1.9. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), which currently states, “a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the [FCC] by regulations).”

1.10. *Communications Act*: The Communications Act of 1934, as amended.

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1.11. *Designated Access Provider:* The entity or entities designated by the Jurisdictions to manage or co-manage the Public, Education, and Government Access Channels and facilities.

1.12. *Dwelling Unit:* Any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is lawfully occupied for residential purposes. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

1.13. *Educational Access Channel:* An Access Channel available for the use of Schools in the Franchise Area

1.14. *FCC:* The Federal Communications Commission or successor governmental entity thereto.

1.15. *Force Majeure:* An event or events not reasonably within the control of the parties. This includes, but is not limited to, acts of God, landslides, earthquakes, lightning, fires, floods, hurricanes, volcanic activity, severe or unusual weather conditions, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, war or act of war (whether an actual declaration of war is made or not), partial or entire failure of public utilities, strikes, explosions, lockouts or other labor disturbances, or other similar events.

1.16. *Franchise Area:* The incorporated area (entire existing territorial limits) of the cities of Fairview, Gresham, Troutdale and Wood Village, and such additional areas as may be included in the corporate (territorial) limits of each Jurisdiction during the term of this Franchise, together with the geographic area of unincorporated Multnomah County as it exists on the Effective Date of this Agreement and as it may be modified during the term of this Franchise.

1.17. *FTTP Network:* Grantee's Fiber to the Premise Telecommunications Network installed in the Franchise Area by Grantee. The FTTP Network is capable of use for Non-Cable Services and Cable Services.

1.18. *Grantee:* Verizon Northwest Inc., and its lawful and permitted successors, assigns and transferees.

1.19. *Government Access Channel:* An Access Channel available for the use of the Jurisdictions.

1.20. *Gross Revenue:* All revenue, including any and all cash, credits, property, or consideration of any kind, which is earned or derived by Grantee and/or its Affiliates from the operation of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenue shall be reported to Grantor using the "accrual method" of accounting. Gross Revenue shall include, but is not limited to, the following items so long as all other cable providers in the Service Area include the same in Gross Revenues for the purposes of calculating franchise fees:

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- (a) fees charged for Basic Service;
- (b) fees charged to Subscribers for any service tier other than Basic Service;
- (c) fees charged for premium Channel(s), e.g. HBO, Cinemax, or Showtime;
- (d) fees charged to Subscribers for any optional, per-channel, or per-program services;
- (e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees associated with Cable Services;
- (f) fees for downgrading any level of Cable Service programming;
- (g) fees for service calls;
- (h) fees for leasing of Channels;
- (i) revenue from customer equipment, including converters (e.g. set top boxes, high definition converters, and digital video recorders) and remote control devices;
- (j) advertising revenue as set forth herein;
- (k) revenue from the sale or lease of access Channel(s) or Channel capacity;
- (l) revenue from the sale or rental of Subscriber lists;
- (m) revenues or commissions received from the carriage of home shopping channels;
- (n) fees for any and all audio programming services provided as Cable Service;
- (o) revenue from the sale of program guides;
- (p) late payment fees;
- (q) forgone revenue that Grantee chooses not to receive in exchange for trades, barters, services, or other items of value;
- (r) revenue from NSF check charges;
- (s) revenue received from programmers as payment for distribution of programming content on the Cable System, including launch fees; and
- (t) to the extent Grantee chooses to itemize amounts on its Subscriber or customer billings for Cable Service-related fees, taxes, other expenses incurred by Grantee that are imposed on Grantee by governmental agencies or other third parties, such itemized amounts are also part of Gross Revenue.

Gross Revenue shall include amounts earned during any period regardless of whether (1) the amounts are paid in cash, in trade or by means of some other benefit to the Grantee or any Affiliate; (2) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; and (3) the amounts are initially recorded by the Grantee or an Affiliate.

Gross Revenues shall not be net of (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment. Revenues which are not directly attributable to specific Subscribers or a Jurisdiction, such as advertising revenue and home shopping commissions, shall be allocated to systems and each Jurisdiction on a per Subscriber basis measured in a consistent manner from period to period.

Notwithstanding the foregoing, Gross Revenue shall be subject to the following limitations, exclusions or deductions:

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1.20.1. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses or capital expenditures of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenue for the purposes of this Franchise. Revenue of an Affiliate constitutes Gross Revenue to the extent the treatment of such revenue as revenue of the Affiliate and not of Grantee has the intentional or unintentional effect of evading the payment of franchise fees that would otherwise be payable to any Jurisdiction hereunder;

1.20.2. Bad debts written off by Grantee in the normal course of its business shall be deducted, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.20.3. Refunds, rebates, or discounts made to Subscribers or other third parties shall be deducted;

1.20.4. Any revenues classified as or attributed to, in whole or in part, Non-Cable Services revenue under federal or state law shall be deducted or excluded but only such amounts as are directly charged or are properly allocable to Non-Cable Services;

1.20.5. Any revenue of Grantee or any Person that is received directly from the sale of merchandise through any Cable Service distributed over the Cable System shall be excluded, notwithstanding that portion of such revenue that represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.20.6. Revenues from the sale of Cable Services on the Cable System to a reseller for resale shall be excluded when the reseller is required by a Jurisdiction to pay franchise fees and/or PEG fees, as applicable, to the Jurisdiction on the resale of the Cable Services;

1.20.7. Any tax of general applicability imposed upon Subscribers by a city, state, federal, or any other governmental entity and which such governmental entity requires be collected from Subscribers by Grantee and remitted to the taxing entity shall be excluded;

1.20.8. Any forgone revenue that Grantee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person shall be excluded, including without limitation, employees of Grantee and public institutions or other institutions designated in the Agreement; provided, however, that such forgone revenue that Grantee chooses not to receive in exchange for trades, barter, services, or other items of value in place of cash consideration shall be included in Gross Revenue;

1.20.9. Revenues from the sales of capital assets or sales of surplus equipment shall be excluded, provided that this exclusion shall not include retail sales directly to

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Subscribers by Grantee of converters, remote controls and other Subscriber equipment used in the provision of Cable Service over the Cable System;

1.20.10. Reimbursement by programmers of marketing costs incurred by Grantee for the introduction of new programming pursuant to a written marketing agreement; or

1.20.11. Telephone directory or Internet advertising revenue shall be excluded, including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing revenue.

1.21. *Initial Service Area*: The portion of the Franchise Area as outlined in Exhibit A.

1.22. *Institutional Network or I-NET*: Dedicated capacity to provide one-way and bi-directional communication services to and among PEG Institutions pursuant to Section 611 of the Communications Act, 47 U.S.C. §531.

1.23. *Jurisdiction*: Each of the Cities of Fairview, Gresham, Troutdale and Wood Village, and Multnomah County, or the lawful successor, transferee, or assignee of such city or county.

1.24. *Non-Cable Services*: Any service that does not constitute the provision of Cable Services to Subscribers in the Franchise Area.

1.25. *PEG*: Public, Educational, and Governmental, collectively.

1.26. *PEG Institutions*: Any School; agency of government, excluding federal governments; public library; or community service organization, with at least one physical site located within the Franchise Area.

1.27. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.28. *Public Access Channel*: An Access Channel available for the use by individual members of the general public, organizations and groups in the Franchise Area.

1.29. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, that are under the jurisdiction or control of each Jurisdiction. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.30. *School*: Any educational institution, public or private, registered by the State of Oregon pursuant to ORS 345.505-.525, excluding home schools, including but not limited to primary and secondary schools, colleges and universities.

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1.31. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any Service Areas added pursuant to 4.1.1.2.

1.32. *Service Date*: The date that Grantee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area. Grantee shall memorialize the Service Date by notifying the Jurisdictions in writing of the same, which notification shall become a part of this Franchise.

1.33. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Grantee's express permission.

1.34. *Telecommunications Facilities*: Grantee's facilities providing Telecommunications Services, including its FTTP Network facilities to the extent they are used to provide Telecommunications Services.

1.35. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.36. *Title II*: Title II of the Communications Act.

1.37. *Title VI*: Title VI of the Communications Act.

1.38. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

2. CABLE REGULATORY COMMISSION AS AGENT

2.1. *Purpose and Scope of Agreement*: The purpose of this Franchise is to create a binding, enforceable contract between each Jurisdiction and the Grantee.

2.2. *Intergovernmental Agreement*:

2.2.1. The governing body of each Jurisdiction has adopted this Franchise as its own, under its independent government authority and has elected to provide for a Cable Regulatory Commission (the "Commission") created through an Intergovernmental Agreement (attached as Exhibit B) ("Intergovernmental Agreement") entered into among and by the Jurisdictions. The Jurisdictions have agreed to designate the Commission as their representative and agent under this Franchise, except as specifically stated otherwise herein, and to be bound by certain decisions and actions taken by the Commission as set forth in the Intergovernmental Agreement. Throughout this Franchise Agreement, references to the "Jurisdictions" in the plural is intended to refer to the Commission acting on behalf of the Jurisdictions, unless otherwise stated or such powers are reserved to each Jurisdiction in the Intergovernmental Agreement. In fulfilling the terms of this Franchise, the Grantee is entitled to rely upon, look to, communicate with, and comply with the decisions and orders of the Commission unless otherwise stated herein. Nothing in this Franchise shall be construed to

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empower the Commission to act contrary to the provisions of the Intergovernmental Agreement. Each Jurisdiction retains all powers reserved to the Jurisdictions in the Intergovernmental Agreement.

2.2.2. Each Jurisdiction has the right to withdraw from the Intergovernmental Agreement. In the event a Jurisdiction does withdraw, the Grantee will deal separately with the withdrawn Jurisdiction or the withdrawn Jurisdiction's designee, and the Commission shall no longer serve as representative or agent of the withdrawn Jurisdiction. Each Jurisdiction agrees that it will not withdraw from the Intergovernmental Agreement without first providing written notice to the Grantee and providing Grantee with an opportunity to state its position on such withdrawal. Each Jurisdiction further agrees that it will not amend the Intergovernmental Agreement without first providing written notice to the Grantee and providing Grantee with an opportunity to state its position on such amendment.

2.2.3. Any withdrawal from or amendment to the Intergovernmental Agreement shall not be construed as amending this Franchise or permitting the withdrawal of any remaining Jurisdiction from this Franchise.

2.2.4. Any withdrawn Jurisdiction shall be entitled to receive the five percent (5%) franchise fee set forth in Section 8 and the PEG/I-Net Grant set forth in Section 7.5 of this Franchise, for Grantee's Gross Revenues attributable to such Jurisdiction's territorial limits. Withdrawal of a Jurisdiction from the Intergovernmental Agreement shall not affect this Franchise which shall remain in effect except as set forth in this Subsection 2.2.4. Certain provisions of this Franchise, including the PEG Access Channels, have been negotiated as an indivisible whole. Grantee has relied upon the Jurisdictions negotiating as a single entity in entering into this Franchise Agreement. Upon the withdrawal of any Jurisdiction from the Intergovernmental Agreement, the Grantee agrees to enter into good faith negotiations with the withdrawn Jurisdiction with respect to the following provisions of this Agreement: PEG Access Channels under Section 7.1, audit reimbursement under Subsection 10.3.2.1, fines under Subsection 14.2.2, or a Security Fund under Section 14.9, collectively, "Sections Subject to Renegotiation." The purpose of the negotiation is to modify the Sections Subject to Renegotiation so as to continue to provide the benefits of the Sections Subject to Renegotiation to the withdrawn Jurisdiction to the extent such benefits may be provided without any additional cost (whether by direct payment to the Jurisdiction, increased labor or material costs, or otherwise) to Grantee over and above the cost Grantee would have incurred had the Jurisdiction not withdrawn. If the Grantee and the withdrawn Jurisdiction are unable to reach agreement on the modification of the Sections Subject to Renegotiation within ninety (90) days after the withdrawal of the Jurisdiction becomes effective, each party agrees to submit the matter to mediation at the request of the other party. Until the Grantee and the withdrawn Jurisdiction reach agreement on any Sections Subject to Renegotiation, Grantee shall have no additional obligations under those sections beyond that which Grantee would have had had the Jurisdiction not withdrawn. Except as modified above, this Franchise Agreement shall remain in effect and, with respect to the Franchise Area within the territorial limits of the withdrawn Jurisdiction, shall be administered by the withdrawn Jurisdiction or its designated representative. Notices to a

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withdrawn Jurisdiction shall be sent to the City/County Clerk of the withdrawn Jurisdiction unless another address is provided by the withdrawn Jurisdiction in writing.

3. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

3.1. *Grant of Authority:* Subject to the terms and conditions of this Agreement and the Communications Act, each Jurisdiction hereby grants Grantee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

3.2. *Regulatory Authority Over the FTTP Network:* Grantee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. Each Jurisdiction acknowledges that jurisdiction over such Telecommunications Facilities is governed by federal and state law, and each Jurisdiction does not and will not assert jurisdiction over Grantee's FTTP Network in contravention of those laws. As provided in Section 621 of the Communications Act, 47 U.S.C. § 541, each Jurisdiction's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of Grantee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained, or operated for the purpose of upgrading and/or extending Grantee's existing Telecommunications Facilities for the provision of Non-Cable Services. Nothing in this Franchise shall affect the authority of each Jurisdiction, if any, to adopt and enforce lawful regulations with respect to Grantee's FTTP Network as a Telecommunications Facility in the Public Rights-of-Way.

3.3. *Term and Effective Date:*

3.3.1. *Term:* The term of this Franchise ("Term") shall be from the Effective Date through and including December 31, 2018, unless the Franchise is earlier revoked as provided herein.

3.3.2. *Effective Date:* This Agreement shall not take effect unless and until the cities of Fairview, Gresham, Troutdale and Wood Village, and Multnomah County, and Verizon Northwest Inc. have all approved and signed this Agreement. The effective date of this Agreement shall be the date of the last signature ("Effective Date").

3.4. *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and each Jurisdiction reserves the right to grant other franchises for similar or other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise.

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3.5. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

3.6. *No Waiver:*

3.6.1. The failure of any Jurisdiction on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such Jurisdiction, nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

3.6.2. The failure of Grantee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse any Jurisdiction from performance, unless such right or performance has been specifically waived in writing.

3.6.3. Neither party waives any of its rights under applicable law, unless otherwise specifically declared in writing in this Franchise Agreement.

3.7. *Construction of Agreement:*

3.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

3.7.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545.

3.7.3. Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as they may be amended, including but not limited to the Communications Act. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of one or more parties, then the parties shall modify this Franchise to ameliorate such adverse effects on, and preserve the affected benefits of, the Grantee and/or any Jurisdiction to the extent possible consistent with the change in law. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at Grantee's or the Jurisdictions' option, the parties agree to submit the matter to mediation. In the event mediation does not result in an agreement, then, at Grantee's or the Jurisdictions' option, the parties agree to submit the matter to non-binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The non-binding arbitration and mediation shall take place in the Franchise Area, unless the parties' representatives agree otherwise. In any negotiations, mediation, and arbitration under this provision, the parties will be guided by the purpose set forth below. In reviewing the claims of the parties, the mediators and arbitrators shall be guided by the purpose of the parties in

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submitting the matter for guidance. The parties agree that their purpose is to modify the Franchise so as to preserve intact, to the greatest extent possible, the benefits that each party has bargained for in entering into this Franchise and ameliorate the adverse effects of the change in law in a manner not inconsistent with the change in law. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the mediator or arbitrator, this Subsection 3.7.3 shall have no further force or effect. To the extent permitted by law, if there is a change in federal law or state law that permits Grantee to opt out of or terminate this Franchise, then Grantee agrees not to exercise such option.

3.8. *Police Powers:* In executing this Franchise Agreement, the Grantee acknowledges that its rights hereunder are subject to the lawful police powers of each Jurisdiction to adopt and enforce general ordinances necessary to the safety and welfare of the public and Grantee agrees to comply with all lawful and applicable general laws and ordinances enacted by any Jurisdiction pursuant to such power. Nothing in this Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of any Jurisdiction's police powers. However, if the reasonable, necessary and lawful exercise of any Jurisdiction's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise after good faith negotiations to the satisfaction of all parties to ameliorate the negative effects on Grantee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Grantee may terminate this Agreement after providing the notice to Subscribers required under Section 14.11 hereof without further obligation to any Jurisdiction or, at Grantee's option, the parties agree to submit the matter to arbitration in accordance with the Oregon Uniform Arbitration Act, ORS 36.600-36.740.

3.9. *Termination of Telecommunications Services:* Notwithstanding any other provision of this Franchise, if Grantee ceases to provide Telecommunications Services over the FTTP Network at any time during the Term and is not otherwise authorized to occupy the Public Rights-of-Way in the Franchise Area, the Jurisdictions may regulate the FTTP Network as a cable system to the extent permitted by Title VI.

3.10. *Competing Cable Systems:*

3.10.1. The parties acknowledge that there is an incumbent cable operator already providing cable service within each Jurisdiction. The incumbent cable operator provides capacity on its cable system for PEG Access Channels, has existing assignments for the PEG Access Channels, provides PEG Access Capital funding and provides I-Net capacity and support. The parties agree that the obligations set forth in Section 7 are intended to require Grantee to provide PEG Access Channels, I-Net Capital funding, and PEG Capital funding that is substantially equivalent to that provided by the incumbent franchised cable operator. Grantee agrees and acknowledges that, solely for the purposes of Section 3.10, the provisions of any other franchise issued or administered by any Jurisdiction with respect to the provision of Cable Services and in effect as of the effective date of this Franchise, are reasonably non-discriminatory and competitively neutral.

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3.10.2. If, after the Effective Date of this Franchise, any Jurisdiction grants a cable services franchise agreement to another cable operator, and such cable operator provides Cable Services in Grantee's Service Area within that Jurisdiction, which franchise requires

3.10.2.1. A lower percentage of Gross Revenue than the PEG/ I-Net Grant required under Section 7.5.1 of this Franchise, then, at the Grantee's request, the parties agree that Grantee's obligations in Section 7.5.1 of this Franchise will be modified, for such Jurisdiction's franchise area, to the same percentage of Gross Revenue as such other cable operator's franchise agreement; or

3.10.2.2. Fewer PEG Access Channels than are required under Section 7.1 of this Franchise, excluding the one Access Channel in Section 7.1.1 provided for distribution of PEG Access Channel programming information to Subscribers, then, at the Grantee's request, the parties agree that the number of PEG Access Channels in Section 7.1 of this Franchise will be modified, for such Jurisdiction's franchise area, to the same number of PEG Access Channels as such other cable operator's franchise agreement.

3.10.2.3. If the parties fail to reach agreement on these modifications, either party may initiate mediation in accordance with Section 3.7.3 of this Franchise.

3.10.3. Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of any Jurisdiction or by any other Person.

4. PROVISION OF CABLE SERVICE

4.1. *Service Area:*

4.1.1. *Initial Service Area:* Grantee shall make Cable Service available to significant numbers of Dwelling Units in the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall make Cable Service available to all Dwelling Units in the Initial Service Area within three (3) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by a Jurisdiction or any other actions or inactions of any government instrumentality or public utility not resulting from Grantee's own delay; (C) for periods of delay resulting from Grantee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Grantee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Grantee; (F) in developments or buildings where Grantee is unable to provide Cable Service for technical reasons or that require non-standard facilities that are not available on a commercially reasonable basis; (G) in areas where the Dwelling Unit density does not meet the density requirements set forth in Subsection 4.1.1.1; and (H) for documented work delays caused by waiting for utility providers to service or monitor

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utility poles to which Grantee's FTTP Network is attached, or caused by documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Grantee to foresee or control.

4.1.1.1. *Density Requirement:* Grantee shall make Cable Services available to Dwelling Units in all areas of the Service Area where the average density is equal to or greater than 20 Dwelling Units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network. After the time stated for providing Cable Service as set forth in Subsections 4.1.1, should an area within the Initial Service Area meet the density requirements through new construction, Grantee shall provide Cable Service to such area within one hundred eighty (180) days of receiving a request for service.

4.1.1.2. *Additional Service Areas:* Except for the Initial Service Area, Grantee shall not be required to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise. If Grantee desires to add a portion of the Additional Service Areas to the Service Area, Grantee shall notify the Commission in writing of such addition and provide an updated map of the Service Area at least ten (10) days prior to providing Cable Services in such areas. All provisions of this Franchise shall apply to any Additional Service Areas which are receiving Cable Service from Grantee.

4.2. *Availability of Cable Service:* Grantee shall make Cable Service available to all Dwelling Units and may make Cable Service available to businesses within the Service Area in conformance with Section 4.1 and Grantee shall not discriminate between or among any individual or Subscriber in the availability or provision of Cable Service.

4.3. *Standard and Non-Standard Installations:* In the areas where Grantee provides Cable Service, Grantee shall be required to connect, at Grantee's cost other than the standard installation charge, all residential Dwelling Units that require a drop of not more than three hundred thirty five (335) feet from the Dwelling Unit requesting Cable Service to the nearest point from which the FTTP Network is designed to serve the site (a "Standard Installation" under this Franchise). Grantee shall have no obligation to provide Cable Services to Dwelling Units which require an installation in excess of a Standard Installation, unless the Subscriber requesting such connection agrees to pay Grantee's actual costs incurred for the portion of the residential installation that exceeds a Standard Installation or actual costs incurred to connect any non-residential Dwelling Unit Subscriber, except in areas or buildings where conditions under Subsections 4.1.1(D), (E) and (F) exist.

5. SYSTEM OPERATION

5.1. *FTTP Network:* As provided in Section 3.2, the parties recognize that Grantee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of each Jurisdiction over such Telecommunications Facilities is restricted by federal and state law, and each Jurisdiction agrees that it shall not assert jurisdiction over Grantee's FTTP Network in contravention of those limitations.

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5.2. *Cable System Tests:* Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the Cable System components are operating as required. All tests shall be conducted in accordance with applicable federal rules.

5.2.1. Grantee shall conduct tests on the Cable System as follows:

5.2.1.1. All applicable tests required by the FCC; and

5.2.1.2. Any other tests reasonably necessary to determine compliance with this Franchise or in response to subscriber complaints.

5.2.2. Grantee shall sign all records of tests provided to the Jurisdictions.

5.2.3. The Jurisdictions shall have the right to witness and/or review all required tests under Subsection 5.2.1. Grantee shall provide the Jurisdictions with at least two business days' notice of, and the opportunity to observe, any such tests performed. To the extent the Jurisdictions utilize contractors for these purposes, such contractors shall sign a nondisclosure agreement prior to admittance to Grantee's facilities or to witnessing such tests.

5.2.4. Grantee shall retain written reports of any test results and shall submit the reports to the Jurisdictions upon request. The Jurisdictions shall have the same rights the FCC has to verify Grantee's test data.

6. SYSTEM FACILITIES

6.1. *System Characteristics:* The Cable System shall meet or exceed all applicable FCC technical standards and the following requirements:

6.1.1. The System shall be designed with a digital carrier passband between 50 and 860 MHz. The Cable System shall be capable of standard digital, HDTV, video-on-demand, as well as other future services.

6.1.2. The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.

6.2. *Power Outages:* The Cable System shall have protection against outages due to power failures, so that back-up power is available at a minimum of at least 24 hours at the Cable System headend and, conforming to industry standards, in no event rated for less than four (4) hours at each power supply site.

6.3. *Interconnection:* Grantee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

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6.4. *Emergency Alert System:* Grantee shall comply with all applicable federal and state regulations regarding the emergency alert system (“EAS”). Each Jurisdiction may identify authorized emergency officials for activating the EAS. Each Jurisdiction may also develop a local plan containing methods of emergency alert system message distribution, subject to applicable federal and state laws.

6.5. *Compliance with Safety Requirements:* All work authorized and required herein shall comply with all safety requirements, rules and practices, and employ all necessary devices as required by applicable law and, by way of illustration not limitation, with the National Electrical Code, National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) standards.

6.6. *Inspection of Facilities:* The Jurisdictions may inspect any of Grantee’s facilities and equipment to confirm performance under this Agreement upon at least twenty-four (24) hours notice to Grantee. In all instances, a qualified representative of Grantee must be available to accompany the inspection. To the extent the Jurisdictions utilize contractors for these purposes, such contractors shall sign a nondisclosure agreement prior to admittance to Grantee’s facilities.

7. PEG ACCESS AND I-NET

7.1. *PEG Access Channels:*

7.1.1. Grantee shall provide eight (8) PEG Access Channels as part of Basic Service which shall be fully accessible to all Subscribers within the Service Area. Grantee shall provide one additional Access Channel as part of Basic Service, to be used by the Jurisdictions or their designee for the distribution of PEG Access Channel programming information to Subscribers.

7.1.2. Within ten (10) days after the Effective Date of this Agreement, the Jurisdictions or their designee shall inform Grantee of the general type of initial use of the PEG Access Channels (e.g. Public, Educational, or Governmental Access Channel) provided by Grantee under Subsection 7.1.1. Grantee may transmit PEG Access Channels within and without each Jurisdiction’s jurisdictional boundaries. Grantee shall initially assign the PEG Access Channels on its channel line-up as requested by the Jurisdictions or their designee to the extent such channel assignments do not interfere with Grantee’s existing or planned channel line-up. If the general type of content on a PEG Access Channel changes, Grantee shall be provided with at least forty-five (45) days notice of the change(s) so that Grantee can update its channel listing as appropriate. In the event Grantee changes the channel assignment of one or more PEG Access Channels, Grantee shall provide at least forty-five (45) days advance notice to the Commission and shall provide a grant of two thousand five hundred dollars (\$2,500) for costs associated with notice of the PEG Access Channel reassignment. Grantee shall identify the PEG Access Channels, and the related Access Channel programming information, whenever technically feasible and economically reasonable, in the local area channel listings on Grantee’s website and in print materials provided to Subscribers in a similar manner as the local broadcast channels are identified. Grantee shall ensure that the terminology used to identify the PEG Access Channels,

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including the channel identification on Grantee's on-screen program guide, is not inaccurate or misleading.

7.1.3. Grantee shall reserve eight (8) additional PEG Access Channels, for a total of seventeen (17) PEG Access Channels. Grantee shall activate a reserved PEG Access Channel following a written request from the Jurisdictions or their designee when the following criteria have been met, as applicable to the type of PEG Access Channel to be activated:

7.1.3.1. The Jurisdictions or their designee must have identified and documented a community need for additional programming capacity that the Jurisdictions or their designee believe cannot be fulfilled by existing Public, Educational or Governmental Access Channels;

7.1.3.2. The existing Public, Educational or Governmental Access Channels must be utilized for PEG programming at least eight (8) hours per day, for any four (4) consecutive weeks, which programming for purposes of this calculation shall not include programming that is more than fifty percent (50%) character generated; and

7.1.3.3. Subject to the conditions in Subsection 7.2.2, as long as the origination point is the PEG Access Headend (as defined in Subsection 7.2.2), the additional PEG Access Channel shall be made available within one hundred twenty (120) days following the Jurisdictions' written request, provided that, at least thirty (30) days prior to the request for activation, the Jurisdictions, or their designee, have provided Grantee with documentation that the criteria have been met. If the signal source location is not the PEG Access Headend, the timing of the availability and other conditions will be by mutual agreement of the Jurisdictions (or their designee) and Grantee, provided that the Jurisdictions or their designee will be required to comply with all conditions set forth in Subsection 7.2.2. In no event shall the origination point be located outside the Franchise Area.

7.1.4. Grantee shall maintain all PEG Access Channel signals in substantially the form received, at a level of technical quality and reliability that complies with all applicable FCC technical standards and consistent with local television broadcast channels available to all Subscribers in Grantee's Basic Service. Grantee shall use equipment and procedures that minimize the degradation of signals that do not originate with Grantee.

7.1.5. If a PEG Access Channel provided under this Section 7 is not being utilized, the Jurisdictions shall notify Grantee and Grantee may utilize such PEG Access Channel, in its sole discretion, until such time as the Jurisdictions, or their designee, elect to utilize the PEG Access Channel.

7.2. *Designated Access Provider and PEG Connection:*

7.2.1. The Jurisdictions have designated MetroEast Community Media located at 829 NE Eighth Street, Gresham, Oregon 97030-5643, or its successors or assignees, as the Designated Access Provider. The Jurisdictions may designate up to a total of six (6)

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Designated Access Providers to control and manage the use of the PEG Access Channels and resources provided by Grantee under this Franchise. Grantee shall cooperate with the Designated Access Providers in the use of the Cable System for the distribution of PEG Access Channels.

7.2.2. The Jurisdictions or their designee shall cause to be provided suitable signals for the PEG Access Channels to Grantee at MetroEast Community Media, 829 NE Eighth Street, Gresham, Oregon 97030-5643 (the "PEG Access Headend"). The Access Channel signal for each PEG Access Channel shall be provided as composite video on a coaxial cable and two balanced audio +4dBm on two shielded audio cables to the Grantee's encoding device at the PEG Access Headend. Grantee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG Access Channel signal from the PEG Access Headend, or other signal source locations designated under Subsection 7.1.3.3, for distribution to Subscribers. Grantee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Grantee, of: (a) suitable required space, environmental conditions, and electrical power supply; (b) access to and pathway within the facility housing the PEG Access Headend; and (c) such cooperation of the Jurisdictions and any designee(s) as is reasonably necessary for Grantee to fulfill such obligations. The Jurisdictions represent and warrant that to the best of their knowledge, no incumbent cable operator consent is necessary for the Grantee to transmit PEG signals, including but not limited to, any consent related to the facilities of any incumbent cable operator used to transmit PEG content to an origination or other point from auxiliary locations. If the PEG Access Headend relocates or if the Jurisdictions designate a different signal source location for an Access Channel, the Jurisdictions or their designee shall fund all direct costs to construct a connection from the new site or location to the nearest point on the FTTP Network.

7.2.3. If Grantee makes changes to its Cable System or signal transmission technology, which directly affects the signal quality, the connection at the PEG Access Headend, or transport of the PEG Access Channels, Grantee shall, at its own expense, make any necessary changes at the PEG Access Headend, including technical assistance and equipment and reimbursement of the Designated Access Provider's reasonable costs directly associated with the change, so that the requirements of this Section 7 are continuous and remain in effect.

7.2.4. Upon request by the Jurisdictions and based on a demonstrated need, Grantee shall work in good faith with the Jurisdictions and other cable operators that have a cable services franchise for any part of the Service Area, to interconnect with other cable operators in order to hand off PEG Access Channel signals. Grantee shall use reasonable efforts to agree upon mutually convenient, cost-effective and technically viable interconnection of the PEG Access Channel signals. Such interconnection shall preserve the technical quality of the PEG Access Channels.

7.3. *Additional Requirements:*

7.3.1. In addition to the PEG/I-Net Grant, and in lieu of providing free Cable Service to public schools and other items, Grantee shall pay the Commission on behalf of

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the Jurisdictions a Franchise Grant (the "Franchise Grant"). The Franchise Grant shall be payable as follows: within sixty (60) days of the Service Date, Grantee shall pay a lump sum of sixty nine thousand six hundred eighty dollars (\$69,680) and by February 15 of each calendar year thereafter, Grantee shall pay three thousand four hundred eighty dollars (\$3,480) for the remaining term of this Agreement.

7.3.2. *Free Cable Service:* Subject to Section 4.1, Grantee shall provide to MetroEast Community Media, located at 829 NE Eighth Street, Gresham, Oregon 97030-5643, without charge, one Standard Installation as defined in Section 4.3, one service outlet activated with Basic Service and related necessary equipment to receive Basic Service. Grantee shall charge for installing, if requested to do so, more than one outlet or concealed inside wiring and for the provision of Basic Service to any additional service outlets. Cable Service may not be resold or otherwise used in contravention of Grantee's rights with third parties respecting programming. Equipment provided by Grantee, if any, shall be replaced at retail rates if lost, stolen, or damaged.

7.3.3. *Technology Advancements:* As Grantee develops and advances the functionality of its set-top box or any other subscriber access technologies, Grantee agrees to consider additional and improved methods to provide Subscribers with information about the PEG Access Channels and programming, whenever technically feasible and economically reasonable. Grantee shall meet with the Commission, at its request, at least every two (2) years during the Term for the purposes of discussing developments in set-top box technology or other subscriber access technologies provided that the Commission may not request such a meeting during the first twelve (12) months following the Effective Date of this Franchise.

7.4. *Institutional Network:*

7.4.1. Grantee acknowledges that other Cable Operators have provided an Institutional Network or I-Net in the Franchise Area paid for by the Jurisdictions. The parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services provided under other cable services franchises.

7.4.2. The Jurisdictions or their authorized designee and Grantee may mutually agree, in a separate written agreement or an amendment hereto, on I-Net capacity, connections, facilities and/or services to be provided by Grantee to meet identified I-Net needs. Grantee may deduct the agreed upon incremental, direct costs of providing such I-Net capacity, facilities and/or services from I-Net funds provided under Section 7.5.

7.5. *PEG/I-Net Grant:*

7.5.1. Grantee shall provide an annual grant to the Commission as agent for each Jurisdiction consisting of three percent (3%) of Gross Revenues to be used to support PEG Capital Costs and I-NET Capital Costs (the "PEG/I-Net Grant").

7.5.2. The Jurisdictions shall allocate the PEG/I-Net Grant at the Jurisdictions' discretion to provide support for PEG Capital Costs and I-Net Capital Costs

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incurred by Designated Access Providers and PEG Institutions. No funds provided by Grantee as a PEG/I-Net Grant shall be paid to another cable operator in the Franchise Area for equipment to be owned by another cable operator or an affiliate of another cable operator. The PEG/I-Net Grant provided by Grantee may be used by Designated Access Providers and PEG Institutions to fund Capital Costs to enable or enhance use of the I-NET owned by another cable operator so long as any equipment purchased with the PEG/I-Net Grant is not owned by another cable operator.

7.5.3. The PEG/I-Net Grant payment, shall be remitted to the Commission in quarterly installments with the Franchise fee payment required under Section 8.1.

7.5.4. The Jurisdictions shall provide Grantee with a report annually explaining the distribution of funds granted pursuant to this Section 7.5.

7.6. The Jurisdictions shall require, through contract with the Designated Access Provider(s) or otherwise, Persons whose Video Programming is transmitted on any PEG Access Channel to agree in writing to authorize Grantee to transmit programming consistent with this Agreement and to defend and hold harmless Grantee and the Jurisdictions from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with transmission of programming on the PEG Access Channel(s), including claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; and for any other injury or damage in law or equity, which result from the transmission of programming on a PEG Access Channel.

7.7. The Jurisdictions shall require the Designated Access Provider(s) to include the Grantee as an additionally named insured in the Designated Access Provider's liability insurance policy with respect to any claim for injury, damage, loss, liability, cost or expense arising from Video Programming or other transmission placed on the PEG Access Channels provided by Grantee under this Franchise, but not if arising out of or by reason of any negligence, willful misconduct or any other act done by Grantee or its officers, agents, or employees.

7.8. To the extent permitted by federal law, Grantee shall be allowed to pass through to Subscribers, and identify as a separate line item on each Subscriber bill, the costs of the PEG/I-Net Grant, the Franchise Grant, and any other amount of the total bill assessed to satisfy requirements imposed on Grantee by this Agreement to support PEG Access Channels or the use of PEG Access Channels.

8. FRANCHISE FEES AND PEG/I-NET GRANT PAYMENTS

8.1. *Payment to Each Jurisdiction:* Grantee shall pay to each Jurisdiction a franchise fee of five percent (5%) of annual Gross Revenue attributable to each Jurisdiction. In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Such payments, together with PEG/I-

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Net Grant payments under Section 7 of this Franchise, shall be remitted to the Commission in quarterly installments no later than forty-five (45) days following the end of each calendar quarter. Grantee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly franchise fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

8.2. *Supporting Information:* Each franchise fee and PEG/I-Net Grant payment shall be accompanied by a report prepared by a representative of Grantee showing the basis for the computation in substantially the form attached hereto as Exhibit C. No later than one hundred twenty (120) days after the end of each calendar year, Grantee shall furnish to the Commission an annual summary of franchise fee calculations, substantially in the form attached hereto as Exhibit C but showing annual rather than quarterly amounts.

8.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for filing an action for recovery of any franchise fee or PEG/I-Net Grant payment payable hereunder shall be five (5) years from the date on which payment by Grantee was due.

8.4. *Bundled Services:* If Cable Services subject to the franchise fee required under this Article 8 are provided to Subscribers in conjunction with Non-Cable Services, Grantee shall not allocate revenue between Cable Services and Non-Cable Services for the purpose of evading or substantially reducing Grantee's franchise fee obligations to each Jurisdiction.

8.5. *Interest Charge on Late Payments:* If any quarterly franchise fee payment due under this Franchise remains unpaid after the due date ("Past Due Amounts"), Grantee shall pay the Jurisdiction interest on such Past Due Amounts in addition to the Past Due Amounts. The interest shall accrue on the Past Due Amounts from the due date until it is paid in full ("Period of Delinquency"). Grantee shall pay the Jurisdiction interest at a rate per annum equal to the highest Bank Prime Rate during the Period of Delinquency plus two percent (2%). The "Bank Prime Rate" shall mean the prime lending rate as it appears in *The Wall Street Journal* during the Period of Delinquency. The Jurisdiction's acceptance of payment shall not be construed as an agreement that the amount paid was correct, nor shall acceptance be construed as a release of any claim which the Jurisdiction may have for additional sums payment under provisions of this Section 8.

8.6. *PEG Access Support Not Franchise Fees:* Grantee agrees that the PEG/I-Net Grant and Franchise Grant set forth in Section 7 shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to each Jurisdiction. Grantee agrees that although the sum of franchise fees and the payments set forth in Section 7 may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12)-month period, the additional commitments are not to be offset or otherwise credited in any way against any franchise fee payments under this Franchise.

9. CUSTOMER SERVICE AND CONSUMER PROTECTION

9.1. *Compliance with Adopted Policies and Standards:*

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9.1.1. Grantee shall comply with the Jurisdictions' Customer Service Standards as of the Effective Date, which are attached here to as Exhibit D, except as otherwise set forth in this Section 9.

9.2. *Compliance with Policy Changes or Amendments:*

9.2.1. *Amendments to standards will not be imposed on Grantee without Grantee's consent in Years 1-5 of Franchise:* In order to provide a reasonable period of certainty to Grantee to promote competition, if the Jurisdictions, acting pursuant to their home rule charter authority and consistent with 47 USC 552(d)(2)(b), amend the Customer Service Standards applicable to any other cable operator providing Cable Services in Grantee's Service Area, the Jurisdictions agree to forgo application of such amendments to Grantee without Grantee's consent for a period of five (5) years from the Effective Date.

9.2.2. *Application to Grantee of Amendments to standards in Years 6 through 10 of the Franchise:* After the period specified within Section 9.2.1 has concluded, the Jurisdictions may apply to Grantee amendments to the Customer Service Standards, provided that:

(a) The Jurisdiction has considered the potential benefits for consumers in relation to any additional costs to Grantee of compliance with such amendments;

(b) The Jurisdiction has provided Grantee with notice of the proposed amendments, and an opportunity to participate in the legislative process of developing such amendments, including an opportunity to provide information to the Commission and the Jurisdictions regarding the costs and benefits referred to in sub-paragraph (a) hereof; and

(c) The Jurisdiction has provided for a reasonable period for Grantee to implement the amended standards into Grantee operations; such reasonable period not to exceed 180 days.

9.2.3. *Minor Variance process not precluded:* Nothing in this Section 9 shall preclude Grantee from requesting a minor variance with respect to compliance with such amendments pursuant to Section 14.8 hereof.

9.3. *Minor Variance:* The Jurisdictions' Customer Service Standards as of the Effective Date are attached hereto as Exhibit D. The Commission agrees to the following minor variances, in accordance with Section 14.8 of this Franchise, to Exhibit D for the purposes of enforcement of the Customer Service Standards:

9.3.1. *Local Office and Office Hours:* If Grantee chooses not to establish a local office in accordance with the requirements of Exhibit D Section II – Local Office and Office Hours – Grantee shall: (a) provide for the pick up or drop off of equipment free of charge by having Grantee picking up equipment from a Subscriber's residence or by Grantee providing Subscriber with pre-paid mailer; and (b) provide for bill payments over the phone free of charge through a live, qualified customer service representative.

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9.3.2. *Installations*: Under the requirements of Exhibit D Section IV - Installations, Disconnections, Outages and Service Calls – Grantee shall perform Standard Installations, as defined under Section 4.3 of this Franchise, in accordance with the Customer Service Standards, except in cases where a Standard Installation requires Grantee’s placement on the customer premise of an Optical Network Terminal, then Grantee shall perform the installation within no more than fourteen (14) days after a service order has been placed.

9.4. *Obscenity*: Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any obscene programming in violation of state or federal law. Grantee shall be deemed to have transmitted or permitted a transmission of obscene Programming only if a court of competent jurisdiction has found that Grantee's officers or employees, acting in their authorized capacity, have knowingly permitted, in violation of state or federal law, programming which is obscene under state or federal law to be transmitted over any Channel that is subject to Grantee's editorial control.

9.5. *Parental Control Device*: Upon request by any Subscriber, Grantee shall make available a parental control or lockout device to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

9.6. *Subscriber Contracts*: Grantee’s terms of service and contracts with Subscribers shall be consistent in all material respects with the requirements of this Franchise.

9.7. *Regulation of Equipment for Hearing Impaired*: Grantee shall comply with applicable federal and state laws regarding equipment for hearing impaired individuals.

9.8. *Downgrade and Disconnect Charges*:

9.8.1. *Downgrade Charges*: Unless otherwise provided by law, Grantee shall not impose any Downgrade Charges, except as otherwise provided in Subsection 9.8.1.1 below. As used in this Section, “Downgrade Charge” means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a change or reduction of Cable Services to less expensive Cable Services or tiers.

9.8.1.1. Grantee may impose Downgrade Charges if :

(a) The Subscriber has been notified of the Grantee's Downgrade Charge pursuant to the terms and conditions of the Subscriber’s terms of service; and/or

(b) There is a delay caused by the Subscriber in returning equipment related to the downgrade of service.

9.8.2. *Disconnection Charges*: Charges for Cable Service will be discontinued at the time of a request by the Subscriber for disconnection of Cable Service, except

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that equipment charges may be applied until equipment has been returned. No period of notice prior to the requested disconnect can be required of a Subscriber by Grantee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless early disconnection charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Service received after the day following the date the disconnect request is received by Grantee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Grantee.

9.9. *Discriminatory Practices:* Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers or any other Persons on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee shall comply at all times with all other applicable federal or state laws, rules and regulations relating to non-discrimination.

9.10. *Permission of Property Owner or Tenant:* Grantee shall not install or attach any of its facilities or devices to any residence or other property without first securing the permission of the owner or tenant of any property involved, except where there is an existing utility easement reserved by plat or other conveyance or unless such installation or attachment is otherwise authorized by law. Grantee shall ensure that Subscribers premises are restored to pre-existing conditions if damaged by Grantee's employees or agents in any respect in connection with the installation, repair or disconnection of Cable Service.

9.11. *Privacy and Personalized Data:* Grantee shall comply with all applicable federal and state laws regarding privacy, unauthorized monitoring or cable tapping, sales of subscriber lists, and collection, use, sale or sharing of Personalized Data. For purposes of Section 9.11, "Personalized Data" means the name and address or other information regarding an individual Subscriber, which is associated with or extracted from data obtained from the Subscriber's use of Grantee's Cable Services.

10. REPORTS AND RECORDS

10.1. *Open Books and Records:* Upon reasonable written notice to Grantee and with no less than thirty (30) business days written notice to Grantee, the Commission on behalf of the Jurisdictions shall have the right to inspect Grantee's and any Affiliate's books and records pertaining to Grantee's provision of Cable Service in the Franchise Area at any time during normal business hours and on a nondisruptive basis at a mutually agreed location within the Portland metropolitan area, as reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Grantee may organize the necessary books and records for appropriate access by the Commission. Grantee shall maintain any books and records for at least five (5) years for Franchise compliance purposes. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. If any books, records, maps, plans or other requested documents are too voluminous, not available locally in the Portland metropolitan area, or for security reasons cannot be copied and

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moved, then Grantee may request that the inspection take place at a location mutually agreed to by the Commission and Grantee, provided that the Grantee must pay all reasonable travel expenses incurred in inspecting those documents above those that would have been incurred had the documents been produced in the Portland metropolitan area up to a maximum of two hundred dollars (\$200) per day.

10.2. *Proprietary Books and Records:* Grantee acknowledges that information submitted to the Commission on behalf of the Jurisdictions is subject to the Oregon Public Records Law, and may be open to public inspection. If Grantee believes that information requested is confidential and proprietary, Grantee shall provide the following documentation to the Commission: (i) specific identification of the information; and (ii) a statement attesting to the reason(s) Grantee believes the information is confidential. The Commission shall take reasonable steps to protect the proprietary and confidential nature of any books, records, Service Area maps, plans, or other documents that are provided pursuant to this Agreement to the extent they are designated as such by Grantee, consistent with the Oregon Public Records Law, including treating any information derived from records identified by Grantee as being confidential or proprietary as confidential and only disclosing such information to employees, representatives, and agents thereof that have a need to know or in order to enforce the provisions hereof. Should the Commission be required under state law to disclose information derived from Grantee's books and records, the Commission agrees that it shall provide Grantee with reasonable notice and an opportunity to seek appropriate protective orders prior to disclosing such information. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to provide copies of any confidential information relating to such Cable Service where the Commission or a Jurisdiction cannot lawfully protect the confidentiality of the information, but the Commission shall have the right to review such records on a confidential basis. Grantee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area.

10.3. *Audit of Fee Payments:*

10.3.1. Acceptance of any payment made pursuant to Section 7 (PEG/I-Net) or Section 8 (Franchise Fees and PEG/I-Net Grant Payments) of this Franchise shall not be construed as an accord that the amount paid is, in fact, the correct amount. The Commission, on behalf of the Jurisdictions, and the Grantee shall make every effort to informally consult and resolve any questions or issues regarding franchise fee or PEG/I-Net Grant payments and nothing herein shall be construed to preclude such informal consultations or informal review of Grantee's books. The Commission, on behalf of the Jurisdictions, may conduct an audit in relation to payments made by Grantee no more than once every three (3) years during the Term. As a part of the audit process, the Commission or the Commission's designee may inspect Grantee's books of accounts relative to the Franchise Area at any time during regular business hours and after thirty (30) calendar days prior written notice. The scope of the audit shall be limited to the records of the previous five (5) years up to and including the most recent calendar quarter, and shall not include any records or period of time that has been previously audited.

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10.3.2. Grantee agrees to give its full cooperation in any audit. Grantee shall not be required to provide responses to written inquiries within less than thirty (30) calendar days of such request.

10.3.2.1. If the results of any audit indicate that Grantee (i) paid the correct franchise fee and PEG/I-Net Grant, (ii) overpaid the franchise fee and PEG/I-Net Grant and is entitled to a refund or credit, or (iii) underpaid the franchise fee and PEG/I-Net Grant by five percent (5%) or less of the correct amounts due, then the Jurisdictions shall pay any costs they incur related to the audit. If the results of the audit indicate Grantee underpaid the franchise fee and PEG/I-Net Grant by more than five percent (5%) of the correct amounts due, then Grantee shall pay the reasonable, documented, third-party costs of the audit, which costs shall be limited to ten thousand dollars (\$10,000). The Jurisdictions agree that any audit shall be performed in good faith. If any audit discloses an underpayment of the franchise fee and PEG/I-Net Grant by more than five percent (5%) of the correct amounts due, Grantee shall pay the Jurisdictions the amount of the underpayment, together with interest computed as set forth in Section 8.5.

10.3.2.2. Any auditor employed by the Jurisdictions shall not be compensated on a success based formula, e.g., payment based on a percentage of underpayment, if any. Grantee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to the Jurisdictions.

10.4. *Information Required:* Grantee shall provide the Commission a current copy of the following information at the intervals indicated:

10.4.1. A current schedule of all Cable Services rates and charges (annually or upon change);

10.4.2. A current schedule of Video Programming services, tiers and/or packages and Channel assignments (annually or upon change);

10.4.3. A monthly Cable Services sample customer bill, including copies of all communications of a general nature related to Cable Services sent to Subscribers with bills, beginning no more than ninety (90) days after the Effective Date (and monthly thereafter);

10.4.4. Copies of other communications of a general nature sent to Subscribers related to Cable Services, excluding communications sent to individual Subscribers which name that Subscriber (upon request);

10.4.5. A copy of Subscriber privacy policies (annually or upon change);

10.4.6. A copy of the Subscriber service agreement(s) and related terms and conditions (annually or upon change).

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10.5. *General Reports:* The Jurisdictions shall have the right to request, in writing, information as is appropriate and reasonable to determine whether Grantee is in compliance with this Franchise. Grantee shall provide the Jurisdictions such information in a format as Grantee customarily prepares such report or information. Grantee shall fully cooperate with the Jurisdictions and shall provide such information and documents as necessary and reasonable for the Jurisdictions to evaluate compliance.

10.6. *Copies of Federal and State Documents:* Grantee shall submit to the Commission a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or Affiliates to any federal, state or local courts, regulatory agencies or other governmental bodies of such documents specifically related to the operation of Grantee's Cable System or Grantee's provision of Cable Services within the Franchise Area. Grantee shall submit such list of documents to the Commission no later than thirty (30) days after filing, mailing or publication thereof. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under applicable federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency or a request for confidential treatment is pending. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the Commission and its duly authorized agents and shall not be made available for public inspection.

11. INSURANCE AND INDEMNIFICATION

11.1. *Insurance:*

11.1.1. Grantee shall maintain in full force and effect, at its own cost and expense, continuously during the Franchise Term, the following insurance coverage:

11.1.1.1. Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Grantee's Cable Service business in the Franchise Area.

11.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

11.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

11.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) employee limit; five hundred thousand dollars (\$500,000) policy limit.

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11.1.2. Each Jurisdiction shall be designated as an additional insured under each of the insurance policies required in this Section 11 except Workers' Compensation and Employer's Liability Insurance.

11.1.3. Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement. The insurance certificates shall contain a provision stating that the insurer shall provide thirty (30) days prior written notice to the Commission of intent to non-renew, cancel, or make a material adverse change in coverage. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 11.1 during the term of this Franchise, Grantee shall provide a replacement policy.

11.1.4. Each of the required insurance policies shall be with insurers authorized or permitted to do business in the State of Oregon, with an A-: VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

11.1.5. The insurance shall be without prejudice to coverage otherwise existing and shall name each Jurisdiction and its officers, agents, and employees as additional insureds as their interest may appear, except the Workers' Compensation and Employer's Liability Insurance.

11.1.6. Grantee shall provide the Commission, within fifteen (15) days of the Effective Date of this Franchise, a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the Jurisdictions' Legal Counsel as to whether the certificate and the insurance certified is consistent with the requirements of this Section 11.1. Failure to maintain adequate insurance as required under this Section 11.1 shall be cause for revocation of this Franchise by a Jurisdiction after the process set forth in Section 14.

11.1.7. The Jurisdictions shall require as a condition of any separate agreement between the Jurisdictions and a Designated Access Provider, that the Designated Access Provider shall include the Grantee as a named insured in the Designated Access Provider's liability insurance policy with respect to any claim for injury, damage, loss, liability, cost or expense arising from programming or other transmission placed by the Designated Access Provider on PEG Access Channels or the Institutional Network (but not if arising out of or by reason of any act done by the Grantee or its officers, agents or employees).

11.2. *Indemnification:*

11.2.1. Grantee shall indemnify, save and hold harmless, and defend each Jurisdiction, its officers, agents, boards and employees, from and against any liability for claims, damages, cost and expense, including court and appeal costs and reasonable attorneys' fees or expenses, arising out of or by reason of: (i) any construction, operation, excavation, reconstruction or maintenance of its Cable System; (ii) any other act done under this Agreement by or for Grantee, its agents or employees under this Agreement; or (iii) any negligence or willful misconduct by the Grantee, its agents or its employees. The Jurisdiction shall give

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Grantee written notice of its obligation to indemnify the Jurisdiction within ten (10) days of receipt of a claim or action pursuant to this subsection, or thirty (30) days provided that the timing of such notice does not prejudice Grantee. Notwithstanding the foregoing, Grantee shall not indemnify any Jurisdiction, for any damages, liability or claims resulting from the willful misconduct or negligence of the Jurisdiction, its officers, agents, employees, attorneys, consultants or independent contractors or for any activity or function conducted by any Person other than Grantee in connection with PEG Access or use of the I-Net or EAS.

11.2.2. With respect to Grantee's indemnity obligations set forth in Subsection 11.2.1, Grantee shall provide the defense of any claims brought against a Jurisdiction by selecting counsel of Grantee's choice to defend the claim, subject to the consent of the affected Jurisdiction, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent a Jurisdiction from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its own cost and expense. Grantee shall have the right to settle or compromise any claim or action arising hereunder, subject to the prior written approval of the indemnified party, which approval shall not be unreasonably withheld. In the event that the terms of any such proposed settlement include the full satisfaction and release of the Jurisdiction without any requirement for further non-procedural actions or public statements by the Jurisdiction, and the Jurisdiction does not consent to the terms of such settlement or compromise, Grantee shall not settle the claim or action but its obligation to indemnify the Jurisdiction shall in no event exceed the amount of such settlement.

12. TRANSFER OF FRANCHISE

12.1. Subject to 47 U.S.C. §537, no "Transfer of the Franchise" shall occur without the prior consent of the Jurisdictions, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under this Article 12.

12.2. A "Transfer of the Franchise" shall mean any transaction in which:

12.2.1. An ownership or other interest in Grantee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Grantee is transferred; or

12.2.2. The rights held by Grantee under the Franchise are transferred or assigned to another Person or group of Persons.

Notwithstanding Subsections 12.2.1 and 12.2.2, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Grantee to the parent of Grantee or to another Affiliate of Grantee; transfer of an interest in the Franchise or the rights held by Grantee under the Franchise to the parent of Grantee or to another Affiliate of Grantee; any action which is the result of a merger of the parent of Grantee; or any action which is the result of a merger of another Affiliate of Grantee. The parent of Grantee is shown in Exhibit E.

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12.3. Grantee shall make a written request (“Request”) to the Commission and Jurisdictions for approval of any Transfer of the Franchise and furnish all information required by law and/or reasonably requested by the Commission and the Jurisdictions in respect to their consideration of a proposed Transfer of the Franchise. In reviewing a Request related to a Transfer of the Franchise, the Commission and the Jurisdictions may inquire into the legal, technical and financial qualifications of the prospective transferee. Grantee shall assist the Commission and the Jurisdictions in so inquiring.

12.4. The Jurisdictions shall render a final written decision on the Request within one hundred twenty (120) days of the Request, provided the Jurisdictions have received all reasonably requested information. Failure by the Grantee or prospective transferee to provide such information will automatically toll the time period set forth in 47 U.S.C. § 537.

12.5. Subject to the foregoing, if the Jurisdictions fail to render a written decision on the Request within one hundred twenty (120) days, unless such time period is tolled under Section 12.4 hereof, the Request shall be deemed granted unless Grantee and the Jurisdictions agree to an extension of time. The Jurisdictions may condition said Transfer of the Franchise upon such terms and conditions as they deem reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective transferee or to the resolution of outstanding and unresolved issues of Grantee’s noncompliance with the terms and conditions of this Agreement.

12.6. Grantee shall ensure that any transferee or assignee shall, prior to consummation of any transaction resulting in such a transfer or assignment of this Franchise, agree in writing to be bound by the terms of this Franchise and to assume the obligations and liabilities to the Jurisdictions or their predecessor under this Franchise.

12.7. The consent or approval of the Jurisdictions to any Request by the Grantee shall not constitute a waiver or release of any rights of the Jurisdictions.

12.8. Grantee shall immediately report to the Jurisdictions, as soon as it becomes known, the initiation of bankruptcy proceedings.

13. RENEWAL OF FRANCHISE

Each Jurisdiction and Grantee agree that any proceedings undertaken by the Jurisdictions that relate to the renewal of this Franchise shall be governed by and comply with the applicable provisions of Section 626 of the Communications Act, 47 U.S.C. §546.

14. ENFORCEMENT AND TERMINATION OF FRANCHISE

14.1. *Enforcement by the Commission:* Pursuant to the Intergovernmental Agreement, the Commission has the authority to take certain actions on behalf of the Jurisdictions jointly and separately, and in its own right, to enforce or administer this Franchise, except those powers retained by the Jurisdictions. In addition to other rights under the Intergovernmental Agreement, the Jurisdictions retain the right to review any action of the

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Commission to: (1) find the Grantee in violation of this Franchise; or (2) impose any penalty or financial remedy. A majority of the affected Jurisdictions may overturn such Commission action and return the matter to the Commission for further proceedings as directed by the affected Jurisdictions. In addition, the Jurisdictions retain full authority, as provided in the Intergovernmental Agreement, to revoke or terminate this Franchise. It is the parties' intent that the Commission will enforce this Franchise on behalf of the Jurisdictions, except for the exercise of that authority retained by the Jurisdictions, and that the amount of any financial penalty under this Agreement shall be on a consolidated basis for all the Jurisdictions and no financial penalty shall be assessed more than once or by multiple Jurisdictions for the same violation. As used in this Section 14, the term "Commission" means the Jurisdictions acting through the Commission to the extent of its authority as provided in the Intergovernmental Agreement.

14.2. *Remedies:* Subject to applicable federal and state law, in the event the Commission, after following the procedures set forth in Sections 14.2 through 14.4, determines that Grantee is in material violation of any provision of this Franchise, the Commission may apply any of the following remedies:

14.2.1. Order Grantee to correct or cure the violation within a reasonable time frame as the Commission shall determine;

14.2.2. Impose reasonable penalties, subject to the Jurisdictions' right of review, up to one thousand dollars (\$1,000) per day, incident, or other measure of violation,

14.2.3. Pursue any other legal or equitable remedy available under this Franchise or any applicable law; or

14.2.4. In the case of a substantial material default of a material provision of the Franchise, recommend to the Jurisdictions that they seek to revoke the Franchise in accordance with Section 14.10.

14.3. *Application of Remedies:* In determining which of the foregoing remedies is appropriate, and in the exercise of specific remedies, the Jurisdictions, acting through the Commission where applicable as provided in the Intergovernmental Agreement, shall consider, among other things: (1) the nature and extent of the violation(s); (2) whether Grantee has a history of similar violation(s); (3) the remedy that can be expected to deter such violation(s) in the future; (4) the damage suffered by the public and the cost of remedying the violation(s); (5) the Persons burdened by the violation(s); and (6) any other matters the Commission deems appropriate.

14.4. *Notice of Violation:* If at any time, the Commission believes that Grantee has not complied with the terms of the Franchise, the Commission on behalf of the Jurisdictions shall notify Grantee in writing of the exact nature of the alleged noncompliance (for purposes of this Section 14, the "Noncompliance Notice") at least thirty (30) days prior to exercising any of the Jurisdictions' rights under this Franchise.

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14.5. *Grantee's Right to Cure or Respond:* If Grantee removes or otherwise cures the asserted violation within thirty (30) days from receipt of the Noncompliance Notice, or if cure is not reasonably possible within thirty (30) days and the Grantee initiates good faith efforts reasonably satisfactory to the Commission to cure within thirty (30) days and the efforts continue in good faith, the Commission shall not exercise the Jurisdictions' rights under this Section 14. Upon cure of any noncompliance, the Commission shall provide written confirmation that such cure has been effected.

14.6. *Grantee Due Process Hearing:* Subject to Section 14.5, in the event that: (1) Grantee fails to remove or otherwise cure the alleged noncompliance within thirty (30) days after receipt of the Noncompliance Notice; or (2) Grantee does not undertake and continue good faith efforts reasonably satisfactory to the Commission to remedy the alleged noncompliance; then the Commission shall commence a formal hearing process under the Rules of Procedure adopted by the Commission. The Commission shall provide Grantee at least thirty (30) days prior written notice of such hearing, not inclusive of the thirty (30) days under Section 14.4. If after the hearing, the Commission determines that a violation exists, the Commission may invoke the remedies set forth in Section 14.2.

14.7. *Fines:*

14.7.1. Total fines shall not exceed two hundred thousand dollars (\$200,000) in any twelve (12)-month period.

14.7.2. If the Commission elects to assess a fine pursuant to this Section 14.7, such election shall constitute the exclusive remedy for the violation for which the fine was assessed for a period of sixty (60) days. Thereafter, the remedies provided for in this Franchise are cumulative and are not exclusive; the exercise of one remedy shall not prevent the exercise of another or the exercise of any rights of the Jurisdictions at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed.

14.8. *Minor Variances:* The Commission may, upon request of the Grantee or on its own motion, permit Grantee to vary its manner of performance under this Franchise so long as the variance does not result in a substantial change in the terms of this Franchise or a substantial reduction in the services to be provided.

14.9. *Security Fund:* Prior to the Service Date, Grantee shall establish and provide to the Commission on behalf of the Jurisdictions a security fund ("Security Fund"), as security for the faithful performance by Grantee of all material provisions of this Franchise. The Security Fund shall be maintained at the amount of fifty thousand dollars (\$50,000) and the form of the security may, at Grantee's option, be a performance bond, letter of credit, cash deposit, cashier's check or any other security acceptable to the Commission.

14.9.1. If Grantee posts a performance bond, it shall be substantially in the form of Exhibit F.

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14.9.2. In the event that a performance bond provided pursuant to this Franchise is not renewed or is cancelled, Grantee shall provide new security pursuant to this Section 14 within thirty (30) days of such cancellation or failure to renew.

14.9.3. Neither cancellation, nor termination nor refusal by surety to extend the bond, nor inability of Grantee to file a replacement bond or replacement security for its obligations, shall constitute a loss to any Jurisdiction recoverable under the bond. However, if Grantee fails to maintain the security required by Section 14.9, after the procedures set forth in 14.4, 14.5, 14.6, the Commission may treat the delay as a substantial material default under Section 14.1.6.

14.10. *Revocation:* Should any Jurisdiction seek to revoke this Franchise after following the procedures set forth above in this Section 14, including the hearing described in Section 14.4, the Jurisdiction shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the Jurisdiction has not received a satisfactory response from Grantee, the Jurisdiction may then seek termination of the Franchise at a second hearing. The Jurisdiction shall cause to be served upon Grantee, at least thirty (30) business days prior to such hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

14.10.1. At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Jurisdiction, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

14.10.2. Following the hearing, Grantee and all parties to the hearing shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the Jurisdiction shall determine whether to revoke this Franchise based on the information presented by all parties, or, where applicable, grant additional time to Grantee to effect any cure. If the Jurisdiction determines that the Franchise shall be revoked, the Jurisdiction shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the Jurisdiction to an appropriate court, which shall have the power to review the decision of the Jurisdiction. If the court finds the Jurisdiction's decision is not supported by substantial evidence, based on the record of the proceeding conducted under this Section 14, Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Jurisdiction.

14.10.3. A Jurisdiction may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Jurisdiction's rights under the Franchise in lieu of revocation of the Franchise.

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14.11. *Grantee Termination:* Grantee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Service Date of this Franchise, if at the end of such three (3) year period Grantee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System. Grantee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 14.11 shall be given to the Commission in writing, with such termination to take effect no sooner than one hundred twenty (120) days after giving such notice. Grantee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

14.12. *Continuity of Service:* In the event that Grantee elects to terminate Cable Services under this Franchise pursuant to Section 14.11, Grantee shall cooperate with the Commission and the Jurisdictions to reasonably transition Subscribers to other cable operators.

15. EQUAL EMPLOYMENT OPPORTUNITY

Grantee shall comply with all applicable federal and state laws affording nondiscrimination in employment to all individuals regardless of their race, color, religion, age, sex, national origin, sexual orientation or physical disability.

16. MISCELLANEOUS PROVISIONS

16.1. *Actions of Parties:* In any action by a Jurisdiction or Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

16.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

16.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the Jurisdictions.

16.4. *Force Majeure:* If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the Jurisdictions prompt notice of such Force Majeure, describing the same in reasonable detail, and

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Grantee's obligations under this Franchise shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibilities and duties under this Franchise.

16.5. *Notices*: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

16.5.1. Notices to Grantee shall be mailed to:

Verizon Northwest Inc.
Attn: Tim McCallion, President
112 Lakeview Canyon Road
Thousand Oaks, CA 91362

16.5.2. with a copy to:

Mr. Jack H White
Senior Vice President & General Counsel – Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

16.5.3. Notices to a Jurisdiction or the Commission shall be mailed to:

Mt. Hood Cable Regulatory Commission
1120 SW Fifth Avenue, Room 1305
Portland, OR 97204

16.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Grantee and the Jurisdictions, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances relating to Cable Service, or other regulations, requirements or policies relating to Cable Service, that conflict with the provisions of this Franchise are superseded by this Franchise.

16.7. *Amendments*: Amendments to this Franchise shall be mutually agreed to in writing by the parties.

16.8. *Captions*: The captions and headings of articles, sections and subsections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

16.9. *Severability*: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of

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competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

16.10. *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

16.11. *Modification*: This Franchise shall not be modified except by written instrument executed by both parties.

16.12. *FTTP Network Transfer Prohibition*: Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Grantee from providing Cable Services, shall Grantee or its assignees be required to sell any right, title, interest, use or control of any portion of Grantee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to any Jurisdiction or any third party. Grantee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Grantee from providing Cable Services to the extent the Grantee's FTTP Network is lawfully occupying the Public Rights-of-Way. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set forth in this Agreement. Furthermore, nothing in this provision shall be intended to waive any rights the Jurisdictions may have with respect to the purchase, removal or relocation of the FTTP Network under telecommunications laws and regulations. Such matters are outside the scope of this provision, and the parties reserve their rights with respect to such matters.

16.13. *Independent Review*: Each Jurisdiction and Grantee acknowledges that they have received independent legal advice in entering into this Franchise. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

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Section 17 **EXECUTION**

17.1 *Execution of Agreement:* On or before thirty (30) days after this Franchise has been executed by the Jurisdictions, as authorized by each Jurisdiction's governing body, Grantee shall file with each Jurisdiction a fully executed original of this Franchise, as signed by a properly authorized officer of the Grantee.

17.2 *Failure to File Executed Agreement:* Any failure by the Grantee to comply with the requirements of Section 17.1 within the thirty (30) day period shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and this Franchise shall thereupon be null and void without any further action by the Jurisdiction.

AGREED TO AS OF THE DATE OF LAST SIGNATURE BELOW:

CITY OF FAIRVIEW

APPROVED AS TO FORM:

By: _____
[Name, Title]

[Name, Title]

Date: _____

CITY OF GRESHAM

APPROVED AS TO FORM:

By: _____
[Name, Title]

[Name, Title]

Date: _____

CITY OF TROUTDALE

APPROVED AS TO FORM:

By: _____
[Name, Title]

[Name, Title]

Date: _____

CITY OF WOOD VILLAGE

APPROVED AS TO FORM:

By: _____
[Name, Title]

[Name, Title]

Date: _____

MULTNOMAH COUNTY

APPROVED AS TO FORM:

By: _____
[Name, Title]

[Name, Title]

ATTACHMENT A
MHCRC RECOMMENDED FRANCHISE
Approved October 2, 2008

Date: _____

VERIZON NORTHWEST INC.

By: _____

Date: _____

EXHIBITS

Exhibit A: Franchise Area Map

Exhibit B: Intergovernmental Agreement

Exhibit C: Quarterly Franchise Fee Remittance Form

Exhibit D: Jurisdictions' Customer Service Standards

Exhibit E: Grantee Parent Structure

Exhibit F: Sample Performance Bond