

Franchise Agreement
for
Cable Services
between
Paragon Cable
and
City of Portland, Oregon

Effective February 2, 1997

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ORDINANCE NO. 170758

Grant a franchise to KBL-Portland Cablesystems, L.P. to operate a Cable System.

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT

1.1 Grant of Franchise.

(A) The City of Portland does hereby grant to KBL-Portland Cablesystem, L.P. , who is qualified to do business in Oregon, and to its successors and assigns, a franchise to construct, operate and maintain a Cable System to provide Cable Services and Institutional Services in the Streets of the City.

(B) Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the “City” and KBL-Portland Cablesystems, L.P. shall be referred to as the “Grantee.”

1.2 Term of Franchise. This Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall expire on December 31, 2010, unless terminated sooner as provided herein.

1.3 Effective Date. The effective date of this Franchise shall be 60 days after passage of this Franchise by the City Council, unless the Grantee fails to file an unconditional written acceptance of this Franchise and a guaranty by the Guarantor as provided herein, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof, as stamped by the Council Clerk.

1.4 Franchise Not Exclusive.

(A) This Franchise is not exclusive. The City expressly reserves the right to grant rights or franchises to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee hereunder, by franchise, permit or otherwise.

(B) (1) If, after the effective date of this Franchise, the City enters into and authorizes a Cable Services franchise, permit, license or other form of agreement with any person other than Grantee to enter the Streets for the construction and operation of a Cable System providing Cable Services within any part of Grantee’s Franchise Area in which Grantee is actually providing Cable Services, the material provisions of such agreement shall be reasonably non-discriminatory and competitively neutral with respect to the material provisions of this Franchise, unless otherwise restricted by law.

(2) In the event that any person, (including without limitation a governmental entity), uses facilities in the Streets to provide a multi-channel video service, (including without limitation an open video system), without a franchise, the City shall, to the extent authorized by law, impose on such person equivalent obligations which shall be reasonably non-discriminatory and competitively neutral with respect to the material provisions of this Franchise.

(3) Solely for the purposes of this Subsection 1.4(B), “Cable Services” shall mean the one-way transmission of :

(a) video programming, or

(b) other programming service;

for commercial purposes, including any subscriber interaction necessary for the selection or use of such programming.

(C) (1) Nothing in Subsection 1.4(B) shall be construed as limiting, restricting or preventing the City from issuing any franchise, permit, license or other form of agreement for all of Grantee's Franchise Area or any portion thereof, that provides for equal or greater requirements or for a similar or higher level of Cable Services to subscribers, than that required of Grantee under this Franchise.

(2) Grantee agrees and acknowledges that, solely for the purposes of Subsection 1.4(B), the provisions of any other franchise issued or administered by the City 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.

(3) Grantee agrees and acknowledges that the provisions of Subsection 1.4(B) shall not apply to any franchise, permit, license or other form of agreement issued by the City with respect to the provision of telecommunications services, in effect as of the effective date of this Franchise or at any time thereafter.

1.5 Charter and General Ordinances. To the extent authorized by law, this Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not materially in conflict with existing contractual rights of Grantee, now in effect or hereafter made effective. Sections 10-201 through 10-218, inclusive, of the Charter of the City of Portland (1942 compilation, as revised in part by subsequent amendments), are hereby incorporated by reference and made a part of this Franchise, to the extent authorized by law. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction. Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority. Nothing in this Section 1.5 shall be deemed a waiver by Grantee or the City of the rights of Grantee or the City under applicable law.

Section 2: INTERGOVERNMENTAL AGREEMENT/ CABLE REGULATORY COMMISSION

Intergovernmental Agreement. The City has provided for regulation of this Franchise through a Cable Regulatory Commission ("Commission") created through an Intergovernmental Agreement (attached as Exhibit A). The City has agreed to be bound by the decisions and actions taken by the Commission pursuant to powers, duties, and responsibilities delegated to the Commission under the Intergovernmental Agreement. Unless specifically stated otherwise herein, the Commission shall be the representative and agent of the City in dealing with Grantee under the terms of this Franchise. In fulfilling the terms of this Franchise, Grantee is expected to rely upon, look to, communicate with, and comply with the decisions and orders of the Commission, its agents, and employees on all cable matters with respect to which the City has lawfully delegated the exercise of the City's authority under this Franchise. Nothing in this Franchise is intended to empower the Commission to act contrary to the provisions of the Intergovernmental Agreement. The City retains all powers not expressly delegated to the Commission.

Section 3. DEFINITIONS

3.1 (A) Captions. Throughout this Franchise, captions to Sections are intended solely to facilitate reading and to reference the Sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

(B) Definitions. For the purpose of this Franchise, and all Exhibits attached hereto, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word “shall” is always mandatory and not merely directory.

3.2 “Access” means the availability for use of the Cable System by various agencies, institutions, organizations, groups and individuals in the community to acquire, create, and distribute Non-Commercial Programming not under the Grantee's editorial control, including, but not limited to:

(A) “Public Access” means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary or designated Programmers or users having editorial control over their Programming;

(B) “Educational Access” means Access where schools are the primary or designated Programmers or users having editorial control over their Programming;

(C) “Government Access” means Access where governmental institutions are the primary or designated Programmers or users having editorial control over their Programming; and

(D) “PEG Access” means Public Access, Educational Access, and Government Access, collectively.

3.3 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit PEG Access Programming.

3.4 “Access Corporation” means such non-profit, public corporations as are designated by the City to provide Access in the Franchise Area, and whose duties may include the management of certain Access Facilities and Resources.

3.5 “Access Facilities” means the Channels, services, facilities, equipment, and/or technical components used or useable by and for PEG Access.

3.6 “Access Resources” means all operating support and other financial means by which PEG Access may be funded.

3.7 “Activation” or “Activated” means the status of any Capacity or part of the Cable System in which any Residential or Institutional Service requiring the use of that Capacity or part may be made available without further installation of System Equipment, whether hardware or software.

3.8 “Affiliated Entity” means any entity having ownership or control in common with the Grantee, in whole or in part, including, without limitation, Grantee's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.

3.9 “Basic Service Tier “ is the level of Programming service which includes, at a minimum, all Broadcast Channels, all PEG Access Channels required in this Franchise, and any additional Programming added by the Grantee.

3.10 “Broadcast Channels” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 (1996 Supp.).

3.11 “Cable Programming Service Tier” is any video Cable Service, other than Basic Service Tier or Pay Services.

3.12 “Cable Services” shall have the meaning provided under Federal law and regulations.

3.13 “Cable System” means a system of plant, Facilities, equipment, and closed Signal transmission paths, including, without limitation, antennas, cables, amplifiers, towers, microwave links, studios, real and personal property, and any and all other conductors, home terminals, converters, remote control units, and all associated equipment or Facilities designed and constructed for the purposes of distributing Cable Services and Institutional Services and of producing, receiving, amplifying, storing, processing or distributing Signals, whether owned, rented, leased, leased-purchased or otherwise controlled by or within the responsibility of the Grantee.

3.14 “Capacity” means the capability of the Cable System to carry Signals. At the time of the effective date of this Franchise, Capacity may be described in terms of portions of the total radio frequency bandwidth by specifying a number of MHz, but this is subject to changes in technology.

3.15 “Capital” or “Capital Costs” means the expenditure of funds for services, products or other resources, whose useful life can be expected to exceed a period of one year or longer.

3.16 “Channel” means a time or frequency slot or technical equivalent on the Cable System, discretely identified and capable of carrying full motion color video, mono or stereo audio, and may include other non-video subcarriers and digital information.

3.17 “City” means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

3.18 “City Council” means the Council of the City of Portland.

3.19 “Closed Channel” means a Channel intended for restricted use, whether on the Institutional Network or the Residential Network, whose contents may only be viewed using special trapping, decoding, an authorized descrambler, or other means of selectively descrambling the Signals. Closed Channel uses may include, without limitation, pay television services or tier services on the Residential Network, and videoconferencing or other closed-circuit uses on the Institutional Network.

3.20 “Designated Access Provider” means the entity or entities designated by the City under Section 7.1.

3.21 “Distribution Hub” means the termination of the distribution ring (the multiple Fiber interconnection between Distribution Hubs and the Transport Hubs with redundant forward Signal paths), from which Fiber is run to individual Fiber Nodes in the Cable System.

3.22 “Downstream” means the direction of Signals from the Headend to Subscribers or Interconnect points served by the Cable System.

3.23 “Dwelling Unit” means 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.

3.24 “Ed-Net” means Oregon's educational institutional network, as set forth in ORS 354.505 through ORS 354.550 (1995).

3.25 “Facility” means any tangible component of the Cable System.

3.26 “FCC” means the Federal Communications Commission.

3.27 “Fiber” means a transmission medium of optical fiber cable capable of carrying Cable Services by means of lightwave impulses.

3.28 “Fiber Node” means the local transition point between the fiber distribution portion and the coaxial distribution portion of the Upgraded Cable System.

3.29 “Franchise” means this franchise agreement, as fully executed by the City and the Grantee.

3.30 “Franchise Area” means the area of the City within which the Grantee is authorized to provide Cable Services and/ or Institutional Services, as set forth in Section 4, and as may be modified from time to time.

3.31 “Frequency Re-use” means the use of Cable System Signal Capacity in a given area of the radio frequency spectrum for different transmissions to and from different locations, such as hubs or user sites, simultaneously.

3.32 “Gross Revenues” means all amounts, in whatever form and from all sources, earned either by the Grantee from the operation of Grantee's Cable System within the City, or by any Affiliated Entity only to the extent such amounts are earned from the operation of Grantee's Cable System within the City. “Gross Revenues” shall include, without limitation, amounts for the Basic Service Tier, Cable Programming Service Tiers, Pay Services, audio services, Subscriber installations and transactions, Leased Access, advertising, equipment rentals and all other revenues derived from the operation of Grantee's Cable System. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. “Gross Revenues” shall also 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 Affiliated Entity; (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 Affiliated Entity. “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. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an Affiliated Entity that represent a transfer of funds between the Grantee and the Affiliated Entity, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliated Entity, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliated Entity and which may otherwise constitute revenue of the Affiliated Entity, shall not constitute additional Gross Revenues for purposes of this Franchise. "Gross Revenues" shall include amounts earned by Affiliated Entities only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System and recorded such types of revenue in its books and Records directly but for the existence of Affiliated Entities. "Gross Revenues" shall not include sales or other similar taxes imposed by law on Subscribers which the Grantee is obligated to collect, nor amounts received from PEG Institutions for use of the Institutional Network.

3.33 "Guarantor" means TWI Cable, Inc., or its successors.

3.34 "Headend" means Grantee's Facility for reception and dissemination of Signals on the Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors, equipment for the Interconnection of the Cable System with adjacent cable systems or other separate communications network, and all other related equipment and Facilities.

3.35 "High Capacity I-Net Location" are Institutional Subscriber locations that require large amounts of Upstream and Downstream Capacity sufficient for multiple Signal transmissions, and to achieve this Capacity, would typically utilize a separate Fiber and/ or coaxial cable from Fiber Nodes in addition to the normal Residential Network coaxial cable.

3.36 "Incremental" costs means the amount actually expended by Grantee in meeting an obligation under this Franchise which Grantee would not otherwise have expended in order to operate and conduct the business of its Cable System or to meet another obligation of this Franchise.

3.37 "Interconnect" or "Interconnection" means the provision by Grantee of technical, engineering, physical, financial, and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated cable system or other separate communications network so that Cable Services of technically adequate quality may be sent to and received from such other systems.

3.38 "Institutional Network" or "I-Net" means Capacity on the Cable System which provides for one-way and bi-directional communication services to and among Institutional Subscribers for use in conducting their business. The network includes all equipment required to make the Capacity available including but not limited to Fiber, coaxial cable, switching, patching, electronic transmitting, receiving, and Signal conversion necessary for effective use of the I-Net.

3.39 "Institutional Services" or "I-Net Services" means one-way and bi-directional communications services provided over the Institutional Network to facilitate the operations of PEG Institutions.

3.40 "Institutional Subscriber" means a PEG Institution receiving Institutional Services.

3.41 "Leased Access Channel" means any Channel or portion of a Channel commercially available for a fee or charge by Persons other than the Grantee, under the requirements of 47 USC § 532 (1996 Supp.).

3.42 “Local Origination Programming” means any local video programming under the editorial control of Grantee, produced, selected, and cablecast by the Grantee on its Cable System.

3.43 “Low Capacity I-Net Location” means a location designated to receive Institutional Services requiring less Capacity for sending or receiving video, voice or data Signals than may be required for High Capacity I-Net Locations, and requiring no special installation of cable from Fiber Nodes for the use of such Institutional Services other than normal Residential Network coaxial cable.

3.44 “Narrowcasting” means the ability of the Cable System to cablecast Signals to specific geographic areas.

3.45 “Non-Commercial” means use of the Cable System by any public, tax-exempt organization or by any other user for a purpose that is not intended to generate income for the user which may be subject to federal, state, or local income taxes.

3.46 “Parent Corporations” means TWI Cable Inc. and Time Warner Inc. as now or hereafter constituted, and includes any other existing or future corporations with greater than fifty percent ownership or control over Grantee.

3.47 “Pay Service” means video Signals delivered to Subscribers for a fee or charge over and above the regular charges for Basic Service Tier and Cable Programming Tier, on a per program, per Channel, or other subscription basis.

3.48 “PEG Institution” means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies; any agency of government, excluding state or federal governments; public libraries; Ed-Net; and Designated Access Providers.

3.49 “Person” means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.

3.50 “Programmer” means any Person responsible for Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides Programming for transmission on the Cable System.

3.51 “Programming” means the process of causing television programs or other patterns of Signals to be transmitted on the Cable System, and includes all programs or patterns of Signals transmitted or capable of being transmitted, on the Cable System.

3.52 “Record” means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, summaries or accounts of personal conversations or interviews, reports, notebooks, sketches, summaries or accounts of meetings or conferences, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, photographs and any other writings or recordings of every kind and description, including magnetic media, and all sound recordings, to the extent related to the enforcement or administration of this Franchise.

3.53 “Residential Services” means Cable Services delivered to single or multiple Dwelling Units.

3.54 “Residential Subscriber” means any Subscriber receiving Residential Services.

3.55 “Residential Network” means the Cable System designed principally for the delivery of Residential Service to individual Dwelling Units.

3.56 “Section” or “Subsection” means a provision of this Franchise, unless specified as part of another document.

3.57 “Signal” means any analog or digital electrical or light impulses carried on the Cable System, which includes any combination of audio, video, voice or data.

3.58 “Standard Installation” means an installation of no more than 170 feet from the nearest point of access on the Cable System from which it is technically feasible and/or designed to serve the site, to the site’s installation point, and which qualifies a Subscriber for installation at standard rates, provided that the number of homes per cable plant mile is at least twenty (20) residential Dwelling Units, as measured from any point on Grantee’s existing Cable System.

3.59 “Standard Video Channel” means a portion of the electromagnetic frequency spectrum which is capable of delivering both the audio and video portions of a television signal at an acceptable level of quality to Residential Subscribers. Upon the effective date of this Franchise, such capability generally requires six (6) MHz capacity, but this is subject to changes in technology.

3.60 “Streets” means the surface of any public street, road, alley or highway, within the City, used or intended to be used by the general public for general transportation purposes to the extent the City has the right to allow the Grantee to use them, and the space above and below.

3.61 “Subscriber” means any Person who is lawfully receiving, for any purpose or reason, any Cable Services provided by Grantee by means of or in connection with the Cable System, whether or not a fee is paid for such service.

3.62 “System Equipment” means all Cable System cable, hardware, active and passive electronics, and software required, except for User Equipment, to activate and make available any service provided over the Cable System.

3.63 “Tap” means to observe or monitor video, audio, digital or other non-video Signals, or any combination of such Signals carried on the Cable System, where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.

3.64 “Transport Hub” means an intermediate location in the Cable System between the Headend and the Fiber Nodes, where Signals are routed to the individual Fiber Nodes of the system.

3.65 “Upgrade” means an improvement in Channel Capacity or any other technical aspect of the Cable System, which may be accomplished without substantially replacing or overlashing the entire Cable System plant.

3.66 “User Equipment” means: all internal wiring; audio video or data receiving, processing and

transmitting devices in cases where Fiber is provided as part of the Institutional Network to a site; the Fiber receiver and laser transmitter; and other related equipment; required on Subscribers' premises in order to utilize any Institutional or Residential Service through connection to System Equipment on the Cable System.

3.67 "Upstream" means the direction of Signals transmitted to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

3.68 "Year," "Annual" or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 4. FRANCHISE AREA

4.1 Cable Services. Subject to the provisions of this Franchise, Grantee shall provide Cable Services authorized by this Franchise and applicable law within the area of the City located east of the Willamette River, and in the Linnton area west of the Willamette River, as set forth on the map attached hereto as Exhibit B (the "Cable Services Franchise Area").

4.2 Institutional Services. Grantee shall provide all Institutional Services as required by this Franchise and applicable law within the entire territory included within the City limits, as such limits may change from time to time.

4.3 Expansion of Franchise Area. Grantee may provide Cable Services outside the Cable Service Franchise Area described in Section 4.1 only after receiving specific City approval, set forth in a separate ordinance adopted by the City Council, to expand such area.

Section 5. RESIDENTIAL NETWORK AND PROGRAMMING

5.1 Initial Channel Capacity. From the effective date of this Franchise, until the Cable System Upgrade required in Section 11 is completed, Grantee shall maintain the operation of its existing Cable System without diminishing the level of Cable System Capacity or the number of Channels programmed on the effective date of this Franchise. Such Capacity shall include a minimum activated Downstream Capacity of 420 MHz (providing 56 Standard Video Channels) for Cable Services on the Cable System.

5.2 Upgraded Channel Capacity.

(A) In accordance with the Upgrade schedule provided for in Section 11.2, Grantee shall provide to Residential Subscribers an activated minimum Downstream Channel Capacity of 550 MHz (providing a minimum Activated Downstream Channel Capacity of 78 Standard Video Channels).

(B) The Channel Capacity required hereunder shall include a sufficient number of Channels with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the Exhibits hereto.

(C) In accordance with the Upgrade schedule provided for in Section 11.2, Grantee's Cable System shall provide a minimum Activated Upstream digital Channel Capacity of 35 MHz accessible from any Fiber Node, any Residential Subscriber, any Access Corporation facility, and any PEG Institution in the Franchise Area. This Upstream Capacity shall require no additional installation of equipment for use except on users' premises.

(D) Nothing in the Cable System Upgrade design and implementation shall preclude the delivery of stereo signals, including stereo signals on PEG Access Channels.

5.3 Broad Programming Categories.

(A) Grantee shall provide or enable the provision of at least the following broad categories of Programming:

- (1) Arts, culture and performing arts;
- (2) Foreign languages;
- (3) Programming addressed to diverse ethnic and minority interests in the City;
- (4) National, state and local government affairs; and,
- (5) Local Origination Programming concerning local and regional issues, events, and affairs of interest to City residents.

(B) Deletion or Reduction of Programming Categories.

(1) Grantee shall not delete or so limit as to effectively delete any broad category of Programming identified in Section 5.3 and within its control without the consent of the City or as otherwise authorized by law.

(2) In the event of a modification proceeding under federal law, the mix and quality of services provided by the Grantee on the effective date of this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

(C) It is the Grantee's position that the requirements of Sections 5.3(A) and (B) are invalid under applicable law and unenforceable. The City's contrary position is that Sections 5.3(A) and (B) are valid and enforceable. The City reserves and in no way waives any right to enforce these Sections during the term of this Franchise and Grantee agrees to such reservation and non-waiver by the City. Grantee reserves and in no way waives any right to challenge the enforcement of these Sections and the City agrees to such reservation and non-waiver by Grantee.

5.4 Obscenity. Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any Programming which is obscene under applicable 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 Programming which is obscene under applicable law to be transmitted over any Channel that is subject to Grantee's editorial control.

5.5 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.

5.6 Leased Access Channels. Grantee shall meet the Leased Access Channel requirements imposed by federal law.

5.7 Broadcast Channels. To the extent required by federal law, Grantee shall provide Broadcast Channels to all Residential Subscribers.

Section 6. LOCAL ORIGINATION PROGRAMMING

6.1 Notice of Change/Discontinuance. Grantee shall provide the City with 60 days prior written notice of any significant changes to Local Origination Programming, provided under Section 5.3 (E), including the discontinuance of any series programs.

6.2 Interconnection and Carriage. Grantee shall cooperate in the maintenance of Interconnections enabling the carriage of local origination programming produced by other cable franchisees, and shall cablecast such Programming on Grantee's Cable System at Grantee's discretion, provided that any request for Grantee's carriage of local origination programming produced by other cable franchisees shall be given substantial, good faith consideration by the Grantee.

Section 7. PEG ACCESS

7.1 Designated PEG Access Providers.

(A) The City may designate up to six (6) Non-Commercial PEG Access providers, including itself for Government Access purposes, to control and manage the use of any or all Access Facilities and Resources provided by the Grantee under this Franchise. To the extent of such designation by the City, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities and Resources.

(B) Grantee shall cooperate with Designated Access Providers in the use of the Cable System and Access Facilities. Grantee shall enter into operating agreements as may be necessary to facilitate and coordinate the provision of PEG Access, provided that all such operating agreements shall not be inconsistent with the terms of this Franchise.

7.2 Access Channel Capacity on the Residential Network.

(A) Downstream Channels. Prior to Digital Transition under Section 7.2 C, Grantee shall provide to all Residential Subscribers, for use by Designated Access Providers, not less than 7 Activated Downstream Standard Video Channels, within the frequency range reserved for analog transmissions, within Access Channel design district A, and not less than 8 Activated Downstream Standard Video Channels, within the frequency range reserved for analog transmissions, within Access Channel design district B. The boundaries of these design districts are identified in Exhibit D hereto.

(B) Closed Channels. After the Cable System Upgrade required under this Franchise, Grantee shall provide the capability to scramble at least three (3) of the Downstream Channels referred to in Section 7.2 (A) to serve as either open Channels or Closed Channels at the Designated Access Provider's discretion to the extent allowed under Federal law. Upon completion of the Upgrade, Grantee shall provide the capability to scramble one such channel at its own expense and may not credit the costs against Section 9.1. Upon the City's request, Grantee shall provide the capability to scramble the two additional scrambled channels and

may credit the Incremental, direct costs against Access Capital Costs provided under Section 9.1(C).

(C) Digital Transition. In in the event that, and at such time as Grantee Activates frequency spectrum on the Cable System for video digital transmissions on the Residential Network, then Grantee:

(1) shall carry both analog and digital format transmission Channels simultaneously of PEG Access Channels under Section 7.2(A) when more than 50% of the analog commercial Programming Channels are converted to digital transmission format; and

(2) may decommission analog format Channels of PEG Access when more than 75% of the commercial Programming Channels are converted to digital format transmission.

(D) Digital Capacity. At the same time as digital transition under Section 7.2(C) begins, Grantee shall reserve, for PEG Access use, either 10% of the total Activated Cable System Downstream Channel Capacity on the Residential Network or 36 Channels (including Channels provided under Sections 7.2(A) and (B) and Section 7.4), whichever is less. These Channels shall have the capacity to carry entertainment quality and motion equivalent Channels, but may be reconfigured, at the City's direction, to carry Channels which require less capacity. Grantee shall Activate digital Capacity under this Subsection upon request by the City for PEG Access use in order to meet a community need identified by a Designated Access Provider.

(E) Stereo Audio Channel. Grantee shall designate and provide for PEG Access use of one Upstream and one Downstream FM or digital stereo audio Channel for PEG Access audio Programming or audio simulcast with PEG Access video Programming. PEG Access use of these channels shall have priority over all other uses, so long as Grantee is notified 90 days in advance of each use.

(F) Access Capacity not Offset. The Access Capacity set forth in Section 7 does not include, nor is it to be offset against, PEG Institutional Capacity as set forth in Section 8.

7.3 Access Channel Assignments.

(A) The City may designate up to six (6) points of origination for Access Channels located within the Cable Service Franchise Area as defined in Section 4.1, and Grantee shall provide the technical capability to transmit Signals for Access Channels from the designated origination points.

(B) Until the Cable System Upgrade is completed, Grantee shall provide Channel assignments for PEG Access and Narrowcast such Access Channels to the Access Channels design districts, as set forth in Exhibit D, as follows:

- | | |
|-------------------------------------|--------------------------------------|
| (1) Channel 11 - public access | (design district A and B combined) |
| (2) Channel 21 - public access | (design district A and B combined) |
| (3) Channel 22 - public access | (design district B) |
| Channel 27 - public access | (design district A) |
| (4) Channel 30 - government access | (design district A and B discretely) |
| (5) Channel 31 - educational access | (design district A and B discretely) |

- (6) Channel 33 - public access (design district A and B combined)
- (7) Channel 53 - educational access (design district A and B discretely)
- (8) Channel 58 - public access (design district B)

(C) Upon completion of Cable System Upgrade, Grantee shall provide Channel assignments for PEG Access and Narrowcast such Access Channels to the service areas as follows:

- (1) Channel 11 - public access (Franchise Area)
- (2) Channel 21 - public access (Franchise Area)
- (3) Channel 27 - public access (Franchise Area)
- (4) Channel 30 - government access (Franchise Area)
- (5) Channel 31 - educational access (Portland Community College service area and Mt. Hood Community College service area discretely)
- (6) Channel 33 - public access (Franchise Area)
- (7) Channel 53 - educational access (Portland Public Schools service area and other public schools' service areas within Multnomah County discretely)
- (8) Channel 58 - public access (Franchise Area)

(D) PEG Access Channel assignments, as provided under this Section, may be adjusted or altered only with the specific written approval, in advance, by the City. Access Channel types, (i.e. Public, Educational, Government), as provided under this Section, may be adjusted by Designated Access Providers upon approval by the City. If technology changes render Channel assignments obsolete, Grantee shall negotiate with the City to determine equitable placement of Access Channels.

7.4 Expansion of Access Channels.

(A) In areas where the Cable System Upgrade under in Section 11 has been completed and for those Subscribers who have been cut-over to the Upgraded Cable System, and prior to completion of the digital transition under Section 7.2(D), the Grantee shall reserve additional Downstream Standard Video Channels, so that there are a total of 9 Downstream Channels, for PEG Access use. The City may require activation of these reserved Access Channels when a Designated Access Provider demonstrates to the City, and the City provides such information to the Grantee, that additional reserved Channels are needed. In determining such need, the City shall use the following criteria, as applicable to the type of Access Channel to be Activated:

- (1) Public Access Channels: During eight consecutive weeks, the Public Access Channel is in use

for Original programming at least 80 percent of the time, seven days per week, for any consecutive five-hour block during the hours noon to midnight, and programming is Locally Produced or Locally Sponsored; or,

(2) Educational Access Channels: During eight consecutive weeks, the Educational Access Channel is in use for Original programming at least 80 percent of the time, five days per week, Monday through Friday, for any consecutive five-hour block during the hours 9:00 am to 9:00 pm, and programming is Locally Produced or Locally Sponsored; or,

(3) Government Access Channels: During eight consecutive weeks, the Government Access Channel is in use for local, Original programming at least 80 percent of the time, five days per week, Monday through Friday, for any consecutive five-hour block during the hours 9:00 am to 9:00 pm, and programming is Locally Produced or Locally Sponsored.

(B) For the purposes of Section 7.5:

(1) “Original” programming means Programming in its initial cablecast on the system or in its first two repeats. Programming shall not qualify as original if it has been cablecast on another cable system within the Portland Standard Metropolitan Statistical Area (“MSA”) within the last six months.

(2) “Locally Produced” programming means programming submitted for cablecast on a PEG Access Channel produced by an individual or group within the Portland MSA.

(3) “Locally Sponsored” programming means Programming submitted for cablecast on a PEG Access Channel sponsored by an individual or group within the Portland MSA. Locally Sponsored programming may not represent more than 25% of PEG programming in determining need under Section 7.4(A).

7.5 Access Channels on Lowest Service Tier. All Access Channels required by this Franchise shall be included by Grantee on the Basic Service Tier and therefore be made available to every Cable Service Subscriber, except as otherwise provided under this Franchise.

7.6 Additional Access Requirements.

(A) Access to I-Net and Interconnect. Grantee shall provide Activated Channel Capacity sufficient to enable Signal transmission to and from all Interconnection points on the Cable System as provided in Section 10.6, and to enable the full bi-directional functioning of the Institutional Network as provided for in Section 8.

(B) Simultaneous Use of Upstream Capacity. The Upgraded Cable System shall provide functioning ability to transmit digital Programming Upstream from each Fiber Node in the Cable System and return the Programming on Downstream Channels and on all Interconnection links simultaneously using return paths as established and limited by the Transport Hub to Distribution Hub to Node architecture of the Upgraded Cable System. Grantee shall cooperate with Designated Access Providers in the transmission of Upstream analog Programming to the extent it is technically feasible (Signal degradation may exist due to the Upgraded Cable System’s architecture). Prior to the Cable System Upgrade, Grantee shall provide sufficient Activated Capacity and Interconnection links to accommodate two live feeds simultaneously.

(C) Live Origination Points. Both before and after the Cable System Upgrade required under this

Franchise, the Grantee shall provide, at a minimum, the transmission capability for Designated Access Providers to originate discrete, live Programming from:

- (1) Designated Access Providers,
- (2) any location on the Institutional Network (including any High- or Low-Capacity I-Net locations to the extent technically feasible given the priority functioning of the Residential Network); and,
- (3) any available Programming origination points on any cable system with which the PEG Access Channels are Interconnected, provided other cable operators permit.

In the event there are Incremental, direct costs to provide the capabilities under Section 7.6(C) from Low Capacity I-Net locations, Grantee may allocate those costs from funds expended by Grantee under Section 9.1(C). However, prior to the Cable System Upgrade, in the event PCA requires the installation of a drop for a remote Upstream transmission, PCA shall reimburse Grantee for its Incremental, direct cost in providing such drop, including the cost of all cable, amplifiers, and other hardware, software and labor related thereto which are necessary to accomplish the installation of the drop.

(D) Westside Access Points. The Upgraded Cable System shall provide functional ability to simultaneously transmit full video and data Signals Upstream from at least four Westside Portland locations: Multnomah County Courthouse, Portland Building, Portland City Hall, and Justice Center to Designated Access Providers located east of the Willamette River, and return the Programming on Cable System Downstream Channels and on all Interconnection links. In the event the City does not designate the locations under Section 7.6(D) as High Capacity I-Net locations, Grantee may allocate Incremental, direct costs to provide the capabilities at these locations from funds expended by Grantee under Section 9.1(C). However upon the effective date of this Franchise, the Grantee shall provide, at its own expense, sufficient Capacity and Interconnection for simultaneous Programming from Portland City Hall and Multnomah County Courthouse.

(E) PCA Master Access Control Center. Grantee shall make available at the Headend sufficient space for a PCA Master Access Control Center and shall provide the Cable System capability to enable the use of the Master Access Control Center as the central collection, switching and dissemination point for PEG Access Programming, including the control of the Interconnection of such Programming with other cable communication systems. The Master Access Control Center shall also have sufficient space to enable the use of video format transfer facilities, film chain, edit facilities and a library for program tapes. Grantee shall provide, at its own expense, all funds, equipment and technical assistance necessary for the relocation of the Master Access Control Center to PCA in the event the Grantee's Headend is moved, vacated, transferred or sold. Grantee shall provide a minimum notice of 90 days to the City and PCA if the Master Access Control Center is to be relocated.

(F) Pre-Upgrade Internal Transmissions. Prior to the Cable System Upgrade, Grantee shall make available to PCA one Upstream Channel on the Residential Network. PCA use of this Upstream Channel shall have priority over all other uses, provided that Grantee is notified 14 days in advance of the proposed use. Additional Upstream Channel Capacity of the Cable System may be used by PCA if available as of the date such use is scheduled.

(G) Access Interconnect Capacity. Both before and after the Cable System Upgrade, Grantee shall provide, at a minimum, Activated Interconnection of the Headend to the Westside cable operator for shared PEG Access and Ed-Net Programming, and Activated Interconnection of the Headend to Designated Access

Providers for shared PEG Access Programming on Access Channels. Designated Access Providers shall have the exclusive right to control and schedule the operation of all Interconnections of the PEG Access Channels with other cable systems and other entities.

(H) Narrowcast Capability. To the extent feasible given normal Cable System Upgrade design, Grantee shall use good faith efforts to re-configure the Cable System to allow Designated Access Providers to Narrowcast Programming to Subscribers within the following specific geographic areas, as such areas exist at the time of Upgrade construction: Portland Community College and Mt. Hood Community College service boundaries, public school district boundaries, and local jurisdictional boundaries. In addition, prior to completion of the Cable System Upgrade, all capabilities for Narrowcasting in place on the effective date of this Franchise shall be maintained, including, without limitation, the capability of PCA to distribute programming from the Master Access Control Center to:

- (1) Each cable system with which the PEG Access Channels are Interconnected; and,
- (2) The Institutional Network and any Institutional Subscriber location.

7.7 Pre-Upgrade Institutional Network Access. Prior to the Cable System Upgrade, Grantee shall provide an Interconnection of the PEG Access Channels to the Institutional Network at the PCA Master Access Control Center located at Grantee's Headend. PCA shall have the use of one Upstream and one Downstream Channel on the Institutional Network. PCA use of these Channels shall have priority over all other uses. Grantee may schedule the use of such Channels, if available, by providing PCA with 14 days' advance notice.

7.8 Charges. All of the Channels, Cable System Capacity, capabilities, equipment, labor and other elements needed for the Grantee to provide PEG Access as required under this Section shall be provided without charge to the City or to any Designated Access Provider, except as specifically provided for in Section 7.

7.9 Change in Technology. In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's Signal delivery technology, which directly or indirectly substantially affect the Signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of Designated Access Providers or Access Programmers are not diminished or adversely affected by such change.

7.10 Change in Designated Access Provider Location. Grantee shall provide all obligations in this Section to the Designated Access Provider locations in place on the effective date of this Franchise. If the City designates new Access providers or if a current Designated Access Provider moves its site or location at its own instigation after the effective date of this Franchise, the Designated Access Provider and/or the City will fund the Incremental, direct costs to construct the Cable System from the new site or location to the nearest Activated I-Net Fiber node, or fiber provisioned I-Net node site, or Distribution Hub.

7.11 Technical Quality.

(A) Grantee shall maintain all Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for Residential Subscriber Channels.

(B) Grantee shall have no responsibility for the technical quality of the Access Programming distributed on the Access Channels.

(C) Use of the Cable System by Designated Access Providers shall not interfere with the technical quality or reliability of the Cable System.

7.12 Portland Cable Access. For purposes of Section 7, “Portland Cable Access,” or “PCA” means the Access Corporation designated by contract with the City. Any Access Resources or Access Facilities allocated to PCA under this Franchise may be re-assigned at the City's sole discretion.

Section 8. PEG INSTITUTIONAL NETWORK CAPACITY

8.1 Existing Institutional Network.

(A) Grantee shall maintain its existing Institutional Network, including 36 MHz Capacity set aside for each of both Upstream and Downstream transmission, for City use at no charge, until replaced as part of the Cable System Upgrade as required under in Section 11.

(B) Grantee's existing Institutional Network minimum design specifications are set forth in Exhibit C hereof.

8.2 New System Institutional Network Design.

(A) In conjunction with the Upgrade set forth in Section 11, Grantee shall install, Activate and maintain on its Upgraded Cable System certain Capacity to be referred to as the Institutional Network. The I-Net shall utilize whatever Capacity is necessary on the Fiber portion of the Cable System and whatever additional equipment and Fiber or coaxial cable is necessary to provide for the Upstream and Downstream I-Net Capacity requirements of this Franchise. The Institutional Network shall include installed equipment to fully provide for the switching and routing of Signals between the Institutional and Residential users of the Cable System as described specifically in Section 8.6. Grantee shall also reserve three 6-foot standard rack spaces in the Headend for I-Net processing equipment.

(B) High Capacity I-Net Locations.

(1) In conjunction with the design of the Upgraded Cable System, Grantee shall provide to the City a detailed design and cost estimates for a High Capacity I-Net overlaying the Residential Network with a bi-directional Capacity of 180 MHz from each Fiber Node to and from PEG Institutions in each Fiber Node area, a Capacity of 400 MHz to and from each Fiber Node to the serving Distribution Hub, a Capacity of four (4) x 500 MHz to and from each Distribution Hub and the serving Transport Hub, and a Capacity of four (4) x 500 MHz in each direction between the Transport Hubs. The Incremental, direct costs under Subsection 8.2 (B) (1) to design and provide cost estimates for the I-Net from the Fiber Node to the High Capacity I-Net sites shall be allocated from funds expended by Grantee under Section 9.1 (C).

(2) Within 60 days after receipt of the design and cost estimates for the High Capacity I-Net described in Subsection 8.2 (B)(1), the City shall advise Grantee of the Fiber Nodes and High Capacity I-Net locations that the Grantee shall construct, shall Activate and shall connect in conjunction with Upgrade of the Cable System. The Incremental, direct costs related to the High Capacity I-Net under Section 8.2(B)(2) and(3) shall be allocated from funds expended by Grantee under Section 9.1(C).

(3) Grantee shall Activate such portions of the High Capacity I-Net constructed pursuant to Subsection 8.2(B)(2) as are designated by the City. The initial Activated Fiber Nodes shall have a Capacity of at least 180 MHz to and from the node to the High Capacity I-Net locations. The Activated Capacity shall be at least 400 MHz to and 60 MHz from the Fiber Node to the Distribution Hub. The initial Activated Capacity from the Distribution Hub to the Transport Hub and between the Transport Hubs shall be a minimum of 400 MHz in each direction.

(C) Low Capacity I-Net Locations. Low Capacity I-Net Locations shall have a minimum of 8 MHz Upstream and 12 MHz Downstream Capacity installed, Activated and reserved for I-Net use from the nearest Fiber Hub. The City has estimated that it will have approximately 500 Low Capacity I-Net Locations. The actual number will be determined by the City subsequent to the effective date of this Franchise provided that, in no case, shall the functioning of the Low Capacity I-Net Locations adversely affect the functioning of the Residential Network. The Grantee and the City shall jointly develop procedures for use of the Low Capacity I-Net Locations and remedies for technical problems that arise from such use. From each Fiber Hub to the I-Net switching center this entire Upstream and Downstream Capacity shall be independent of any other hub to allow Frequency Reuse. Grantee may reclaim Upstream and Downstream Capacity to Low Capacity I-Net Locations in 1.5 MHz increments to meet its bona fide commercial need. The Grantee shall provide, at a minimum, 90-days written notice to the City prior to the date the Grantee desires to reclaim any portion of the Capacity. In the event that the Grantee finds it necessary to reclaim the final remaining two 1.5 MHz non-contiguous Upstream increments and three 1.5 MHz non-contiguous Downstream increments of the Low Capacity I-Net Capacity, the Grantee shall provide notice of not less than 180 days and shall provide a conversion plan to the City to upgrade all Low Capacity I-Net Locations to High Capacity I-Net Locations or to substitute equitable Capacity in order to provide for Low Capacity I-Net uses under this Subsection. If the Grantee reclaims more than the minimum of two 1.5 MHz non-contiguous Upstream increments and three 1.5 MHz non-contiguous Downstream increments of the Low Capacity I-Net Capacity, the Grantee shall, at the City's request, provide upgrades at Incremental, direct cost to all Low Capacity I-Net Locations according to the conversion plan. Grantee may credit these costs against Access Capital Costs provided under Section 9.1(C). Low Capacity I-Net Locations shall include all PEG Institutions located within the Cable Service Franchise Area defined in Section 4.1, and shall have Institutional Network Capacity, as set forth under this Subsection, available for use upon installation of Residential Service.

8.3 I-Net Ownership, Maintenance and Usage Fees.

(A) (1) Grantee shall own and maintain the Institutional Network. Until completion of the Upgrade, the Institutional Network, including Capacity available to the City, shall be maintained in accordance with the Agreement No. 22607 authorized by Ordinance No. 156289 (passed by the City Council July 18, 1984).

(2) Upon completion of the Cable System Upgrade, Grantee shall provide I-Net Subscribers with a reliable level of service, repair and maintenance which the Grantee makes available to commercial or residential user of the Cable System. At a minimum, Grantee shall meet the following performance standards for I-Net Capacity and Services:

(a) Grantee shall make I-Net Services and Capacity available to PEG Institutions within 30 days of their written request. If a Low Capacity I-Net Location requires more than a Standard Installation or a High Capacity I-Net Location requires new construction in order to connect to a Fiber Node, and upon receipt of any applicable fees, Grantee shall make I-Net Services and Capacity available to PEG Institutions within 90 days of their written request.

(b) Grantee shall maintain a minimum of 99.5 percent service availability to I-Net Subscribers measured over a period of one year.

(c) Grantee shall assure that the video carrier to noise ratio for I-Net Services meets 44dB as measured across 4 MHz under normal operating conditions, excluding Upstream Signals for Low Capacity I-Net locations.

(d) Grantee shall respond to repair requests from an I-Net Subscriber at any time within 2 (two) hours of the request.

(e) Grantee shall provide ongoing maintenance at its discretion, as it deems necessary. Grantee shall provide at least one week advance notice to any affected I-Net Subscriber of any maintenance requiring temporary interruption of services, except in emergency situations.

(f) The Grantee and I-Net Subscriber shall develop a mutually agreeable priority listing of critical circuits and their terminal locations. When notifying Grantee of service complaints, a I-Net Subscriber shall identify critical circuits requiring priority repair. Grantee shall escalate repair of critical circuits to the extent reasonable under the circumstances.

(g) When Grantee responds to repeat requests for service and there is no I-Net problem found, Grantee may charge the I-Net Subscriber for the service call at a reasonable rate.

(3) All service agreements between the Grantee and I-Net subscribers for I-Net Capacity and Services shall, at a minimum, meet the requirements of this Franchise. If an I-Net Subscriber and the Grantee are unable to mutually agree on the terms of a service agreement, the City shall make a final determination consistent with the terms of this Franchise.

(B) (1) Upon completion of the Cable System Upgrade, Grantee may charge a periodic fee to Institutional Subscribers for use of I-Net Capacity for Institutional Network Services, except for those PEG Access requirements in Section 7. The fee for Institutional Subscribers shall be set on a "cost"-plus ten (10) percent basis. Grantee's costs shall be calculated by taking the total technical costs for the period to technically operate and maintain the Cable System and allocating a portion of those costs to Institutional Subscribers based on their use of I-Net Capacity in proportion to the total amount of the Cable System Capacity, excluding those PEG Access requirements uses in Section 7. Grantee may Annually establish Capacity use fees for Institutional Subscribers based on reasonable projections for technical costs for the following Year and on actual technical costs for the previous Year. Technical costs shall not include marketing, programming, customer service (except customer service for Institutional Subscribers), general administration, and other costs not directly related to maintaining the technical performance of the Cable System. However, in no circumstances shall Grantee's fees charged to Institutional Subscribers exceed Grantee's lowest fees charged to commercial users for comparable services.

(2) Upon completion of the Cable System Upgrade, Grantee may charge a periodic fee to not-for-profit organizations, and agencies of the State of Oregon and the United States for use of the Cable System Capacity. The fee shall be set at a rate which may exceed the fee charged to PEG Institutions under Subsection 8.3(B)(1), but may in no circumstance exceed Grantee's lowest fee charged to commercial users for comparable services.

8.4 Interconnection of I-Net to City Cable and Public Fibers of Other Carriers. Upon request by the City, Grantee shall Interconnect its I-Net to:

(A) the fibers set aside for City use under other telecommunications franchises, insofar as such Interconnection is technically feasible; and

(B) any City-owned cable system and such other communications systems.

If the City authorizes such Interconnection, Grantee may credit the Incremental, direct cost of such Interconnection against the funds provided under Section 9.1(C).

8.5 Joint Use of Fiber or Conduit. So long as it is technically feasible and does not interfere with normal operations of the Cable System, the City and the Grantee shall cooperate to use existing conduit or Fiber for the purpose of expanding the I-Net to achieve the most economical coverage.

8.6 Required PEG Access and Institutional Network Switching and Routing Capabilities. Grantee's Upgraded I-Net shall, at a minimum, permit PEG Institutions to transmit Programming via Upstream Institutional Network Channels to Grantee's Headend, and then to Downstream Open or Closed PEG Access Channels on Grantee's Residential Network, or to Downstream Institutional Network Channels serving any PEG Institution on the Cable System. The design of the Cable System, and equipment installed by the Grantee, shall enable the switching and routing of Institutional Network Signals from Upstream to Downstream transmission to be accomplished remotely via computer and modem by Designated Access Providers or other institution designated by the City, without the assistance of the Grantee. As a demonstration project, Grantee shall initially provide terminations clearly identified for each individual forward and return path to and from the I-Net in the Headend, to facilitate patching and routing capability. The Grantee shall provide and facilitate the design and installation at its Headend of an expandable 10-channel by 10-channel RF video switching mechanism for the I-Net, with 3 additional outputs for the Residential Network PEG Access Channels, with all associated equipment, as necessary to demonstrate an initial level of switching pursuant to this Section. Grantee shall provide a minimum of three data translators to allow demonstrations of the data transmission capability of the I-Net. Grantee may credit the Incremental, direct costs to achieve requirements in this Subsection against the funds provided under Section 9.1(C).

8.7 Limits on Use. The City agrees and shall require as a condition of any separate agreement between the City and PEG Institutional users that:

(A) PEG Institutional users shall not re-sell, lease, or assign use of Institutional Network Capacity or Services to any third party.

(B) PEG Institutions may provide Non-Commercial services to other PEG Institutions utilizing I-Net Capacity and Services, and may charge a fee for I-Net Capacity use, as long as the fee does not exceed the fee that the PEG Institutions pay to the Grantee for use of the I-Net Capacity under Subsection 8.3(B)(1).

(C) PEG Institutions may provide Non-Commercial services to not-for-profit organizations, and agencies of the State of Oregon and the United States utilizing I-Net Capacity and capabilities, provided that the PEG Institution pays the Grantee a fee for such I-Net Capacity use determined in accord with Subsection 8.3(B)(2). The PEG Institution may charge the organization or agency for the fee as long as the charge does not exceed the fee that the organizations and agencies would pay to the Grantee for use of the Cable System Capacity determined in accord with Subsection 8.3(B)(2).

(D) The I-Net may be used by PEG Institutions for non-commercial, educational and governmental purposes, and for the transmission of Programming but for no other purpose; and

(E) Grantee shall in all instances be afforded an opportunity to provide any connection of the I-Net with Interconnection sites under Section 8.4, and sites other than those High Capacity and Low Capacity I-Net Locations specified herein, or use of the I-Net for transmission to or from a place other than an I-Net site may be provided only by the Grantee, provided that Grantee can provide such connection or transmission at a charge no greater than, and on terms no less favorable than, those which would be charged or imposed by any other party.

Section 9. PEG ACCESS CAPITAL FUNDING

9.1 3% Gross Revenue Annual Setaside. Grantee shall allocate three percent (3%) of Gross Revenues Annually to support PEG Access Capital Costs as follows:

(A) Grantee shall pay to the City one percent (1%) of Gross Revenues to provide support for Access Corporation Capital Costs funds. Pursuant to the terms of agreements between the Access Corporations and the City, the City shall use these funds to defray Access Capital Costs identified by the Access Corporations in their approved budgets. Funds not utilized in the year provided may be carried over into future years for Access Capital Costs and/or the City may apply such carryover amounts to funds granted by the City under Section 9.1(B).

(B) (1) Grantee shall pay to the City one percent (1%) of Gross Revenues as a dedicated Access Capital Development Fund to be granted by the City to PEG Institutions for Capital projects.

(2) With the City's approval, funds granted by the City under this Subsection in support of projects to be paid or constructed by the Grantee may be credited by the Grantee against payments to be made to the City under this Subsection.

(C) One percent (1%) of Gross Revenues shall be expended by Grantee to fund Institutional Network Capital requirements and extensions, subject to ongoing oversight and approval by the City in the manner provided in this Franchise. Expenditures under this Subsection must tangibly benefit PEG Institutional users and shall include only Incremental, direct costs, but shall not be disqualified by the City if they also accomplish a business purpose of Grantee.

(1) The City may require Grantee to advance additional funds under Section 9.1(C), up to an additional One Million Dollars, (\$1,000,000), provided that Grantee may subsequently reduce annual payments under this Section by up to 20% of the amount advanced plus the time value of money as calculated pursuant to Section 14.9(D), until such reductions equal the amount advance plus the time value of money, pursuant to a schedule agreed to by the City and Grantee at the time of the advance.

(2) In conjunction with the preliminary construction plan required under Section 11.2(A), Grantee shall provide an Institutional Network Capital Plan for the expenditure of funds under Section 9.1(C) through completion of the Cable System Upgrade required under this Franchise. Grantee shall consult with the City in developing such plan, which shall be subject to approval by the City, which shall not be unreasonably withheld. Grantee shall seek approval by the City, which approval shall not be unreasonably withheld, to any proposed changes to the plan.

(3) Following completion of the Cable System Upgrade, Grantee shall Annually provide an Institutional Network Capital Plan for the upcoming Year. Grantee shall consult with the City in developing such plan, which shall be subject to approval by the City, which approval shall not be unreasonably withheld.

(4) During the Cable System Upgrade, and Annually thereafter, in addition to, and at the same time as, submission to the City of Grantee's annual report and annual audited financial statements, Grantee shall provide to the City, consistent with such statements, an Institutional Capital Expenditure Report for the prior Year in a form satisfactory to the City;

(5) Amounts expended by Grantee under Section 9.1(C) shall be subject to ongoing City oversight and approval. Following completion of the Cable System Upgrade, the City anticipates exercising such oversight and approval in conjunction with City review of Grantee's annual report. Grantee acknowledges that the City may disallow expenditures that do not tangibly benefit PEG Institutions. Grantee may carry over expenditures beyond one Year, but all amounts accrued Annually must be expended within three Years of accrual.

(6) In the event the City disallows a Grantee expenditure under Section 9.1(C), then the amount of the expenditure shall be re-credited to the resources available under this Section.

(7) If the City has not required changes, or has not disallowed Grantee expenditures under Section 9.1(C) within one year of the City's actual receipt of any of Grantee's Institutional Capital Expenditure Reports, then the Report shall be deemed accepted by the City.

9.2 Payments. Following the effective date of this Franchise, Grantee shall make quarterly payments to the City, under Sections 9.1(A) and (B), for the preceding quarter Year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

9.3 Limitation on Payments and Setaside.

(A) During any one Year, Grantee shall be relieved of its obligation to make further payments to the City for Access Capital Costs under Sections 9.1 (A) and (B) following the time when the Grantee has actually made Access Capital Costs payments to the City equaling the Maximum Access Capital Costs, as defined in this Section, during that Year. The Maximum Access Capital Costs shall be \$1,670,000 for each Year through December 31, 2005. For the Year 2006, the Maximum Access Capital Costs shall be multiplied by the ratio of 1) the average Consumer Price Index for all urban consumers (CPI) for January through June 2006, to 2) the average CPI for January through June 2005. Similarly, for each succeeding Year, the Maximum Access Capital Costs shall be multiplied by the ratio of 1) the average CPI for January through June of the current Year, to 2) the average CPI for January through June of the prior Year. Except that, the Maximum Access Capital Costs shall never be less than \$1,670,000 in any Year.

(B) During any one Year, Grantee shall be relieved of the requirement under Section 9.1 (C) to make further expenditures for Institutional Network Capital Costs following the time when Grantee's actual expenditures during that Year are greater than the Maximum Institutional Network Capital Costs, as defined in this Section, during that Year, not including funds carried over from prior Years under Subsection 9.1 (C)(3) or any funds granted by the City under Section 9.1(B). The Maximum Institutional Network Capital Costs shall be \$830,000 for each Year through December 31, 2005. For the Year 2006, the Maximum Institutional Network Capital Costs shall be multiplied by the ratio of 1) the average Consumer Price Index for

all urban consumers (CPI) for January through June 2006, to 2) the average CPI for January through June 2005. Similarly, for each succeeding Year, the Maximum Institutional Network Capital Costs shall be multiplied by the ratio of 1) the average CPI for January through June of the current Year, to 2) the average CPI for January through June of the prior Year. Except that, the Maximum Institutional Network Capital Costs shall never be less than \$830,000 in any Year.

9.4 PEG Access Support not Franchise Fees; Applicable Federal Law. Grantee agrees that financial support for Access Capital Costs arising from or relating to the obligations set forth in Section 9 shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the City. Grantee agrees that although the sum of franchise fees and the payments set forth in Section 9 may total more than five percent of Grantee's Gross Revenues in any 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.

9.5 Review of Records. Grantee may inspect records of the City and the recipients of the PEG Access Capital Costs funds at any time during normal business hours and upon reasonable notice regarding the use of funds under this Section in order to determine whether such use is in accordance with the purposes of PEG Access Capital Costs as defined in this Franchise.

Section 10. SERVICE, CONSTRUCTION, AND INTERCONNECTION

10.1 Universal Service. Grantee shall provide Cable Service to all Subscribers in the Cable Services Franchise Area under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within the Cable Services Franchise Area.

10.2 Standard Installation. Except as otherwise provided in Section 10.3, Grantee shall provide Standard Installation of Residential Services to all Residential Subscribers and PEG Institutions throughout the Cable Services Franchise Area at Grantee's published rates and charges.

10.3 Isolated Installations. In general, Grantee shall have no obligation to provide service necessitating a line extension beyond a Standard Installation unless the Person requesting service contractually agrees to pay construction costs based on the following formula:

(A) Grantee shall provide service at its Standard Installation charge for the initial 170 feet of extension.

(B) Grantee and the Subscriber shall share equally the actual cost of the extension for the distance over 170 feet but less than 500 feet.

(C) The Subscriber shall pay all costs for the extension for the distance greater than 500 feet.

10.4 Monthly Service and Installation of Schools. Grantee shall provide without charge the Basic Service Tier and Cable Programming Service Tiers, and one Standard Installation to all schools in the Cable Services Franchise Area as defined in Section 4.1. Extensions in excess of the Standard Installation shall be subject to the isolated installations formula of Section 10.3. For purposes of Section 10.4, schools means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.

10.5 Interconnection with Ed-Net.

(A) Grantee will continue to provide the existing interconnection with Ed-net, accomplished indirectly through the Interconnect with the westside cable operator, as is in existence as of the effective date of this Franchise, until Ed-Net ceases operation.

(B) Grantee shall provide all necessary equipment at Grantee's Headend and all necessary Facilities on the Grantee's Cable System between Grantee's Headend and the Interconnection of the westside cable operator to accomplish the routing of Programming:

(1) from the Interconnection of the westside cable operator through the Headend onto any Access Channel on the Cable System and to the headends of other cable systems Interconnected with the Grantee; and

(2) from the Access Corporations, any program origination point on the Cable System, and the headends of other cable systems Interconnected with the Grantee, through the Headend to the Interconnection of the westside cable operator.

(C) Grantee will fully cooperate with Ed-Net personnel in identifying appropriate equipment to be used at the Ed-Net facility to accomplish Upstream and Downstream Channel transmissions.

10.6 Interconnection with other Cable Systems and Competitive Access Providers.

(A) Grantee shall continue without limitation all Interconnections in effect on the effective date of this Franchise.

(B) Grantee shall maintain Interconnections with all other major, contiguous cable systems in Washington, Multnomah and Clackamas Counties, Oregon and Clark County, Washington. The Interconnect Capacity shall provide the bi-directional capability to transmit Programming. The Interconnections shall be capable of receiving and delivering, among other things, Local Origination and PEG Access Programming produced by Grantee and other major, contiguous cable systems in Washington, Clackamas and Multnomah counties, Oregon and Clark County, Washington and Access Programming carried by the Grantee or those cable systems. The Grantee shall cooperate with the City in utilizing available Interconnect capacity to assist with video and data communications applications by local and state public and nonprofit organizations, including two-way applications between and among the Grantee, the Public Communications Network operated under the auspices of the Metropolitan Area Communications Commission, the Westside cable operator and Ed-Net. Upon prior approval by the City, the Grantee may credit Capital Costs of such Interconnection against funds set aside for Institutional Network extension under Section 9.1(C), pursuant to the procedures of that Section.

(C) The City understands that Interconnection requires cooperation from other cable system operators. The City shall make every reasonable effort to assist Grantee in achieving the cooperation necessary to realize Interconnection.

(D) Grantee shall establish and continue in effect a routing system satisfactory to the City for carriage of Signals to and from the Institutional Networks of the Grantee and cable operators serving jurisdictions contiguous with the Franchise Area.

10.7 Quality and Workmanship. The Cable System constructed or erected by Grantee shall be of good

quality and workmanship and shall be maintained in good repair and efficiency.

10.8 Inspection of Construction. The City shall have the right to inspect any construction or installation work performed under this Franchise. The City shall have the right to make such tests as it deems necessary to ensure compliance with the terms of this Franchise and applicable provisions of law.

Section 11. CABLE SYSTEM UPGRADE

11.1 System Design for Upgrade. The Grantee shall Upgrade the Cable System as required to meet the technical specifications and all other requirements of this Franchise. All cable and electronic equipment added or replacing old equipment in the Upgrade shall be new and of the highest level of quality by common industry standards. The Upgraded Cable System shall incorporate hybrid Fiber/ coaxial cable design, with Fiber to Fiber Nodes. Grantee will follow to customer demarcation point minimum performance standards for Cable System Upgrade that conform to applicable FCC standards in effect at the time of construction.

11.2 Construction Plan & Schedule.

(A) The Upgrade of the Cable System shall be completed by Grantee within the Franchise Area by July 1, 2000. The Grantee shall provide the City with a preliminary construction plan and schedule, along with the I-Net Capital Plan required under Section 9.1(C), at least 6 months prior to the commencement of construction. Any plan elements that affect expenditure of funds under Section 9.1(C) shall be subject to the approval of the City. The Grantee shall consult the City on any developments and revisions to the construction plan and schedule and shall seek approval of any proposed changes which impact expenditure of funds under Section 9.1(C). Grantee shall provide reasonable prior notice to the City of all revisions to the plan and schedule which affect Grantee's compliance with its obligations under this Franchise. The City shall be given reasonable opportunity for further comment. Grantee shall consult with the City on matters to include, but not be limited to, the overall design of the Cable System, the Fiber count in Fiber cable, the placement of Distribution Hubs and Fiber Nodes, the technology for switching, routing, and Frequency Re-use, and the technical elements to meet the PEG Access and I-Net requirements of this Franchise.

(B) The construction plan shall include maps and Cable System design documentation, including the location of all major Facilities, the routing of cable plant, the location of Transport Hubs, Distribution Hubs, and Fiber Nodes, specifications for all cable and major electronic equipment to be used in the Upgrade, and information demonstrating that the Upgraded System will meet or exceed all Franchise requirements, including, without limitation, PEG Access and I-Net requirements.

(C) The construction schedule shall specify estimated completion and activation dates for all parts of the Upgraded Cable System, and shall identify specific milestone phases of the Upgrade scheduled for completion by specified milestone dates spaced no more than six (6) months apart throughout the time period allotted for full completion.

(D) Three months prior to the commencement of construction of each milestone phase of the Upgrade, Grantee shall submit any proposed changes or additions to the construction plan and schedule. The changes shall be discussed in consultation between the Grantee and the City prior to their implementation.. Any changes that affect expenditure of funds under Section 9.1(C) shall be subject to the approval of the City prior to implementation.

(E) The Grantee shall provide quarterly written Upgrade progress reports to the City during

construction, and shall meet with representatives of the City to discuss each report as requested by the City.

(F) The City shall have the right to have its representatives witness or inspect any part of the Upgrade construction at any time during normal construction business hours, and the Grantee shall extend its full cooperation for such witnessing or inspection.

(G) For the purposes of Section 11.2, to “commence construction” means, as finally determined by the Grantor if necessary, to begin installation of any part of the system Upgrade or milestone phase thereof, including, but not limited to, the construction or modification of any facility, building or structure, or the stringing of any strand wire or cable, or the laying of any conduit, or the installation of any active or passive electronic equipment to facilitate the required system Upgrade.

11.3 Upgrade for Access and Institutional Network. The Capacity for PEG Access and for Institutional Network services required as part of the Cable System Upgrade under this Franchise shall be installed and Activated on a phased basis, so that PEG Access and Institutional Services become available in any given part of the Cable System at the same time Upgraded Residential Services become available.

11.4 Changes to Construction Plans. Nothing herein shall prevent Grantee from making changes or additions to the construction plan during the Upgrade which are technically warranted and do not affect Grantee’s compliance with its obligations under this Franchise, including expenditure of funds under Section 9.1(C).

11.5 Technology Assessment/Early Termination.

(A) The City may notify Grantee on or after January 1, 2002 that the City will conduct a Technology and Compliance Assessment of Grantee’s Cable System. Upon completion of the Technology and Compliance Assessment, the City may reduce the term of the Franchise by not more than four (4) years if the City finds that Grantee has failed to successfully comply with the conditions set forth in this Section. The City shall notify Grantee of such findings, and the basis therefore, on or before March 31, 2003.

(B) The City may reduce the term of the Franchise pursuant to Section 11.5(A) if the City finds:

(1) Grantee is not in substantial compliance with the material terms and conditions of this Franchise, including without limitation, Sections 5 through 14;

(2) (a) Grantee's technology and performance are inconsistent with current overall industry technical practices and range and level of services, existing and planned, in either the 100 largest U.S. cable systems that have been renewed or entered into since January 1, 1997, or in cable systems of more than 50,000 subscribers in the Portland MSA (“Survey”), taking due consideration of the then current practices and trends in the industry; and Grantee has not agreed to conform with industry or Portland metropolitan area practice in the five year period between 2005 and 2010 by implementing improvements that have been demonstrated in the Survey to be commercially feasible. The City shall designate an expert or experts in the area of cable television to conduct the Survey and to assess, in full consultation with Grantee, and advise the City whether Grantee meets the requirements of Subsection 11.5(B)(2).

(b) Notwithstanding the above designation by the City, at Grantee's request, a panel of experts in the cable industry shall recommend to the City whether Grantee complies with Subsection 11.5(B)(2). Promptly upon the City’s notification to Grantee under Section 11.5(A), the Grantee and the City

shall agree on the designation of such experts. If the parties are unable to do so, each party shall designate an expert within one (1) month after Grantee's request and the two experts so designated shall designate a third, all of whom shall have the qualifications above stated. The reasonable costs of such experts shall be borne equally by the Grantee and the City. No one serving as an expert as designated in this Subsection shall be an agent or employee of Grantee or its Affiliates or have been employed within the last year by the Commission or its participating jurisdictions who are party to the Intergovernmental Agreement (Exhibit A).

(C) In the event an improvement identified in the Survey is requested by the City, the Grantee shall agree to make the improvement in order to avoid early termination by the City. However, upon the Grantee's request, the City shall give the Grantee the opportunity to demonstrate that the improvements requested by the City are not commercially feasible (i.e., do not provide a reasonable expectation for a reasonable return on Grantee's investment to make the improvements in the remainder of the original term). In the event that an improvement identified in the Survey and requested by the City is not commercially feasible, then the City may not require early termination under this Section. The City may also waive the requirement of expert assistance and stipulate that Grantee has met the conditions.

Section 12. TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS

12.1 Technical and Safety Standards.

(A) Grantee shall comply with FCC Rules and Regulations, Part 76, Subpart K (Technical Standards), now in effect or as may be amended from time to time.

(B) Grantee shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of the Grantee.

(C) Grantee shall install and maintain its Cable System in accordance with the requirements of the National Electrical Safety Code, and in such manner that the Cable System shall not interfere with any installations of the City or any public utility or Institutional utility, or any franchisee, licensee or permittee of the City.

(D) Grantee shall provide and put in use such equipment and appliances as shall control on a closed circuit basis and effectually carry all electric currents and Grantee television and other system Signal impulses in a manner so as to prevent injury to the wires, pipes, structures, and property belonging to the City or to any Person within the City.

(E) Grantee, at its own expense, shall repair, renew, change, and improve its Cable System from time to time as may be necessary to accomplish these purposes.

12.2 Performance Testing.

(A) Grantee shall perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests specified in this Franchise; and

(3) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise.

(B) At a minimum, the Grantee's tests shall include:

(1) Proof of performance when Activating any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to subscriber complaints;

(4) Periodic monitoring tests, at intervals not to exceed 6 months, of subscriber (field) test points, headend (satellite receiver) systems, and condition of standby power supplies; and

(5) Cumulative Leakage Index tests, at least Annually, designed to insure that 100% of Grantee's Cable System has been ground or air tested for Signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written Records of all results of its Cable System tests, performed by or for the Grantee. Such test results shall be available for inspection by the City upon request.

(D) Grantee shall perform Cable System tests twice each calendar year, at intervals of no greater than every seven months, at a number of randomly chosen Subscriber television receiver connections in the Franchise Area corresponding to at least the minimum number of test points for the size of the Grantee's Cable System as specified in FCC regulations. Tests done at actual television receiver connections may be done at connections to the Cable System which are the equivalent of standard Subscriber connections, including 100-foot cable drops that are connected to the Subscriber tap. The City shall be given the opportunity to review and approve test sites in advance. At least one-third of the test locations shall be at the far end of the distribution trunk cables. Test points shall include locations with drops configured for each service tier offered by the Grantee. The tests may be witnessed by representatives of the City, and Grantee shall inform the City of the time and place of each test no less than three weeks prior to the test. Written test reports shall be submitted to the City. The City may conduct independent tests of the system for which the Grantee shall give its fullest cooperation. If ten percent (10%) or more of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed, and at least five (5) additional randomly chosen locations. If a second test results in failure of ten percent (10%) or more, the failure shall constitute a violation of this Franchise, and the City may apply such penalties as it deems appropriate, unless the circumstances of the failure are caused by conditions of Force Majeure, as set forth in Section 24.12.

12.3 Specific Technical Facilities or Capabilities. The following specific technical facilities or capabilities shall be provided on the Cable System by the Grantee:

(A) 100% Emergency Standby Power. Grantee shall maintain standby power generating capacity at the Cable System Headend and throughout the trunk and distribution networks as is in place on the effective date of this Franchise, until such time as the Cable System is Upgraded as required in Section 11. During the Upgrade, Grantee shall replace and/or upgrade the trunk and distribution standby power generating capacity at the Transport Hubs and Distribution Hubs in all Upgraded portions of the Cable System. All standby power systems shall be rated to provide at least two (2) hours duration. In addition, throughout the term of this

Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the City upon request.

(B) Emergency Override. Grantee shall comply with all applicable federal regulation regarding emergency alert systems, including equipment standards and procedures for alerting capacities. The City may identify authorized emergency officials for activating the emergency alert system. The City may also develop a local plan containing methods of emergency alert system message distribution, subject to federal review and approval as provided by federal rules.

(C) Headend Performance. Grantee shall adopt and maintain performance standards for all Headend systems, including off-air station reception, satellite Signals, insertion Signals, and equipment for reception and routing of interconnected Signals from other providers, including Ed-Net and Designated Access Providers. All performance testing shall include all Headend systems. Such tests shall include the cascade effects of Headend receivers, processors, satellite receivers, and any other devices in the Signal path.

Section 13. CUSTOMER SERVICE AND CONSUMER PROTECTION

13.1 City's Cable Television Consumer Protection Policy. Grantee shall comply with the City's Cable Television Consumer Protection Policy set forth in Portland City Code Chapter 3.115.

13.2 Subscriber Contracts. Grantee shall not enter into contracts with Subscribers which are inconsistent in any material sense with the requirements of this Franchise.

Section 14. COMPENSATION AND AUDITING

14.1 Amount of Compensation. As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets of the City, the Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five (5%) percent of Grantee's Gross Revenues related to Cable Services.

14.2 Payments and Quarterly Reports.

(A) Payments. Grantee's franchise fee payments to the City shall be computed quarterly following the effective date of this Franchise for the preceding quarter Year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

(B) Quarterly Reports. Each payment shall be accompanied by a written report to the City, verified by an officer of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in a form satisfactory to the City.

14.3 Interest on Late Payments. Payments not received within forty-five (45) days from the quarter ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date.

14.4 Cost of Publication. Grantee shall pay the cost of publication of this Franchise and any amendments thereto, as such publication is required by the City Charter.

14.5 Alternative Franchise Compensation. Grantee acknowledges that the City has a utility license fee applicable to cable television utilities under Portland City Code Chapter 7.14. If Grantee's obligation to pay franchise fees to the City under this Franchise is lawfully suspended or eliminated, in whole or in part, at any time during the term of this Franchise, then the Grantee shall pay to the City the utility license fee set forth in PCC 7.14. In the event the obligation of Grantee to compensate the City through franchise fees or the utility license fee is lawfully suspended or eliminated, in whole or in part, then the Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the streets for Grantee's use of the Streets, to the extent the City has the legal right to require such compensation.

14.6 Maximum Legal Compensation. The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible franchise fee of five percent (5%) of Gross Revenues related to Cable Services. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the City may request a modification of this Franchise under the provisions of Section 18.2.

14.7 Additional Commitments not Franchise Fees. No term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay franchise fees related to Cable Services in accordance with applicable law. Although the total sum of such franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not franchise fees as defined under 47 U.S.C. § 542, nor are they to be offset or credited against any franchise fee payments due to the City. Except as otherwise authorized by 47 U.S.C. § 542, and the regulations promulgated thereunder, Grantee shall not pass these additional commitments through to subscribers.

14.8 Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid shall be subject to audit and recomputation by the City.

14.9 Audits and Reviews.

(A) The City and its agents and representatives shall have authority to arrange for and conduct audits or reviews of the relevant financial records of Grantee or of any Affiliated Entity for the purpose of verifying franchise fee payments or other financial obligations payable hereunder. The City may determine the scope of audit or review in each instance. All amounts paid by Grantee shall be subject to audit or review by the City, provided that such audit or review be completed within five (5) years from the date payment was due. If the City requests in writing that the Grantee provide, or cause to be provided, any information reasonably within the scope of the audit or review, and the Grantee fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee fails to provide, or fails to cause to be provided, such requested information.

(B) The City will notify Grantee in writing at least seven (7) days prior to the date of an audit or review and, to the best of the City's ability, identify the Records it wants to review prior to the scheduled date for the audit or review. Grantee shall make such books and Records of Grantee or any Affiliated Entity as the City reasonably deems relevant to the determination of Gross Revenues and franchise fees or other financial obligations due hereunder available for inspection, copying and audit. Grantee's Records shall be reviewed

during normal business hours at a time and place made available by Grantee. The reasonable costs to the City of the audit or review shall be borne by Grantee if the audit reveals that Grantee has underpaid franchise fees or its other financial obligations by five percent (5%) or more during the period in question; otherwise the cost shall be borne by the City.

(C) Grantee shall pay to the City, or City shall pay to Grantee, any undisputed amounts that are due to the City or due to be refunded to Grantee as determined by any audit. Such payment or refund shall be made regardless of whether the obligation therefore arose before or after the effective date of this Franchise.

(D) If Grantee is determined to have made an underpayment in an amount that exceeds five percent (5%) of the total amount due at the time such payment was due, Grantee shall pay simple interest to the City on the amount of the underpayment at a rate two percent per annum above the publicly-announced prime rate of interest charged by United States National Bank of Oregon to its most credit worthy commercial customers as of the date of the audit ("U. S. Bank's Prime Rate") from the date on which payment was due until the date on which full payment of the interest charge is received by the City.

14.10 Liability for Licenses and Taxes. Payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. The City's right to impose any such license fee, tax or charge shall be subject to any limitations on the City under applicable law.

Section 15. GENERAL INDEMNIFICATION AND INSURANCE

15.1 Indemnification.

(A) General Indemnification. Grantee agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any direct claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property, including, without limitation, copyright infringement, defamation and all other damages, arising out of or by reason of any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee to keep its system in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City or its officers, agents or employees. The City shall provide Grantee prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done without the prior written approval of the City which approval shall not be unreasonable withheld. Grantee shall consult and cooperate with the City while conducting its defense of the City and the City shall fully cooperate with the Grantee.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities in the Streets in a timely manner in accordance with a relocation schedule furnished Grantee by the City Engineer in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

15.2 Insurance.

(A) Grantee shall maintain public liability and property damage insurance that protects the Grantee and

the City, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:

(B) The insurance shall provide coverage at all times for not less than \$200,000 for personal injury to each person, \$500,000 aggregate for each occurrence, and \$50,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$500,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be equal to or better than commercial general liability insurance.

(C) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

(D) The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days written notice first being given to the City Auditor and the City's Office of Cable Communications and Franchise Management. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

(E) Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the City Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of this Section. Failure to maintain adequate insurance as required under this Section shall be cause for immediate revocation of this Franchise by the City.

(F) In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide the City with a statement regarding its self-insurance. Grantee's self-insurance shall provide the same amount and level of protection for the Grantee and the City, its officers, agents, and employees as otherwise required under this Section. The adequacy of the self-insurance shall be subject to the review and approval of the City Attorney. If Grantee elects to provide self-insurance under this Section, any failure to maintain adequate self-insurance shall be cause for immediate forfeiture of this Franchise by the City.

(G) The City shall require as a condition of any separate agreement between the City and an Access Corporation that the Access Corporation shall include the Grantee as a named insured in the Access Corporation'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 Access Corporation 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).

15.3 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City with good and sufficient surety approved by the City, in the penal sum of Four Hundred Thousand Dollars (\$400,000.00), conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be maintained by the Grantee throughout the term of this Franchise.

(B) Grantee shall pay all premiums charged for any bond required under Section 15.3, and unless the City Council specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:

- (1) The remaining term of this Franchise; or
- (2) If required by the City, the removal of all of Grantee's system installed in the City's Streets.

(C) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days written notice first being given to the City Auditor. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of this Section. During the term of the bond, Grantee shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without 30 days prior written notice to the City.

(D) Subject to the City's prior approval, Grantee may provide an irrevocable letter of credit or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

(E) In lieu of the performance bond required under Section 15.3(A), the Grantee shall provide to the City a fully executed Guarantee in Lieu of Bond of Time Warner, Inc., in the form provided in Exhibit F to this Franchise. The duly executed Guarantee in Lieu of Bond shall be filed by the Grantee on or before thirty (30) days after this Franchise becomes effective.

15.4 Construction Bond. During all times when Grantee is performing any construction work in or under the Streets requiring a street opening permit, Grantee shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the City, with good and sufficient surety approved by the City, in the sum of \$100,000. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of the Franchise. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the City Engineer. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the City Auditor a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the approval of the City Attorney as to its adequacy under the requirements of Section 15.4.

Section 16. GENERAL STREET USE AND CONSTRUCTION

16.1 Construction.

(A) Subject to applicable regulations of the City, Grantee may perform all construction necessary for

the operation of its Cable System. All construction and maintenance of any and all Facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain the Grantee's responsibility. Grantee shall apply for and obtain all permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities, within the Streets. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee.

(B) Prior to beginning any construction, Grantee shall provide the City with a construction schedule for work in the Streets. When Grantee's construction of Facilities in the Streets is completed, Grantee shall provide the City with a map showing the location of the installed Facility in the Streets, as built.

(C) Grantee may make excavations in Streets for any Facility needed for the maintenance or extension of the Grantee's Cable System. Prior to doing such work, Grantee shall apply for, and obtain, appropriate permits from the City, and give appropriate notices to any other franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.

(D) In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within 48 hours after discovery of the emergency. Grantee shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permit or license fees.

16.2 Locates.

(A) Within forty-eight (48) Business Day hours after any City bureau or City franchisee, licensee or permittee notifies Grantee of a proposed street excavation, the Grantee shall:

- (1) Mark all of its locatable underground Facilities within the area of the proposed excavation;
- (2) Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or
- (3) Notify the excavator that the Grantee does not have any underground Facilities in the vicinity of the proposed excavation.

(B) For purposes of Section 16.2, "Business Day" means any 24-hour day other than a Saturday, Sunday or federal, state or local legal holiday.

(C) If the Grantee receives notice of an excavation in response to an emergency, the Grantee shall comply with Subsections 16.2(A)(1), (2), and (3) as soon as possible.

16.3 Relocation. The City shall have the right to require Grantee to change the location of any of Grantee's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such Facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its Facilities located within the Streets, the City shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

16.4 Restoration of Streets.

(A) Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer.

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration and maintenance of the Street and its surface within the area affected by the excavation. The City may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 16.4 shall be done in strict compliance with all rules, regulations and ordinances of the City.

16.5 Maintenance and Workmanship.

(A) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the Streets by or under the City's authority.

(B) Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's Signals so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, at its own expense, shall repair, renew, change and improve its Facilities from time to time as may be necessary to accomplish this purpose.

(C) Grantee shall not construct its Cable System in any manner that requires any Subscriber to install any cable, wire, conduits or other facilities, under or over a Street.

16.6 Acquisition of Facilities. Upon Grantee's acquisition of Facilities in any City Street, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any Streets, the Grantee shall, at the City's request, submit to the City a statement describing all Facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such Facilities to the extent the Grantee has possession of such information. At the City's sole option, as expressed by ordinance adopted by the City Council, such Facilities shall immediately be subject to the terms of this Franchise within a reasonable period of time to bring the acquired Facilities into compliance with this Franchise .

16.7 Reservation of City Street Rights. Nothing in this Franchise shall prevent the City from constructing sewers; grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's Cable System shall be removed or replaced in the manner the City shall direct. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal,

adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

16.8 Use of Conduits by City. The City may install or affix and maintain wires and equipment owned by the City for Municipal Purposes upon any and all of Grantee's ducts, conduits or equipment in the Streets and other public places, without charge to the City, to the extent space therein or thereon not needed by the Grantee is reasonably available. For the purposes of this Section, "Municipal Purposes" includes, but is not limited to, the use of the Grantee's structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for commercial purposes in competition with Grantee. Grantee shall not deduct the value of such use of its Facilities from its franchise fee and/or other fees payable to the City. Grantee shall not be responsible for any damage resulting to the wires or property of the City occurring as a result of City's use of Grantee's Facilities. The City shall indemnify the Grantee for any damages to the Grantee's Facilities arising out of or resulting, directly or indirectly, from the City's exercise of its rights under Section 16.8.

16.9 Street Vacation. If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to the City, remove its Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City Council. In the event of failure, neglect or refusal of Grantee, after thirty days' notice by the City Council, to restore, repair or reconstruct such Street, the City may do such work or cause it to be done, and the cost thereof, as found and declared by City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket.

16.10 Common Users.

(A) For the purposes of this Section:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit Facility" means any structure, or section thereof, containing one or more ducts, conduits, manholes, handhole or other such facilities in the Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.

(4) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Streets.

(5) "Surplus ducts or conduits" are Conduit Facilities other than those occupied by the Grantee or any prior Licensee, one unoccupied duct held by Grantee as an emergency use spare, and other unoccupied ducts that the Grantee reasonably expects to use within the next 18 months, except that no such ducts shall be deemed surplus if Grantee anticipates utilization in connection with the Upgrade of the Cable System under Section 11.

(B) Grantee acknowledges that the Streets have a finite capacity for containing conduits. Therefore, Grantee agrees that, whenever the City Engineer determines it is impracticable to permit construction of an

underground conduit system by any other Licensee, the City Engineer may require Grantee to afford to such person the right to use Grantee's surplus ducts or conduits in common with the Grantee, pursuant to the terms and conditions of an agreement for use of surplus conduits and ducts being entered into by the Grantee and the Licensee.

(C) If the Grantee and any Licensee fail or cannot otherwise agree to fair and equitable terms, conditions and regulations, including but not limited to a conduit rental rate, within a reasonable period of time, the Grantee and the Licensee shall enter into binding arbitration to determine such terms, conditions and regulations. In such arbitration, the arbitrators shall determine the conduit rental rate at a fair market rate. The binding arbitration shall be as provided in Section 24.2.

(D) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(E) The Grantee shall give a Licensee a minimum of 120 days notice of its need to occupy licensed conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers or other space-saving technology sufficient to meet the Grantee's space needs;

(2) Pay revised conduit rent based on the cost of new conduit constructed to meet the Grantee's space needs;

(3) Vacate ducts that are no longer surplus; or

(4) Construct and maintain sufficient new conduit to meet the Grantee's space needs.

(F) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all Licensees shall bear the increased cost.

(G) All attachments shall meet local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. The Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Grantee for any fines, fees, damages or other costs the Licensee's attachments cause the Grantee to incur.

16.11 Discontinuing Use of Facilities. Whenever Grantee intends to discontinue using any Facility within the Streets, Grantee shall submit for the City Engineer's approval a complete description of the Facility and the date on which the Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require the Grantee to remove the Facility from the Street or modify the Facility to protect the public health and safety or otherwise serve the public interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until such time as Grantee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as

maintenance of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

16.12 Hazardous Substances.

(A) Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Cable System in the Streets. For purposes of Section 16.12, "Hazardous Substances" shall have the meaning as defined by ORS 465.200(15) (1995).

(B) Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to Grantee, the City may inspect Grantee's Facilities in the Streets to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's Facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances related thereto.

(C) Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of Hazardous Substances caused by Grantee's Cable System in the Streets.

16.13 Undergrounding of Cable. Grantee is strongly encouraged to locate and construct its present and future cables underground. Grantee shall install its cables or other Facilities underground wherever all existing utilities already are underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the City or applicable State law, or in the event that an institutional utility or a public utility decides to underground its facilities on a voluntary basis, unless the City grants an exception.

16.14 Construction Codes. Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of the Grantee's lines, cables, and other appurtenances from the property in question.

16.15 Construction and Use of Poles.

(A) Whenever feasible, the construction, maintenance, and use of Grantee's Cable System shall comply with the standards of materials in engineering and all other provisions of a pole user agreement for use of poles, entered into by and between the US West, Inc., Pacific Power & Light Company, Portland General Electric Company, and the Grantee, or separate agreements between each of said companies and the Grantee, a copy of which shall be furnished to the City upon request of the City. In the event Grantee cannot obtain the necessary poles and allied facilities pursuant to the provisions of such an agreement, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's Cable System. All poles of the Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper City authorities, and each pole shall be set whenever practicable at an extension of a lot line. The City shall have the right to require the Grantee to change the location of any pole, conduit, structure or other Facility within the Streets when in the opinion of the City the public convenience requires such change, and the expense

thereof shall be paid by the Grantee.

(B) The terms of Section 16.15(A) shall not exempt the Grantee from compliance with all Charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

16.16 Tree Trimming.

(A) Upon obtaining a written permit from the City Forester, Grantee may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree in or overhanging the Streets which interferes with Grantee's Cable System. Except in emergencies, Grantee may not prune trees at a point below 23 feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. For purposes of Section 16.16, emergencies exist when it is necessary to prune to protect the public from imminent danger. The owner or occupant shall have seven days from receipt of Grantee's notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense.

(B) The City Forester may, at his or her own discretion, waive the notification and permit process in the case of single trees, if Grantee adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by Grantee shall be subject to the approval of the City Forester. The City Forester shall have the discretion to cancel the permit if, at any time, the Grantee or its agents fails to use proper arboricultural practices.

Section 17. TRANSFER OF GRANTEE'S CABLE SYSTEM

17.1 Prior Consent of City for Transfers.

(A) Transfer Defined. For purposes of Section 17, "Transfer" shall mean any form of sale, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, in whole or in part, and whether voluntary or involuntary.

(B) City Approval of Transfers.

(1) Neither this Franchise nor any Substantial Portion of the Cable System owned and operated by Grantee by authority of this Franchise shall be Transferred without the prior consent of the City as expressed by ordinance. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the Auditor an executed counterpart or certified copy thereof. For purposes of this Section, "Substantial Portion" means any Facilities the transfer of which would substantially affect Grantee's operations or which would substantially affect any of Grantee's obligations under this Franchise.

(2) In determining whether the City will consent to any Transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective transferee, and may require that the prospective transferee respond timely in writing to the City's request for information. Such requests for information by the City may, without limitation, be addressed to the prospective transferee's ownership structure, experience, management qualifications, legal qualifications, character qualifications, financial capability and Cable

System financing plan, financial pro formas, operating history, technical capabilities, and technical plans for the Cable System. Grantee shall assist the City in any such inquiry, including facilitating the prospective transferee's responses to the City's information requests.

(3) The City may condition any Transfer upon such conditions as are considered appropriate. Such reasonable conditions may include, but are not limited to, a requirement that the prospective transferee reimburse the City's reasonable direct costs in processing the Transfer request, requiring that the transferee assume responsibility for any non-compliance by Grantee, and requiring that a guaranty be furnished by the proposed transferee's parent corporations. No Transfer for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied or agreed to comply with all of the requirements of this Franchise, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance.

(4) Nothing contained in Section 17.1 shall be deemed to prohibit the mortgage, pledge or assignment of tangible assets of Grantee's Cable System, including but not limited to accounts receivable, inventory or monetary assets, for the purpose of financing the acquisition of equipment or for the acquisition, construction and operation of the Cable System of Grantee or any Affiliated Entity, without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this Franchise. Grantee may also sell tangible assets of the Cable System in the ordinary conduct of its business without the consent of the City.

(C) City Approval of Leases. Grantee shall not lease or sublease this Franchise or any of the rights or privileges granted or authorized by this Franchise without the City's consent as expressed by ordinance. However, Grantee may enter into leases or subleases not affecting the Franchise, or rights or privileges thereunder, in the ordinary conduct of its business, and may enter such leases or subleases with other City franchisees, without the City's consent, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its Cable System.

17.2 Change in Control.

(A) Grantee shall promptly notify the City of any proposed Transfer or acquisition by any other party resulting in a change of control of the Grantee or the Parent Corporations. Such change in control shall make this Franchise subject to revocation unless and until the City shall have consented thereto by ordinance.

(B) If required by federal law, the City shall make a final decision upon a proposed change in control within 120 days of receiving a written request for approval of a change in control containing or accompanied by such information as is required by federal law and this Franchise. If the City fails to render a final decision on the request within 120 days, then the proposed change shall be deemed to be consented to by the City. At any time during the 120 day period, the City may request in writing that the Grantee provide or cause to provide any information reasonably necessary to rendering a final decision on the request. The City and the Grantee may, at any time, agree to extend the 120 day period.

17.3 Bankruptcy or Dissolution. Grantee shall immediately report to the City, as soon as it becomes known, the initiation of bankruptcy proceedings, or corporate or partnership dissolution.

17.4 Consent. No consent by the City, which is required under this Section, shall be unreasonably denied or delayed.

Section 18. OTHER RIGHTS RESERVED TO THE CITY

18.1 Purchase of Grantee's Cable System after Forfeiture or Expiration.

(A) Subject to the provisions of federal law, if the City has declared a forfeiture of this Franchise by ordinance, as provided in Section 23.1 or if the initial term of this Franchise has expired without the franchise being renewed or extended, and all applicable renewal procedures under federal law have been complied with, and if the City has so ordered by ordinance, the Grantee shall continue its operations for a period of 270 days after either the effective date of the ordinance or expiration of the initial term unless the ordinance in either case orders termination by the Grantee of its operations at an earlier time. During this period, the Grantee shall not Transfer any portion of its Cable System in the Streets to any other Person, including parts of the Cable System rented, leased or leased-purchased from others by the Grantee, without the prior consent of the City Council expressed by resolution.

(B) Within 30 days of the effective date of the forfeiture ordinance or following the expiration of the term of this Franchise, if the City has not otherwise renewed or extended the Franchise, and all renewal procedures under federal law have been complied with, the Grantee shall submit a report (hereafter referred to as the "System Report") to the City setting out Grantee's assessment of the Fair Value of Grantee's Cable System and the methodology, assumptions and limiting conditions underlying the Grantee's appraisal. In addition, Grantee shall provide such further relevant information regarding its technical and customer operations, contractual or other legal obligations, and financial history and current condition as the City may reasonably request.

(C) (1) At any time within 60 days after receiving the System Report, the City may notify the Grantee that it desires to acquire by purchase all or a portion of Grantee's Cable System for its Fair Value. The notice shall be by passage of an ordinance stating the City's desire and shall state a date not less than 180 days from its date upon which the Grantee shall cease its operations and receive payment from the City.

(2) For purposes of Section 18, the valuation of Grantee's Cable System shall be determined by mutual agreement between the City and the Grantee. If the City and Grantee are unable to agree upon the Fair Value within 120 days after the City gives notice of intent to purchase under Section 18, then the City and Grantee may agree that such valuation be determined by arbitration, as provided for in Section 24.2.

(D) For purposes of Section 18, subject to applicable law, "Fair Value" shall mean:

(1) In the case of the expiration of the Franchise without renewal, the fair market value, determined on the basis of Grantee's Cable System, or the portion being acquired, as a going concern, but with no value allocated to the Franchise itself. This would be a value for which a willing buyer would purchase the Cable System as an ongoing business, recognizing that the existing Franchise has expired. The fair market value would be reduced by the amount of any lien, encumbrance, or other obligation of the Grantee which the City may assume.

(2) In the case of a forfeiture of the Franchise, the equitable price of Grantee's Cable System, or the portion being acquired, reduced by the amount of any liens, encumbrances or other obligations of the Grantee which the City may assume, but shall not include any sum for the value of the unexpired portion of this Franchise. In determining the equitable price, matters such as the harm to the community resulting from the Grantee's violation of the Franchise may be considered.

(E) (1) In the event of the City's acquisition of all or portions of Grantee's Cable System, as provided in Section 18, Grantee and its Affiliated Entities shall use all best efforts to obtain consent to assignment, to the extent any existing and future rental, lease, and lease-purchase arrangements for Grantee's Cable System or any Facilities require any consent to assignment by third parties.

(2) In the event of the City's acquisition of all or portions of Grantee's Cable System, as provided in Section 18, Grantee or its Affiliated Entities shall not unreasonably withhold any consent to assignment of any rental, lease, and lease-purchase arrangements for Grantee's Cable System or any Facilities.

18.2 Changes in Law or Unenforceability of Franchise Provisions.

(A) The City and Grantee have entered into this Franchise under the federal and state laws in effect on the effective date of this Franchise. The City and the Grantee reserve the right to request modifications to this Franchise, under Section 18.2(B), to account for changes in the law during the term of this Franchise. The City and the Grantee also reserve the right to request modifications in this Franchise, under Section 18.2(B), if any provision of this Franchise becomes, or is declared, invalid or unenforceable.

(B) Upon written notice from either party, the City and the Grantee may voluntarily agree, under Section 18.2(A), to participate in a non-binding mediation proceeding under Section 24.3 to mediate, in good faith, modifications to the terms and conditions of this Franchise. The written request shall specifically identify the particular reasons under Section 18.2(A) for the modification sought by the requesting party. In the mediation proceeding, the City and the Grantee shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the City and the Grantee remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding. If the City and Grantee are unable to successfully conclude the mediation within 90 days from the date of the written notice requesting the mediation proceeding, the parties may agree to submit the matter to arbitration as set forth in Section 24.2.

18.3 Right of Intervention. The City shall have the right to intervene in any suit or proceeding to which the Grantee is a party, in the event the City's rights under this Franchise may be affected thereby.

Section 19. CITY REGULATORY AUTHORITY

19.1 City Regulatory Rights.

(A) The City Council shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest.

(B) Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of this Franchise by any failure of the City to promptly enforce compliance with this Franchise.

19.2 City Regulatory Actions. Grantee shall comply with any and all lawful actions of the City affecting Grantee's operations under this Franchise, including, without limitation, all applicable ordinances, orders, contracts, and regulatory actions taken pursuant thereto, in all respects and without exception, so long as such actions do not materially affect the rights of Grantee hereunder. In the event of any direct conflict between City orders and regulatory actions, and the terms of this Franchise, this Franchise shall prevail.

19.3 Regulation of Rates and Charges. All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by the City Charter and by applicable federal, state and local laws and City ordinances.

19.4 Rate Discrimination. All Grantee rates and charges shall be published and non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability, income of the residents, or geographic location within the Grantee's Franchise Area. Nothing in Section 19.4 shall be construed to prohibit:

(A) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

(B) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens; or

(C) Grantee establishing different and nondiscriminatory rates and charges and classes of services for commercial subscribers, as well as different, nondiscriminatory monthly rates for classes of commercial subscribers.

19.5 Filing of Rates and Charges.

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise, in a form satisfactory to the City. Nothing in this Section 19.5(A) shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this Section, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six consecutive months to purchase Cable Services at such rate or charge.

(B) Grantee shall maintain on file with the City a complete schedule setting forth the maximum rates and charges for any and all Leased Access Channels. The schedule shall be in a form satisfactory to the City.

19.6 Changes in Rates and Charges.

(A) Unless otherwise provided by law, Grantee shall provide written notice to the City and Subscribers at least 30 days in advance of any increase in rates and charges. Notice to the City of proposed increases in rates and charges shall be filed in a form satisfactory to the City.

(B) Unless the City has lawfully required prior review of Grantee's rate increase in accordance with the requirements and conditions of applicable law, Grantee's rate increase shall become effective on the date identified in the form filed by the Grantee, provided that the effective date shall not be earlier than the 31st day after such filing.

19.7 Regulation of Equipment for Hearing Impaired. To the extent authorized by law, the City reserves the right to require and regulate the installation or rental of equipment which facilitates the reception of Basic Service Tier by hearing impaired individuals.

19.8 Downgrade and Disconnect Charges.

(A) Downgrade Charges.

(1) Unless otherwise provided by law, Grantee shall not impose any Downgrade Charges, except as otherwise provided herein. 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.

(2) Unless otherwise provided by law, Grantee may impose Downgrade Charges only if:

(a) the Subscriber has been notified, at the time of initiating Cable Services, and periodically thereafter, of Grantee's Downgrade Charges;

(b) the Downgrade Charge does not exceed the Grantee's actual Incremental, direct costs of performing the downgrade; and

(c) the downgrade is from a level of service which the Subscriber has not maintained continuously for six (6) months immediately preceding the date of the downgrade request.

(B) Disconnection Charges. Unless otherwise provided by law, Grantee shall not impose any charges for the disconnection of Cable Services, nor may the Grantee impose any rate, charge or other financial liability upon any Subscriber for Cable Services delivered after the date of a voluntary disconnection request.

Section 20. RECORDS AND REPORTS

20.1 Open Records. Grantee shall maintain a business office within the City for managing the Grantee's Cable System. Grantee shall manage all of its operations in accordance with a policy of keeping its Records open and accessible to the City. The City shall have the right to inspect all Records of the Grantee and Affiliated Entities at any time during normal business hours and upon reasonable notice to determine compliance by Grantee with its obligations under this Franchise. Grantee shall not deny the City access to Grantee's Records on the basis that Grantee's Records are under the control of an Affiliated Entity or a third party, rather than the Grantee. In the case of Affiliated Entities not under common control with Grantee, Grantee shall not be subject to the remedies set forth in Section 23.1(A) if such Affiliated Entity does not permit inspection of its Records, and Grantee has;

(A) made available for inspection all of its Records relevant to the determination of compliance; and

(B) exercised all reasonable efforts to persuade such Affiliated Entity to make such Records available for inspection.

20.2 Annual Reports. Grantee shall Annually present a written report to the City (the “Annual Report”) setting out such information as the City deems necessary to determine compliance by Grantee with its obligations under this Franchise. Grantee shall submit the Annual Report no later than May 1 of each Year, following the end of the Grantee's calendar fiscal year. Except as otherwise provided by the City, the Annual Report shall include, at a minimum, information as may be required concerning the Grantee's operations within the Franchise Area for the immediately previous Year in a form prescribed by the City. Specifically, the Annual Report will include the following information:

(A) Cable System structure and operating information:

- (1) Cable System ownership, including all levels of Parent Corporation and related ownership percentages;
- (2) An organizational chart for Grantee, listing officers and member of the board of director, department heads, and supervisors for major activity centers by category;
- (3) Total Cable System mileage and overall homes passed;
- (4) The number of Basic Service Tier Subscribers, Cable Programming Service Tier Subscribers, Pay Service Subscribers and pay-to-basic percentages;
- (5) Cable Service provided on the Cable System, including services begun or dropped during the previous Year; and
- (6) A schedule of all Grantee's rates and charges.

(B) Financial statements for Grantee's regional cable system of which the Cable System serving the Franchise Area is a part and, separately, for its Cable System within the City, prepared in accordance with generally accepted accounting principles. The financial statements for Grantee's Portland Area Cable System shall be reviewed or audited by an independent Certified Public Accountant. A responsible corporate officer shall certify that the financial statements for Grantee's Cable System within the City are an accurate reflection of the operations of the Grantee or its Affiliated Entities, consistent with any attached notes and disclosures. The City reserves the right to require, if good cause exists as determined by the City, that the financial statements for Grantee's Cable System within the City be reviewed or audited by an independent Certified Public Accountant.

Both sets of financial statements shall include income statements, balance sheets, and statements of cash flows, together with notes and disclosures describing allocation methodologies and other information as needed to allow proper interpretation of the statements. If the Grantee makes a significant change in its accounting methods in any Year, Grantee shall disclose such change and include a restatement of the financial statements submitted in prior years to the extent that such restatements may be required by generally accepted accounting principles. The financial statements and attached notes shall be in sufficient detail to include:

- (1) Gross Revenues by category, such as Basic and Cable Programming Service Tiers, Pay Services, advertising, installation, and other miscellaneous revenues;
- (2) Operating expenses by category. Deferred or non-cash expenses shall be separately identified;
- (3) Other expenses, such as depreciation and amortization, interest expenses, and income taxes paid and accrued, as applicable;
- (4) Capital expenditures by category, including funds expended under Section 9.1(C);
- (5) Any incurrences or repayment of debt, and remaining outstanding debt by lender or type, including interest rates and future payment terms;

(6) Any contributions from, distributions to or other material transactions with Affiliated Entities, in any form; and

(7) Detailed information regarding the amounts paid, and the Grantee's method of accounting for, City franchise fees, utility taxes and amounts paid under Section 9.1, including a description of the computation of such fees, taxes and payments, and a reconciliation of Gross Revenues to the computational bases used.

(C) A statement of Gross Revenues for the Grantee's Cable System within the City, consistent with the financial statements provided under Section 20.2(B), audited by an independent Certified Public Accountant;

(D) Annual audited financial statements for the Guarantor;

(E) Parent Corporation(s) Annual corporate reports, including audited financial statements; and

(F) The Institutional Capital Expenditure Report required by Subsection 9.1(C)(4).

20.3 General Reports. Grantee shall prepare and furnish to the City, at the times and in the form prescribed by the City, such other reports with respect to its operation, affairs, transactions or property as the City may deem reasonably necessary or appropriate to the performance of the City's rights, functions or duties under this Franchise.

20.4 Format. The City, after consultation with Grantee, may specify the form and details of all Grantee's reports required under this Franchise.

20.5 Reports of Regulatory Violations. Grantee shall provide copies to the City of any communications to and from any regulatory agency having jurisdiction over Grantee pertaining to any alleged, apparent or acknowledged violation by Grantee of any applicable rule or law of the agency regarding the Grantee's provision of Cable Services under this Franchise.

20.6 Public Records.

(A) Grantee acknowledges that information submitted to the City is subject to the Oregon Public Records Law, and is open to public inspection. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

(B) Grantee may identify information, such as trade secrets, submitted to the City as confidential. Grantee shall prominently mark each page for which it claims confidentiality as "Confidential" prior to submitting such information to the City. The City shall treat any information so marked as confidential, until the City receives any request for disclosure of such information. Within five (5) working days of receiving any such request, the City shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. If the City determines that it will be necessary to reveal the information, the City shall promptly notify the Grantee, and do so at least five (5) working days prior to the information being released.

Section 21. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION/MINORITY BUSINESS ENTERPRISES

21.1 Equal Employment Opportunity.

(A) Throughout the term of this Franchise, Grantee shall fully comply with the equal employment opportunity requirements of federal, state, and local law, and in particular, FCC rules and regulations relating thereto. Upon request by the City, Grantee shall furnish the City a copy of the Grantee's Annual statistical report filed with the FCC, along with proof of Grantee's Annual certification of compliance. Grantee shall immediately notify the City in the event Grantee is at any time determined not to be in compliance with FCC rules or regulations.

(B) Throughout the term of this Franchise, the Grantee shall maintain a policy that all employment decisions, practices, and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee's policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, remuneration, selection for training, company benefits, disciplinary action, lay-off, and termination.

21.2 Affirmative Action. Grantee shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ and advance in employment women, minorities, and the physically and mentally disabled.

21.3 Minority and Female Business Enterprises. Grantee shall make determined and good faith efforts to use minority and female business enterprises in its contracted expenditures, including, without limitation, contracts for the acquisition of goods, services, materials, supplies, and equipment used in the construction, maintenance, and operation of its Cable System. If directed by the City, the Grantee shall participate in the City's Minority and Female Business Enterprise Certification Program.

Section 22. RIGHTS OF INDIVIDUALS

22.1 Discriminatory Practices. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers 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, state or local laws, rules and regulations relating to non-discrimination.

22.2 Unauthorized Monitoring or Cable Tapping.

(A) Neither the Grantee, nor any of its agents, employees, officials or permittees, or any other Person, agency or entity, shall Tap any cable, line, Signal input device or subscriber outlet or receiver for any purpose, except as provided herein, and as is necessary for billing purposes.

(B) Grantee may Tap a cable, line, Signal input device or Subscriber outlet or receiver to 1) determine the number of viewers watching a program where the identities of the viewers are not determined; 2) perform Cable System maintenance and verify technical performance; and 3) identify theft of services, without the Subscriber's written consent.

22.3 Privacy.

The City and Grantee shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any Subscriber, Programmer or any other Person resulting from any device or Signal associated with the Cable System. Grantee shall not use the two-way communications capability of the Cable System for unauthorized or illegal Subscriber surveillance of any kind.

22.4 Permission of Property Owner or Tenant. Grantee shall not install or attach any of its Facilities 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. Nothing herein, however, shall excuse the Grantee from obtaining permission from anyone who has the right to approve or disapprove the attachment. If such permission or easement is later revoked, unless Grantee is otherwise entitled to maintain its Facilities, whether by the original or a subsequent owner or tenant, the Grantee, on the owner's request, shall promptly remove any of its Facilities and promptly restore the property to its original condition. Grantee shall perform all such installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation or the removal.

22.5 Sale of Subscriber Lists and Personalized Data.

(A) Grantee shall not sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies the viewing habits by the name of any Subscriber, or any Personalized Data pertaining to a Subscriber's use of any of Grantee's Cable Services by the name of any Subscriber, without the written, expressed consent of the Subscriber to which the Personalized Data pertains, except as otherwise permitted by federal law. For purposes of Section 22.5, "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.

(B) Grantee shall be subject to the provisions of federal law regarding limitations on Grantee's collection and use of Personalized Data, and other issues involving the protection of Subscriber privacy.

Section 23. FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

23.1 Remedies for Franchise Violations.

(A) Remedies. In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess, the City reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the Persons burdened by the violation, the nature of the remedy required in order to prevent further violations, and any other matters the City deems appropriate.

(1) Impose reasonable penalties, up to \$1,000 per day, incident or other measure of violation;

(2) To the extent authorized by law, require Grantee to reduce its rates and charges by such amount or amounts as is reasonable in light of the violation;

(3) To the extent authorized by law, require Grantee to make payments or grant refunds to its Subscribers or Subscriber Classes in such amounts, and on such bases as are reasonable relative to damages sustained by Subscribers, for violations relating to Subscriber service. At Grantee's option, such payments or refunds may be made in the form of a credit against Subscriber service bills. For purposes of this Subsection, "Subscriber Class" means any group of actual or potential Subscribers identified by the Grantee on the basis of specified characteristics for the purpose of providing, marketing or establishing any combination or package of Cable Services, rates or charges, or for the purpose of providing or directing customer services or marketing in any form;

(4) To the extent authorized by law, require Grantee to correct or cure the violation prior to any rate increase becoming effective, or otherwise delay consideration of any rate request until the violation is corrected or cured;

(5) Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or

(6) Revoke this Franchise.

(B) Remedies for Delays. In addition to the remedies set forth in Section 23, the City may, at its sole discretion, apply any one or more of the following remedies in connection with material delays in Cable System Upgrade:

(1) Find the Grantee in material violation of this Franchise;

(2) Reduce the duration of the term of this Franchise on a month-to-month basis for each month of delay exceeding six (6) months provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years;

(3) Declare a forfeiture of any construction bond required under Section 15.4 for any delay exceeding one year; or

(4) Terminate this Franchise for any delay exceeding eighteen (18) months.

(C) In determining which of the foregoing remedies is appropriate, and in the exercise of specific remedies, the City shall consider, among other things, (1) the nature and extent of the violation, (2) whether Grantee has had a history of similar violations, (3) the remedy that can be expected to deter such violations in the future, and (4) the damage suffered by the public and the cost of remedying the violation.

(D) The City also has the right to shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 23.1(A)(5) and (6) upon the occurrence of any of the following acts or events:

(1) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City; or

(2) Grantee becomes insolvent or is adjudged to be bankrupt, or otherwise initiates corporate or partnership dissolution; or

(3) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the Cable System.

(E) Receivership. In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right to revoke this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Grantee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

(1) Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by the City; and

(2) Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the City, duly approved by the City and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

(F) In the event that the City makes a preliminary determination that the Grantee has violated this franchise, the City shall commence a contested case proceeding under the rules adopted by the City. The City's final determination, following a contested case proceeding, may be appealed to the City Council. The City Council shall consider the appeal based on the record established in the contested case proceeding, under rules established by the City Council.

23.2 Notice and Opportunity to Cure.

(A) The City shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 23.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and the Grantee initiates good faith efforts satisfactory to the City within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the City shall not exercise its rights under Section 23.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and continue efforts satisfactory to the City to remedy the stated reason, then the City may exercise any or all of the remedies available under Section 23.1 or such other rights as the City may possess.

23.3 Minor Variances. The City may, upon request of the Grantee or its own motion, permit the 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 agreement or a substantial reduction in the services to be provided.

23.4 Expiration.

(A) Upon the expiration of this Franchise, subject to any restrictions imposed by 47 U.S.C. § 546 (Section 626 of the Cable Communications Policy Act of 1984) and other applicable federal, state or local laws, the City shall have the right, at its election, to:

- (1) Renew or extend Grantee's Franchise;
- (2) Invite additional proposals and award this Franchise to another Person;
- (3) Terminate the Franchise without further action;
- (4) Exercise its rights under Section 18; or
- (5) Take such further action as the City deems appropriate.

(B) Until such time as the City exercises its rights under Section 23.4, the Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

23.5 Removal of Plant and Equipment. If the City has by ordinance declared a forfeiture of this Franchise as provided in Section 23.1, or if this Franchise has expired without being renewed or extended, or in the event of the City's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section and Section 18, or as otherwise provided by ordinance, the Grantee shall remove its Facilities from the Streets and restore the Streets to such condition as the City may require. In the event of a failure by the Grantee to properly perform such work, then the City may perform the work and collect the cost thereof from the Grantee. The cost thereof shall be a lien upon the system of the Grantee and a set-off against any sums owed Grantee by City.

Section 24. MISCELLANEOUS PROVISIONS

24.1 Compliance with Laws.

(A) Grantee shall comply with all applicable federal and state laws.

(B) Nothing in this Franchise is intended to authorize the Grantee to engage in any activity constituting a violation of federal or state antitrust laws, including, but not limited to, the Sherman Act, the Clayton Act, the Robinson-Patman Act or any related amendments or regulatory provisions.

24.2 Arbitration.

(A) Any dispute between the parties hereto, including but not limited to disputes or controversies arising from or related to interpretation of this Franchise, may be arbitrated provided that both parties consent in writing to the arbitration. Such arbitration will be final and binding, and the parties shall have no right to appeal from the arbitrator's decision.

(B) The City may initiate arbitration by resolution of its City Council, while Grantee may choose to initiate arbitration by sending written notice to the City.

(C) After arbitration has been initiated, the City and Grantee may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within 20 days after the arbitration has been initiated, the arbitrator shall be selected by the presiding civil judge of the Multnomah County Circuit Court.

(D) If either the City or Grantee does not consent to having one arbitrator conduct the arbitration, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

(1) If the City initiates arbitration, the City shall select one arbitrator and Grantee by written notice shall select one arbitrator within 15 days after passage of the resolution. If Grantee initiates arbitration, it shall identify its selected arbitrator in its written notice, and the City shall select one arbitrator, within 15 days after receiving the notice.

(2) The two selected arbitrators shall select a third arbitrator within 15 days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Multnomah County Circuit Court.

(E) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than 120 days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the City and Grantee. The arbitrator(s) shall make a written report to the City and Grantee on the final determination within 60 days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination.

(F) The arbitrators shall have such powers as are set forth in ORS 36.335.

(G) The City and Grantee shall share equally the fees and costs of the arbitrator(s).

24.3 Mediation. The City and Grantee agree that should any dispute arise between the parties concerning any aspect of this Franchise which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the City and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. In the mediation proceeding, the City and the Grantee shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the City and the Grantee remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding. If the City and Grantee are unable to successfully conclude the mediation within 45 days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written notice has been received by the other party, either party may request arbitration, as set forth in Section 24.2, or may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

24.4 Continuity of Service. It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to Upgrade, modify or sell its Cable System, the Grantee shall make a good faith effort to ensure that all

Subscribers receive continuous, uninterrupted service regardless of the circumstances during the term of this Franchise. In the event of purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment by the City under Section 18, including subsequent assignment, sale, lease or other transfer to any other Person, the Grantee shall operate the Cable System for such reasonable periods as are necessary to maintain continuity of Cable Service to all Subscribers.

24.5 Severability. If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in Section 18.2.

24.6 No Recourse against City. To the extent provided by law, Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief.

24.7 Nonenforcement by the City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

24.8 Action by Agencies or Courts. Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Oregon or any court with competent jurisdiction requires the Grantee to act inconsistently with any provisions of this Franchise. Upon receipt of such notification, the City or the Grantee may determine if a material provision of this Franchise has been affected. Upon such determination, the City or the Grantee may seek to modify or amend this Franchise, pursuant to Section 18.2, as may be necessary to carry out the parties' intentions and purposes under this Franchise.

24.9 Choice of Forum. Any litigation between the City and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

24.10 Notice. Any notice provided for under this Franchise shall be sufficient if in writing and: (1) delivered personally to the following addressee; (2) deposited in the United States Mail, postage prepaid, certified mail, return receipt requested; (3) sent by overnight or commercial courier (such as Federal Express); or, (4) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City: Office of Cable Communications and
Franchise Management
City of Portland, Oregon
1211 SW 5th Avenue, Room 1160
Portland, Oregon 97204
FAX No. (503) 823-5370

With a copy to: City Attorney's Office
Room 315, City Hall
1220 SW 5th Avenue
Portland, Oregon 97204
FAX No. (503) 823-3089

If to the Grantee: Paragon Cable
3075 NE Sandy Blvd
Portland, Oregon 97232
FAX No. (503) 230-2218

Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of either actual delivery; three (3) business days after depositing in the United States mail as aforesaid; one (1) business day after shipment by commercial courier as aforesaid; or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

24.11 Reasonability of Actions. In any matter provided for in this Franchise involving discretionary acts by the City, including but not limited to the giving of consent, approval or instructions, the City shall act in a manner that is reasonable under the circumstances.

24.12 Force Majeure.

(A) For purposes of this Franchise, the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.

(B) 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 City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, 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.

24.13 Other Authority and Written Modification. Except as otherwise expressly provided in this Franchise, this Franchise contains the entire agreement between the City and the Grantee. All prior franchise agreements between the City and the Grantee shall be superseded. This Franchise may not be altered or modified orally but only by an instrument in writing executed by duly authorized representatives of the City and the Grantee. For the City, such authority may only be granted by ordinance enacted by the City Council.

Section 25. GUARANTY.

25.1 Executed Guaranty. On or before thirty days after this Franchise ordinance becomes effective, the Guarantor shall file with the City Auditor's Office a written guaranty, duly executed by the Guarantor. The written guaranty shall be in the form provided in Exhibit F to this Franchise. By executing the written guaranty in the form attached hereto as Exhibit F, the Guarantor shall guarantee the Grantee's performance of all of the terms and conditions of this Franchise and agree to perform those obligations on Grantee's behalf, if so ordered by the City in the event Grantee for any reason fails to perform them.

25.2 Failure to File Guaranty. Any failure on the part of the Guarantor to file such written guaranty within such time shall be deemed an abandonment and rejection of the rights and privileges otherwise conferred upon the Grantee by this Franchise, and this ordinance shall thereupon be null and void.

25.3 Substitute Guarantor. If stockholder's equity of the Guarantor falls below 50 Million Dollars, (\$50,000,000.00) as indicated in the annual audited financial statements for the Guarantor provided to the City under Section 20, then the City may require the Grantee to demonstrate to the City that the Guarantor nevertheless will be able to perform all of the obligations of the Guarantor under the terms of the Guaranty as fully as if there had not been such a reduction in stockholder's equity. If the Grantee fails to so demonstrate to the City's satisfaction, then the City, by ordinance, may require the Grantee to provide, and the Grantee shall provide, the City with a substitute guarantor satisfactory to the City as reasonably equivalent to the Guarantor prior to the reduction in stockholder's equity. As used in this Section, "stockholder's equity" means the amount of assets minus liabilities, both measured in accordance with Generally Accepted Accounting Principles, as reported in the annual financial statements for the Guarantor, which statements will be audited by Guarantor's independent accountants.

Section 26. WRITTEN ACCEPTANCE.

26.1 Written Acceptance. On or before thirty days after this Franchise becomes effective, Grantee shall file with the City Auditor's Office a written acceptance of this Franchise duly executed by the Grantee, in the form provided in Exhibit E to this Franchise. Such acceptance shall be unqualified and shall be an acceptance of all the terms, conditions and restrictions contained in this Franchise.

26.2 Failure to File Acceptance. Any failure on the part of the Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and this ordinance shall thereupon be null and void.

Commissioner Mike Lindberg
DCOlson/BEWalters/JSOmelchuck

EXHIBITS

- EXHIBIT A: Intergovernmental Agreement creating Mt. Hood Cable Regulatory Commission
- EXHIBIT B: Linnton Cable Service Area Map
- EXHIBIT C: Institutional Network Maintenance Contract
- EXHIBIT D: Access Channel Design Districts A and B
- EXHIBIT E: Acceptance
- EXHIBIT F: Guaranty