

FRANCHISE AGREEMENT WITH AMENDMENTS MERGED
FOR
CABLE SERVICES
BETWEEN
TCI CABLE
AND
CITY OF PORTLAND, OREGON

EFFECTIVE JULY 1, 1993
AMENDED JULY 7, 1998

CITY OF PORTLAND
TCI CABLEVISION OF OREGON
FRANCHISE RENEWAL

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DOCUMENT WITH AMENDMENTS MERGED

ORDINANCE NO. 166469

Grant franchise to TCI Cablevision of Oregon, Inc. to operate a cable system for 12 years.

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 TCI Cablevision of Oregon, Inc., 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 an Institutional Network to provide 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 TCI Cablevision of Oregon, Inc. shall be referred to as the "Grantee."

1.2 Duration of Franchise. This Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall expire December 31, 2007, unless terminated sooner, or extended to December 31, 2010 as provided herein.

1.3 Franchise Term Extension.

(A) The term of the Franchise under Section 1.2, and all rights privileges, obligations and restriction pertaining thereto, shall be extended until December 31, 2010, if Grantee has substantially met the requirements contained in Section 8 and 11 A hereof, and if:

(1) Grantee has Upgraded and Activated its Cable System beyond the 550 MHz requirement of Section 11A hereof, to 750 MHz on or before July 1, 2004;

(2) Grantee has met the requirements contained in Section 7.11;

(3) The Cable Regulatory Commission has reported to the City Council its finding that the Grantee has met the requirements of Sections 1.3 (A)(1) and (2) hereof; and,

(4) The City Council accepts, by resolution, the Cable Regulatory Commission's report of substantial completion by Grantee of these requirements.

1.4 Franchise not exclusive. 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.

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 merely 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.

Section 2. CITY'S PRINCIPLES AND INTENT

The City has established and relied upon the following policies, principles, and assumptions to guide the preparation and express the intent of the City in entering into this Franchise:

2.1 City government has a legitimate and necessary regulatory role with respect to maximum feasible availability of cable service, technical capability and reliability, availability of local programming (including public, educational, and governmental access programming), customer service performance, and the cost of service, subject to the limitations of applicable law.

2.2 The basis for the City's lawful regulatory authority to establish an enforceable franchise agreement and associated regulatory mechanisms is the cable franchisee's use of public resources for its distribution network, limited competition in the cable service marketplace within the City, and applicable federal law authorizing the provision of cable services only through a local franchise agreement. If the market for cable services becomes competitive in the future, the City may revise its regulatory role.

2.3 Diversity in cable services and local and nonlocal programming is a significant policy goal. Grantee's cable system should offer a wide range of programming services which individually may not be desired by all subscribers, but collectively represent a substantial share of the overall value of cable to current and prospective subscribers. Both the City and the Grantee should be mindful of existing and evolving legal constraints regarding the regulation of program content. City actions should seek to maximize channel capacity, facilities and programming access for government and educational agencies, as well as other groups and individual members of the general public, so as to promote open government, educational opportunity, and a diversity of community information and opinion, within a free-flowing marketplace for ideas.

2.4 Flexibility to respond to changes in technology, subscriber interests, and competitive factors within the cable service market and the larger market for entertainment and information should be an essential characteristic of this Franchise. Both the City and the Grantee should stress maximum system flexibility to take advantage of new technology to benefit subscribers and citizens as such technology becomes available in the future.

2.5 Regulations and public interest requirements that increase the Grantee's cost of doing business should be balanced with the City's interest in having a cable operator that is in sound financial condition. The cost of regulation itself should be considered by the City. On the other hand, adequate monitoring and enforcement methods must be available if the Grantee's performance falls below franchise requirements.

2.6 Grantee, through a franchise agreement, will be granted extensive and valuable rights to operate its cable system for profit using the City's streets. As trustee for the public, the City expects fair compensation to be paid for these valuable rights throughout the term of the franchise.

2.7 Whenever possible, market competition should be substituted for regulation as a means for the City to achieve its franchise goals. The City's franchises are non-exclusive, and the City encourages the development of fair competition among cable television franchisees in the hope that consumers may eventually have a choice among competing cable television providers.

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 by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, and distribute 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 or their designees 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 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 enterprise 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 "Bi-directional" means Activated Downstream and Upstream Signals carried on the Cable System.

3.10 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system off-the-air by antenna, microwave, satellite dishes or any other means.

3.11 "Cable Regulatory Commission" means the Mt. Hood Cable Regulatory Commission, or its successor agency as designated by ordinance of the City Council.

3.12 "Cable Services" means Programming, in any combination, provided on the Cable System by Grantee to Subscribers.

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 to produce, receive, amplify, store, process or distribute Signals for the purposes of distributing Cable Services to Subscribers, and providing Institutional Services; 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 Costs" or "Capital" means the expenditure of funds for services, products or other resources, whose useful life can be expected to exceed a period of time longer than one year.

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 the content of which 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 for the Residential Subscribers, 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 "Document" or "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.

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

3.23 "Downtown" means that portion of the City shown on Exhibit A, attached to this Franchise and incorporated herein.

3.24 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

3.25 "Ed-Net" means Oregon's educational telecommunications network, as set forth in ORS 354.505 through ORS 354.550 (1991).

3.26 "Facility" means any tangible component of the Cable System.

3.27 "FCC" means the Federal Communications Commission.

3.28 "Fiber Optic" refers to a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying Cable Services by means of electric lightwave impulses.

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

3.30 "Franchise Area" means the area within the City within which the Grantee is authorized to provide Cable Services and/ or Institutional Services, as described in Section 4.1(A) and as may be modified from time to time by the City under Section 4.2.

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 earned by the Grantee, or any Affiliated Entity, in whatever form and from all sources, in connection with the operation of Grantee's Cable System within the City. "Gross Revenues" shall include, without limitation, amounts for Standard Cable Services,

premium services, advertising, installations and all other revenues derived from the operation of Grantee's Cable System. "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; (3) the amounts are characterized, separately identified or accounted as being for goods, services or fees to be paid to government agencies; and (4) 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. "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 TCI West, Inc..

3.34 "Headend" means Grantee's Facility for signal reception and dissemination on the Cable System, including cable, antennas and wires, satellite dishes, monitors, switchers, modulators, processors for television Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent cable systems and Interconnection of any separate networks which are part of the Cable System, 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 Services 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 either operate and conduct the business of its Cable System or meet another obligation of this Franchise.

3.37 "Initial" or "Initially" is a qualifier meaning available, operational or otherwise provided as of the effective date of this Franchise, unless otherwise indicated within this Franchise.

3.38 "Interconnect" or "Interconnection" means the provision by Grantee of technical, engineering, physical, financial, and all other necessary components to accomplish, complete, and adequately maintain a physical linking of Grantee's Cable System and Cable Services or any designated Channel or signal pathway thereof, with any other designated cable system or programmer so that cable services of technically adequate quality may be sent to and received from such other systems.

3.39 "Institutional Network" or "I-Net" means Capacity on the Cable System which provides for Signals 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.

3.40 "Institutional Services" or "I-Net Services" means Signals provided over the Institutional Network to facilitate the operations of PEG Institutions.

3.41 "Institutional Subscriber" means a PEG Institutional receiving Institutional Services.

3.42 "Leased Access Channel" means any Channel or portion of a Channel commercially available for Programming for a fee or charge by Persons other than the Grantee.

3.43 "Local Origination Channel" means any Channel used to provide Local Origination Programming.

3.44 "Local Origination Programming" means any local programming or communications under the editorial control of Grantee, produced, selected, and cablecast by the Grantee on Grantee's Cable System.

3.45 "Loop" means a coaxial, Fiber Optic or hybrid special purpose cable with balanced Upstream and Downstream Channel capacity linking key signal acquisition and distribution points within the Franchise Area.

3.46 "Low Capacity I-Net Locations" 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 Services coaxial cable.

3.47 "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.

3.48 "Parent Corporations" means TCI West, Inc., TCI Holdings, Inc., and Tele-Communications, Inc., as now or hereafter constituted, and includes any other existing or future corporations with greater than fifty percent ownership or control over Grantee.

3.49 "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.

3.50 "Penalties" means any and all monetary penalties provided for in this Franchise.

3.51 "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.

3.52 "Programmer" means any Person responsible for Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides Programming material for transmission on the Cable System.

3.53 "Programming" means the process of causing television programs or other patterns of signals in video, voice or data formats 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. In using this definition, the parties rely upon the definition provided in 47 U.S.C. § 522(16) (Section 602(16) of the Cable Communications Policy Act of 1984).

3.54 "Rebuild" means to replace or overlash substantially the entire Cable System plant, except for overhead messenger cable and underground ducts, which may include an Upgrade of the Grantee's Cable System.

3.55 "Residential Services" means Cable Services delivered to single or multiple Dwelling Units.

3.56 "Residential Subscriber" means any Subscriber receiving Residential Services.

3.57 "School" means any accredited educational institution, public or independent, including primary and secondary schools, colleges, and universities.

3.58 "Service Availability" means the ability of a Subscriber to obtain Cable Services within 60 days of requesting the service and agreeing to pay applicable charges.

3.59 "Serviceable" means the ability to obtain Cable Service by a business or residence within the Franchise Area within 60 days of request, at Grantee's uniform rates.

3.60 "Signal" means any analog or digital electrical or light impulses carried on the Cable System, whether one-way or bi-directional, and which includes any combination of audio, video, voice or data.

3.61 "Standard Cable Service" means all video signals, services, and Programming available on Grantee's Cable System to all Residential Subscribers, including but not limited to Access Channels, Broadcast Signals, and advertiser-supported Cable Services, in any combination, and the necessary equipment therefor. "Standard Cable Service" does not include premium Programming (such as movie-only channels or pay-per-view) offered individually to Subscribers on a per channel or per program basis.

3.62 "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.

3.63 "Streets" means the surface of, and the space above and below, any public street, road, alley or highway, within the City, used or intended to be used by the general public for motor vehicles, to the extent the City has the right to allow the Grantee to use them.

3.64 "Subscriber" means any Person who is lawfully receiving, for any purpose or reason, any Cable Service or services provided by Grantee by means of or in connection with the Cable System, whether or not a fee is paid for such service.

3.65 "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.

3.66 "Tier" means any package or cluster of Standard Cable Services offered by Grantee to Subscribers.

3.67 "Upgrade" means an improvement in Channel capacity or other technical aspect of Cable System capacity, which may be accomplished without a Rebuild of the Cable System.

3.68 "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.

3.69 "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.

3.70 "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 Initial Franchise Area.

(A) Initially, Grantee shall provide Cable Services, as authorized under this Franchise, within the area of the City located west of the Willamette River (the "Initial Franchise Area") under the terms and conditions established in this Franchise.

(B) Grantee shall not be required to extend its Cable System to any portion of the Initial Franchise Area actively served by another City-franchised cable operator.

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 Initial Franchise Area, as such area may change in accordance with Section 4.3.

4.3 Expansion of Franchise Area.

(A) Within the area of the City located east of the Willamette River, Grantee may provide Cable Services only after receiving specific City approval expanding the Initial Franchise Area as set forth in a separate ordinance adopted by the City Council.

(B) The City's approval of Grantee's expanding the Initial Franchise Area shall be subject to the limitation that Grantee shall offer all of its Cable Services to Residential Subscribers in the expanded Franchise Area, on the same terms and conditions as are provided by Grantee in its Initial Franchise Area.

Section 5. PROGRAMMING AND CHANNEL CAPACITY

5.1 Grantee compliance. Grantee shall meet or exceed the Programming and Channel capacity requirements set forth in this Franchise.

5.2 Initial Channel capacity.

(A) Grantee shall provide an Initial minimum Downstream Channel capacity of 60 Standard video channels, plus an FM band, to all Residential Subscribers.

(B) (1) The Initial Channel capacity shall include a sufficient number of Closed Channels with sufficient capability and technical quality to enable the implementation and performance of all the

requirements of this Franchise, including but not limited to, remote access transmissions and transmissions to and from Access centers and Interconnection points, as set forth in, but not limited to, Sections 7.2, 7.4, 8.4, and 8.5, and Exhibit B.

(2) Initially, for purposes of remote transmission capability from Hardwired Programming Origination Points as set forth in Exhibit B and for no other purpose, Grantee's Cable System has the technical capacity to provide a minimum Upstream Channel capacity of four (4) Channels throughout the Franchise Area. However, only two (2) of those Channels are technically satisfactory for transmitting Programming, and only one (1) of those two (2) Channels is technically capable of transmitting Programming at any one time.

5.3 Broad Programming categories. Grantee shall provide or enable the provision of at least the following Initial broad categories of Programming:

- (A) Educational programming;
- (B) News & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts; culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) Weather information;
- (J) Programming addressed to diverse ethnic and minority interests in the City;
- (K) National, state and local government affairs;
- (L) Local Origination Programming concerning local and regional issues, events, and affairs of interest to City residents;
- (M) PEG Access Programming; and
- (N) Audio programming (including local radio signals).

5.4 Ascertainment of Programming.

(A) At least biennially, Grantee shall conduct a systematic ascertainment of the Programming needs, interests, and preferences of Subscribers within its Franchise Area. Grantee shall consult and cooperate with the City in developing and implementing a mutually agreeable ascertainment methodology

for determining Subscriber Programming preferences. Grantee shall report to the City the results of Grantee's Programming ascertainment and any actions taken, or to be taken, by Grantee pursuant thereto.

(B) The City at its sole option may undertake an annual survey, conducted by an independent researcher, of community views of cable operations in the City, including but not limited to Programming, response to community needs, and customer service.

5.5 Deletion or reduction of Programming categories.

(A) 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.

(B) 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) In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries Programming within the broad Programming category described in Section 5.3(N), then Grantee shall be obligated to carry such Programming only upon reasonable terms and conditions.

5.6 Obscenity. Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any Programming which is obscene under Oregon law and is otherwise not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene Programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees have permitted Programming which is obscene under Oregon law, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control.

5.7 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.

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

5.9 Broadcast Channels. To the extent required by federal law, Grantee shall provide to all Residential Subscribers the signals of:

(A) Local commercial television stations and qualified low power stations; and

(B) Qualified local noncommercial educational television stations.

Section 6. LOCAL ORIGINATION PROGRAMMING

6.1 Channel. Grantee shall provide Local Origination Programming to all Residential Subscribers on not less than one activated Local Origination Channel, available on Grantee's Cable System for that purpose.

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 Local Origination Channel 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 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, including, without limitation, the operation of Interconnected Access Channels. 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 PEG Access providers in the use of the Cable System and Access Facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with designated PEG Access providers 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 Channel capacity.

(A) Downstream Channels. Initially, Grantee shall provide not less than five Downstream Channels for distribution of Access Programming to all Residential Subscribers, with such Channel assignments as are set forth in Section 7.3.

(B) Closed Channels. Initially and throughout the term of this Franchise, Grantee shall provide Closed Channels sufficient to enable both prerecorded and live cablecasts from remote points on the Cable System, including the Hardwired Programming Origination Points as described in Exhibit B and Access centers, and to and from all Interconnection points on the Cable System, and to enable the distribution of PEG Access to Residential Subscribers on Access Channels and to all Interconnection points on the Cable System.

7.3 Access Channel assignments. Grantee shall provide Initial Channel assignments for PEG Access as follows:

- (A) Channel 11 - Community Access Network (CAN) (public access)
- (B) Channel 30 - City Council/KBLE interconnect (government access)
- (C) Channel 31 - Portland Public Schools (educational access)
- (D) Channel 32 - Portland Community College (educational access)
- (E) Channel 33 - Portland Cable Access (public access)

7.4 Access Interconnections.

(A) Grantee shall continue all Interconnections of Access Channels in effect on the effective date of this Franchise, and as otherwise provided herein, unless otherwise authorized or modified by the City. The City shall designate the Access provider with the right to control and schedule the operation of all Interconnects of Access Channels with other systems, including the Ed-Net.

(B) In addition, Grantee shall cooperate with the City, other cable franchisees, and Designated Access Providers in the establishment and continuance of a City-wide, common Channel, Interconnected Government Access Channel to be launched on a date to be determined by the City provided that the number of Access Channels shall be as provided under Section 7.2 or Section 7.8.

(C) Grantee shall take all necessary technical steps to ensure that technically adequate signal quality and routing systems are Initially and continuously provided for all Access Interconnections throughout the duration of this Franchise.

7.5 Expansion of Access Channels.

(A) Following the end of Year two (2) of this Franchise, Grantee shall, if directed by the City Council, by ordinance, provide additional activated Downstream Channel capacity for PEG Access, to a maximum total of nine Access Channels or ten percent (10%) of Grantee's Channel capacity, whichever is less. The City shall give Grantee at least six months prior notice of required additional Access Channels. Channel assignments for additional Access Channel capacity shall be determined under Subsection 7.8(D).

(B) The City Council may require Grantee to provide additional activated Downstream Channel capacity for a particular type of PEG Access under this Section only after receiving a recommendation from the Cable Regulatory Commission regarding the need for additional capacity of that type as established under the criteria as set forth herein. The Cable Regulatory Commission shall develop such recommendation, after giving Grantee notice and an opportunity to be heard, and considering such information as may be provided by the Grantee regarding potential displacement of other Programming, subscriber preferences, and any additional costs which Grantee estimates may arise. The Cable Regulatory Commission's recommendation shall be based upon a determination that the following criteria, as applicable to the type of Access Channel to be added, have been met:

(1) Public Access Channels: During eight consecutive weeks, the Public Access Channels are in use for Locally-Scheduled Original Programming 80% of the time, seven days per week, for any consecutive five-hour block during the hours noon to midnight; or,

(2) Educational Access Channels: During eight consecutive weeks, the Educational Access Channels are in use for Locally-Scheduled Original Programming 80% of the time, five days per week, Monday through Friday, for any consecutive five-hour block during the hours 9:00 a.m. to 9:00 p.m.; or,

(3) Government Access Channels: During eight consecutive weeks the Government Access Channels are in use for Locally-Scheduled Original Programming 80% of the time, five days per week, Monday through Friday, for any consecutive five-hour block during the hours 9:00 a.m. to 9:00 p.m.; and,

(4) The applicable PEG Access Channel capacity expansion criterion as set forth in subsections (1), (2) or (3) has been met, or exceeded, in good faith by the Designated Access Provider with responsibility for programming the PEG Access Channel.

(C) For the purposes of Section 7.8:

(1) "Original Programming" means Programming in its initial cablecast on the system or in its first or second repeat; and

(2) "Locally-Scheduled" means that the scheduling, selection and/or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to Programming received from an Interconnection, the provider transmitting the Programming over the Interconnection. However, carriage on any Access Channel of all or a substantial portion of any non-local Programming which duplicates Programming otherwise carried by Grantee as a part of its Standard Cable Service shall not be considered "Locally-Scheduled."

(D) Grantee shall make a good faith effort to cooperate with the City, Designated PEG Access providers, and other cable franchisees in establishing common, or mutually agreeable, PEG Access Channel assignments under Subsection 7.8. To that end, Grantee shall engage in substantial good faith negotiations with the City, Designated PEG Access providers, and other cable franchisees to establish common, or mutually agreeable, PEG Access Channel assignments for any additional activated PEG Access Channel capacity under this Section. If the parties are unable to successfully conclude the negotiations within 90 days after the City Council has required additional activated PEG Access Channel capacity, the matter shall be submitted to arbitration as set forth in Section 22.3.

7.6 Access Channels on lowest non-broadcast Tier.

(A) All Access Channels provided to Residential Subscribers under this Franchise shall be included by Grantee, without limitation, as a part of each and every Tier, subtier, package, combination or other grouping of Standard Cable Service offered by Grantee on its Cable System.

(B) Except as otherwise required by Federal law, Grantee shall not be required to include Access Channels in any Tier composed exclusively of local Portland-area Broadcast Signals.

7.7 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 affects 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 Access Providers or Access Programmers are not diminished or adversely affected by such change.

7.8 Technical quality.

(A) Grantee shall maintain all Upstream and Downstream 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.

7.9 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(A).

7.10 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.

7.11 Additional Access requirements under extension.

(A) Grantee shall meet the Access provisions of Section 7.11, prior to any extension of the franchise term under Section 1.3(A).

(B) Expansion of Access Channels.

(1) In areas where the Cable System Upgrade under in Section 11A 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 7.11(D), Grantee shall provide to all Residential Subscribers, for use by Designated Access Providers, not less than 8 Activated Downstream Standard Video Channels, within the frequency range reserved for analog transmissions.

(2) Grantee shall reserve one additional Downstream Standard Video Channel, 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 criteria under Section 7.8(B), as applicable to the type of Access Channel to be Activated.

(3) Grantee shall make a good faith effort to cooperate with the City, Designated PEG Access providers, and other cable franchisees in establishing common, or mutually agreeable, PEG Access Channel assignments under Section 7.11(B). To that end, Grantee shall engage in substantial good faith negotiations with the City, Designated PEG Access providers, and other cable franchisees to establish common, or mutually agreeable, PEG Access Channel assignments for any additional activated PEG Access Channel capacity under Section 7.11(B). If the parties are unable to successfully conclude the negotiations within 90 days after the City Council has required additional activated PEG Access Channel capacity, the matter shall be submitted to final and binding arbitration as set forth in Section 22.3(A)(1).

(C) 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 7.11(B) 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).

(D) Digital Transition.

(1) In the event that, and at such time as Grantee Activates frequency spectrum on the Cable System for video digital transmissions for Residential Services, then Grantee:

(a) shall carry the PEG Access channels simultaneously in analog and digital formats when more than 75% of the analog commercial Programming Channels are converted to digital transmission; and

(b) may decommission analog format PEG Access Channels when all programming (other than Access Channels), local broadcasters and the lowest tier of cable service are converted to digital format transmission.

(2) If a Designated Access provider or the City requests that any or all PEG Access Channels be converted to digital format transmission prior to when 75% of the commercial Programming Channels are converted to digital format transmission, the Designated Access Provider or the City shall be responsible for the Incremental, direct cost of converting each PEG Access Channel to digital format transmission until the 75% threshold for transition in 7.11(D)(1) is met.

(E) Digital Capacity. At the same time as Access Channels are transmitted in digital format under Section 7.11(D), Grantee shall make available up to 36 Downstream digital Access Channels (including Channels provided under Sections 7.11(B)) to Residential Subscribers for digitally transmitted PEG Access Programming. 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. Upon notice to the Grantee by a Designated Access Provider, a digital Access Channel shall include a digital data stream associated with each such Channel for PEG Access purposes. The City may require Activation of the digital Access Channels under this section upon notice by the City to Grantee that a Designated Access Provider has demonstrated to the City that additional reserved Channels are necessary to meet an identified community need. Grantee shall thereupon activate such additional reserved digital PEG channels within 60 days of such notice, and to the extent of such notice, so long as such activated capacity is within the capacity limitation set forth in this section.

(F) 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 locally produced 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.

(G) Live Origination Points. After the Cable System Upgrade required under this Franchise, the Grantee shall provide, at a minimum, the transmission capability using System Equipment 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 Residential Services); and,
- (3) Any available Programming original 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 7.11(G) from Low Capacity I-Net locations, Grantee may allocate those costs from funds expended by Grantee under Section 9.1(C).

(H) Simultaneous Use of Upstream Capacity. The Upgraded Cable System shall provide functioning ability to transmit digital Access Programming Upstream from each Fiber Node in the Cable System and return the Access Programming on Downstream Channels and on all Interconnection links simultaneously using return paths as established and limited by the architecture of the Upgraded Cable System. Grantee shall cooperate with Designated Access Providers in the transmission of Upstream analog Access Programming to the extent it is technically feasible (Signal degradation may exist due to the Upgraded Cable System's architecture).

(I) 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 K-12 public school district boundaries, as such boundaries exist at the time of the Upgrade construction.

Section 8. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

8.1 Universal service. It is the City's general policy that all Dwelling Units in the Grantee's Franchise Area should have equivalent Service Availability from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area.

8.2 General requirements. Grantee shall meet or exceed all construction, extension, and Service Availability requirements set forth in this Franchise.

8.3 Service Availability.

(A) In general. Except as otherwise provided in Section 8.3, Grantee shall provide Cable Service within 60 days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified oral request. Except as otherwise provided in Subsections 17.5(A) and (B), Grantee shall provide such service:

(1) With no line extension charge except as authorized in Subsection 8.3(B); and except for Subscribers in the Downtown Wiring District who desire Cable Services in advance of the phase map and construction schedule set forth in Subsection 8.3(C), who may be required to pay a line extension charge computed according to a non-discriminatory methodology for such extensions, adopted by the Grantee and provided in writing to the City;

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 200 foot drop connecting to an outside wall for Residential Subscribers and a 200 foot drop for Commercial Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by the Grantee and provided in writing to the City;

(3) At non-discriminatory monthly rates for Residential Subscribers; and

(4) Notwithstanding Section 8.3(A), Grantee may establish 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.

(5) For the purposes of Section 8.3(A), "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

(B) Incremental Line Extension Costs. Grantee shall have no obligation to provide Cable Service causing direct and incremental line extension costs in excess of 50 times the standard monthly charge for Standard Cable Service, unless the Person requesting service contractually agrees to pay such excess costs, based on the following formula:

(1) Grantee shall provide service at its standard line extension charge, if the direct and incremental line extension costs are equal to or less than 50 times the standard monthly charge for Standard Cable Service.

(2) In all other cases, the Subscriber shall pay the standard line extension charge plus all direct and incremental line extension costs in excess of 50 times the standard monthly charge for Standard Cable Service.

(C) Limits upon Incremental Line Extension formula. In the event that, considered on an annual basis, more than five percent (5%) of Persons requesting service within Grantee's Franchise Area outside the Downtown Wiring District are determined by Grantee to be subject to the incremental line extension costs set forth in Section 8.3(B)(2), then the Grantee shall so notify the City. Upon written notice from the City, the City and the Grantee shall negotiate, in good faith, to modify the incremental line extension cost formula set forth in Section 8.3(B). The purpose of the negotiations shall be to determine an incremental line extension formula in Grantee's Franchise Area outside the Downtown Wiring District which will serve to generally limit the number of Persons subject to incremental line extension costs to five percent (5%) or less of Persons requesting service. If the City and Grantee are unable to successfully conclude the negotiations within 90 days from the date of the City's written notice, the matter shall be submitted to arbitration as set forth in Section 22.3.

(D) Downtown Wiring District.

(1) A Downtown Wiring District is hereby established to ensure that Cable Services shall be available throughout the Downtown to potential Residential Subscribers by the end of Year three (3) of this Franchise and to all potential Subscribers, on a non-discriminatory basis, by the end of Year five (5) of this Franchise.

(2) Grantee shall take all necessary steps to ensure that all Persons within the Downtown Wiring District are Serviceable as individual Subscribers, at Grantee's non-discriminatory rates and charges, in accordance with the phase map and schedule attached hereto as Exhibit A. However, for certain limited areas, the phase map and schedule does not indicate the time period within which such areas shall be Serviceable. Such areas shall be Serviceable by the end of Year five (5) of this Franchise, unless the City Council by ordinance approves an extension of time for making such areas Serviceable. In deciding whether to grant such an extension of time, the City Council may consider the number of potential Subscribers in such area, the need and desire of potential Subscribers in such area for Cable Services, the cost of making such area Serviceable, any other developments which may make such area Serviceable at a later date at a substantially reduced cost, and any other factors the City Council deems appropriate.

(3) As part of its Annual reports to the City, as provided in Section 18.2, Grantee shall report on its progress made in completing the construction of the Downtown Wiring District. The reports shall

include an update of the map included in Exhibit A, showing completed portions of the Downtown Wiring District, and the projected schedule for the remaining phases.

(4) Grantee shall periodically review the map and schedule attached hereto as Exhibit A to determine the need for any updates or revisions. Grantee shall include recommended revisions to such map when submitting its Annual report to the City, as provided in Section 18.2. After review of the recommended revisions, the City may order or direct changes to be made to the map, after notice to the Grantee and an opportunity to be heard.

8.4 Installation of Hardwired Programming Origination Points and Portable Remote Transmission Units.

(A) As part of the construction and extension of the Cable System required under this Franchise, Grantee shall at its own expense construct and extend the Cable System to provide activated, Hardwired Programming Origination Points to the sites and locations, and according to the schedule, set forth in Exhibit B.

(B) Grantee shall provide activated Closed Channel capacity, as required by Section 7.2(B), enabling the use of the remote sites at the time the Hardwired Programming Origination Points are activated.

(C) Grantee shall also provide two (2) Portable Remote Transmission Units as described in Exhibit B.

8.5 Interconnection with Ed-Net. Within 24 months of the effective date of this Franchise, Grantee shall provide:

(A) A hardwired link between Grantee's Headend and the Ed-Net office, located at 7140 SW Macadam Avenue Portland, Oregon;

(B) All necessary equipment at Grantee's Headend and all necessary facilities on the Grantee's Cable System between Grantee's Headend and the Ed-Net office to accomplish the routing of Programming:

(1) from the Ed-Net facility through the Headend onto any Access Channel on the Cable System and to the headends of other cable systems Interconnected with the Grantee, as provided in Section 8.6(A); and

(2) from any program origination point on the Cable System, including the Hardwired Programming Origination Points established under Section 8.4, any Access provider and the headends of other cable systems Interconnected with the Grantee, as provided in Section 8.6, through the Headend to the Ed-Net facility.

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

8.6 Interconnection with other cable systems.

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

(B) Initially, Grantee shall Interconnect the Cable System at its Headend with all other major, contiguous cable systems in Washington, Multnomah and Clackamas Counties. At a minimum, the Interconnection shall provide 20 MHz bandwidth in both directions. This bandwidth shall provide the capability to transmit Upstream Channels and Downstream Channels, in each direction, together with data, telemetry, audio, and other non-video signals. The Interconnection shall be capable of receiving and delivering, among other things, Local Origination Programming produced by Grantee and other major, contiguous cable systems in Washington, Clackamas and Multnomah counties and Access Programming carried on those cable systems. The Grantee shall cooperate with the City in utilizing available Interconnect capacity to assist with potential video and data communications applications by local and state public and nonprofit organizations, including forward and reverse applications between and among the Grantee, the Public Communications Network of Columbia Cable of Oregon/Metropolitan Area Communications Commission, the Institutional Network of Paragon Cable, and Ed-Net.

(C) The City understands that Interconnection, including the use of the Columbia Cable system and the Paragon Cable Institutional Network, 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 provide at its Headend a secure facility, convenient for maintenance, to house the Interconnection of the institutional networks of Paragon Cable and TCI of Tualatin Valley (as successor to Columbia Cable). Grantee shall establish and continue in effect a routing system satisfactory to the City for carriage of signals from the institutional networks. Upon completion of the Cable System Upgrade, Grantee shall Interconnect its I-Net, and continue in effect a routing system satisfactory to the City, for carriage of Signals to and from the Grantee's I-Net and institutional networks of cable operators serving jurisdictions contiguous with the Franchise Area.

8.7 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.

8.8 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 8A. PEG INSTITUTIONAL NETWORK CAPACITY

8A.1 Institutional Network Design.

(A) In conjunction with the Upgrade set forth in Section 11A, 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 8A.5. Grantee shall also reserve if necessary up to three 6-foot standard rack spaces in the Headend for I-Net processing equipment.

(1) It is the intention of the City and the Grantee that the direct, Incremental Costs related to the construction and implementation of an Institutional Network in Grantee's Franchise Area be substantially defrayed through utilization of PEG Access Capital Funding set aside under Section 9.1(C). To the extent provided for in Section 8A, Grantee may allocate the Incremental, direct Costs related to the Institutional Network from funds provided for the Institutional Network in Section 9.1(C).

(2) In conjunction with, and at the same time as, the High Capacity I-Net design and cost estimates are provided to the City under Section 8A.1(B), the Grantee, at its option, may submit alternative proposals for providing I-Net Capacity, capabilities and Services consistent with Section 8A hereof, for consideration by the City, including, without limitation, a Fiber-based managed network.

(B) High Capacity I-Net Locations.

(1) Within 30 days of the effective date of the Franchise, the City shall provide the Grantee a list of potential High Capacity I-Net sites. 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 Cable System with Fiber Capacity to and from each Fiber Node in increments of two (2) Fibers up to six (6) Fibers, and a high-split Capacity from each Fiber Node to PEG Institutions in each Fiber Node area. The direct, Incremental, costs under Subsection 8A.1(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 8A.1(B)(1), the City shall advise Grantee of the portions of the I-Net Capacity under Section 8A.1(B)(1), the Fiber Nodes and related equipment, and the 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 8A.1(B)(2) and(3) shall be allocated from funds expended by Grantee under Section 9.1(C).

(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 75 Low Capacity I-Net Locations in Grantee's Franchise Area. 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 Residential Services. 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 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.

8A.2 I-Net Ownership, Maintenance and Usage Fees.

(A) (1) Grantee shall own and maintain the Institutional Network.

(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, Grantee shall make I-Net Services and Capacity available to PEG Institutions within 90 days of their written request. Grantee may charge the PEG Institution an installation fee based on the Incremental, direct costs of the I-Net site installation.

(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 and at such time as Institutional Services are actually being provided, Grantee may charge a periodic maintenance 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 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. Nothing in Section 8A.2(B) shall preclude the Grantee and PEG Institutions from mutually agreeing to additional charges for performance standards that exceed those required in this Franchise.

(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 8A.2(B)(1), but may in no circumstance exceed Grantee's lowest fee charged to commercial users for comparable services.

8A.3 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).

8A.4 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.

8A.5 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 to Grantee's Residential Subscribers, 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. If necessary as directed by the City, Grantee shall 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. If necessary as directed by the City, 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 PEG Access Channels, with all associated equipment, as necessary to demonstrate an initial level of switching pursuant to Section 8A.5. If necessary

as directed by the City, 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 Section 8A.5 against the funds provided under Section 9.1(C).

8A.6 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 8A.2(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 accordance with Subsection 8A.2(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 accordance with Subsection 8A.2(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 8A.3, 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.

8A.7 I-Net not Common Carrier. Nothing in this Franchise or Section 8A hereof shall be deemed by the City or Grantee to subject Grantee's operations, or I-Net services provided by Grantee under authority of this franchise, to regulation as a common carrier within the meaning of applicable state or federal law.

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 Community Access Capital 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 six hundred thousand dollars, (\$600,000), 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 12.8(B), 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 11A.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) If the City determines that the I-Net requirements are not being performed by Grantee in accordance with Section 8, the City may require that the funds under Section 9.1(C) be paid and distributed in accordance with Section 9.1(B).

(7) 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.

(8) 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. 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 \$333,332 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 \$333,332 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 \$166,667 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 \$166,667 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 Access Capital Costs report. The City shall provide a report annually to the Grantee on the use of funds provided to the City under Section 9.1(A) and (B). The City shall submit such report to the Grantee within 120 days of the close of the City's fiscal year. Grantee may review records of the City and Access Providers regarding the use of funds described in such report, as being in accordance with the purposes of Access Capital Costs as defined in this Franchise.

Section 10. TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS

10.1 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 telecommunications 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.

10.2 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 for starting up 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 minimum of at least six (6) randomly chosen subscriber television receiver connections in the Franchise Area, or connections to the 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 4 of the test locations shall be 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 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 22.13.

10.3 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 provide standby power generating capacity at the Cable System control center and at all hubs. Grantee shall maintain standby power system supplies, rated at least at two (2) hours duration, throughout the trunk and distribution networks. 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 for approval prior to the effective date of this Franchise.

(B) Emergency override. Upon request by the City Council, or as otherwise required by FCC regulations, the Grantee shall implement a system for providing restricted audio and video override of all audio and video Channels during emergencies, with override to be placed under the City's control. Before requesting the implementation of the emergency alert system, the City Council shall consider the Grantee's costs and the benefits to the citizens of Portland of audio and video override. If directed by the City, the emergency alert system shall provide for activation from the Mayor's Office and/or the City's emergency services (911) center, with coded access for both audio and video (character-generated) messages. If directed by the City, the audio override shall include a squeal alert tone to precede the verbal and video messages. Upon request by the City, the Grantee shall cooperate with the City to test the emergency override system, for periods not to exceed one (1) minute in duration and not to occur more often than once every six (6) months.

(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 Access providers. All system performance testing shall also 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.

(D) Review of trunk distance/amplifiers in cascade. The Grantee shall submit a construction schedule to the City prior to undertaking any construction. As a part of any such schedule, the Grantee shall include information regarding the design of the construction, including amplifier cascade design and

how such design may be reasonably expected to result in a system meeting FCC technical standards, for the City's technical review and comment.

Section 11. CUSTOMER SERVICE AND CONSUMER PROTECTION

11.1 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, as in effect on the effective date.

11.2 Compliance with Policy changes or amendments. Grantee shall comply with amendments to the City's Cable Television Consumer Protection Policy, provided that:

(A) Any amendment arising from a complaint addressed to the operations of Grantee has been processed by the Cable Regulatory Commission in accordance with the Commission's rules;

(B) The Cable Regulatory Commission has considered the Grantee's costs and benefits to consumers of the proposed amendment; and

(C) The City has provided Grantee with notice and an opportunity to address the Cable Regulatory Commission and the City Council.

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

11A.1 System Design for Upgrade. The Grantee shall Upgrade the Cable System within the Franchise Area 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.

11A.2 Upgraded Channel Capacity.

(A) In accordance with the Upgrade schedule provided for in Section 11A.3, Grantee shall provide to Residential Subscribers an activated minimum Downstream Channel Capacity of 550 MHz (providing a minimum Activated Downstream Channel Capacity of 75 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.

(C) In accordance with the Upgrade schedule provided for in Section 11A.3, upon completion of the Upgrade, the Cable System shall be fully Activated for Bi-directional operation throughout the Franchise Area. This requirement obligates Franchisee to activate Bi-directional capability that can support two-way, high-speed Internet access via the Cable System. Further, all facilities and equipment (except customer premises equipment) must be installed so that this Bi-directional capability is fully ready to operate on Subscriber request, and 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.

11A.3 Construction Plan & Schedule.

(A) The Upgrade of the Cable System shall be completed by Grantee within the Franchise Area by March 31, 2001. 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 related to the technical elements to meet the PEG Access and I-Net requirements of this Franchise including, but not be limited to, the overall design of the Cable System, the Fiber count, the placement of hubs and Fiber Nodes, and the technology for switching, routing and Frequency Re-use.

(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 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 11A.3, 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.

11A.4 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.

11A.5 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).

Section 12. COMPENSATION AND AUDITING

12.1 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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 of gross revenues. 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 of Gross Revenues, then the City may request a modification of this Franchise under the provisions of Section 16.3.

12.7 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. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent 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 (Section 622 of the Cable Communications Policy Act of 1984), nor are they to be offset or credited against any franchise fee payments due to the City, nor do they represent an increase in franchise fees to be passed through to Subscribers pursuant to 47 U.S.C. § 542(c) (Section 622(c) of the Cable Communications Policy Act of 1984).

12.8 Acceptance of payment and recomputation.

(A) 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, provided that such audit and computation is completed within five (5) years of 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, 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) If the City determines that Grantee made any underpayment, and that the underpayment exceeded 5% of the amount due, interest shall be calculated on the unpaid balance from the due date until the date on which full payment is received. Interest shall be charged at a rate to be set annually by the Treasurer based on the average prime interest rate set by the City's bank on December 31 of the previous year, plus 200 basis points (2%). Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received.

12.9 Audits.

(A) Consistent with the terms of this Franchise, the City reserves the right, without limitation, to conduct any necessary financial audits relating to matters arising under this Franchise. The City may determine the scope of audit in each instance. Any such audit shall be conducted in accordance with generally accepted audit standards.

(B) Grantee shall pay to the City any undisputed amounts which are due to the City as determined by any audit of the system. Such payment shall be made whether or not the Grantee's obligation for such payment arose before or after the effective date of this Franchise.

(C) If the City, as the result of any audit, determines that the Grantee made any underpayment, and that the underpayment exceeded five percent (5%) of the amount due, Grantee shall reimburse the City for the reasonable costs of such audit, upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit.

12.10 Tax liability. Payment of the franchise fee under this Franchise shall not exempt Grantee from the payment of any other 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 13. GENERAL INDEMNIFICATION AND INSURANCE

13.1 Indemnification.

(A) General Indemnification. Grantee agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and 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 act done by the Grantor or its officers, agents, or employees in the exercise of its emergency override authority under Section 10.3(B) of this Franchise. 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.

13.2 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 cancelled or materially altered so as to be out of compliance with the requirements of this Section 13.2 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 cancelled or materially altered so as to be out of compliance with the requirements of this Section 13.2 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 Section 13.2. Failure to maintain adequate insurance as required under Section 13.2 shall be cause for immediate termination 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.

13.3 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 13.3(A), 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 Section 13.3. 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 13.3(A), the Grantee shall provide to the City a fully executed Guaranty in Lieu of Bond of Tele-Communications, Inc., in the form provided in Exhibit E to this Franchise. The duly executed Guaranty in Lieu of Bond shall be filed by the Grantee on or before thirty days after this Franchise ordinance becomes effective.

13.4 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 under Section 14. 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 13.4.

Section 14. GENERAL STREET USE AND CONSTRUCTION

14.1 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.

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

(A) Mark all of its locatable underground Facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or

(C) Notify the excavator that the Grantee does not have any underground Facilities in the vicinity of the proposed excavation.

14.3 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.

14.4 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 14.4 shall be done in strict compliance with all rules, regulations and ordinances of the City.

14.5 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.

14.6 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. Such Facilities shall immediately be subject to the terms of this Franchise.

14.7 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 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 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.

14.8 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 Subsection 14.8, "Municipal Purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for cable system 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 14.8.

14.9 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.

14.10 Common users.

(A) For the purposes of this Subsection:

(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.

(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 Person which may at the time have authority to construct or maintain conduits or ducts in the Streets, but excluding Persons providing Cable Services in competition with the Grantee, 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 22.3.

(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.

14.11 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.

14.12 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 14.12, "Hazardous Substances" shall have the meaning as defined by ORS 465.200(9) (1991).

(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.

14.13 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 a telecommunications utility or a public utility decides to underground its facilities on a voluntary basis, unless the City grants an exception.

14.14 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.

14.15 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, in a form approved by 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 Subsection 14.15(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.

14.16 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 30 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 14.16, 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 15. TRANSFER OF GRANTEE'S CABLE SYSTEM

15.1 Prior consent of City.

(A) Transfer Defined. For purposes of Section 15.1, "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 property 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 property" means any property 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 party. Grantee shall assist the City in any such inquiry. The City may condition any Transfer upon such conditions, related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of the Franchise, as it deems appropriate. No Transfer for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section 13, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance.

(3) Nothing contained in Section 15.1 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 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 system.

15.2 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 otherwise 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 by the City. 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.

Section 16. OTHER RIGHTS RESERVED TO THE CITY

16.1 Purchase of Grantee's Cable System after forfeiture or expiration.

(A) Subject to the requirements of federal law, if the City has declared a forfeiture of this Franchise by ordinance, as provided in Section 21.2, or if the initial term of this Franchise has expired without the franchise being renewed or extended, 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 to any other Person, including parts of the 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, 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 information regarding its technical and customer operations, contractual or other legal obligations, and financial history and current condition as the City may 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 16.1, 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 16.1(C)(1), then the City, by resolution of the City Council, may demand that such valuation be determined by arbitration, as provided for in Section 22.3.

(D) For purposes of Section 16.1, "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 potential 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 16.1, 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 16.1, 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.

16.2 Condemnation of Grantee's Cable System.

(A) (1) To the extent authorized by law, the City may condemn all or any portion of Grantee's Cable System, including real property. Nothing in Section 16.2 is intended to expand or restrict the City's lawful condemnation authority. In the event the City desires to condemn all or any portion of Grantee's Cable System, the City shall so indicate by resolution approved by the City Council. Within 30 days of passage of such resolution, the Grantee shall submit a System Report to the City, as described in Section 16.1(B).

(2) At any time after receiving Grantee's System Report, the City may notify the Grantee that it desires to condemn all or any portion of Grantee's Cable System. Such notice shall be given by the passage of an ordinance by the City Council, stating the City's intentions to condemn all or any portion of the Grantee's Cable System within the City. The ordinance shall describe with specificity those portions of Grantee's Cable System which the City is condemning.

(B) (1) In the event the City files a lawsuit to condemn Grantee's Cable System or any portion thereof, the City and the Grantee shall proceed with all reasonable dispatch to obtain a final determination to the litigation.

(2) In the event that a court awards title to the City to all or any portion of Grantee's Cable System in a condemnation proceeding under Section 16.2 B(1), the City shall have the unlimited and unrestricted right to assign, sell, lease or otherwise transfer its interests in the Cable System, or portions thereof, to any other Person on whatever terms the City deems appropriate.

16.3 Modification in event of changes in law.

(A) This Franchise has been entered into by the parties under terms of the Cable Communications Policy Act of 1984 and other federal and state laws in effect on the effective date of this Franchise. The City and the Grantee reserve the right to request modifications in the terms and conditions of this Franchise to account for changes in the law during the term of this Franchise.

(B) Upon written notice from either party, the City and the Grantee shall voluntarily negotiate, in good faith, to modify the terms and conditions of this Franchise to account for changes in the law during the term of this Franchise. The purpose of the negotiations shall be to modify 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 arbitration proceeding. If the City and Grantee are unable to successfully conclude the negotiations within 90 days from the date of the written notice requesting the modification, the matter shall be submitted to negotiations as set forth in Section 22.2.

16.4 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 17. CITY REGULATORY AUTHORITY

17.1 City regulatory rights.

(A) The City Council shall be vested with the power and right reasonably to 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.

17.2 Cable Regulatory Commission. The City Council may designate by ordinance the regulatory powers and authority which may be exercised by the Cable Regulatory Commission, or its successor, under this Franchise or any applicable federal, state or local law.

17.3 Prior and subsequent City regulatory action. Grantee shall comply with any and all lawful actions of the City affecting Grantee's operations under this Franchise, whether prior to or subsequent to the effective date of 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 regulatory action and the terms of this Franchise, this Franchise shall prevail.

17.4 Regulation of rates and charges.

(A) Recurring 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. Regulation of rates under this Franchise shall be subject to the requirements of applicable federal law.

(B) Nonrecurring charges and fees. Additionally, the City reserves the right to adopt other lawful regulations governing Grantee's collection of advance charges and deposits, installation and reconnection charges, disconnection charges, late payment and other administrative and billing charges, upgrade and downgrade charges, the availability of refunds and other Grantee policies and procedures insofar as such policies and procedures substantially relate to Grantee's Subscribers or the City, and not with respect to the internal policies and procedures of the Grantee that do not have such an effect.

17.5 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. Except as provided in Section 8, 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 or geographic location within the Grantee's Franchise Area. Nothing in Section 17.5 shall be construed to prohibit:

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

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

17.6 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 Subsection 17.6(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 Subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than four consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

(B) Grantee shall provide a complete schedule of rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels. The schedule shall be in a form satisfactory to the City.

17.7 Changes in rates and charges.

(A) Grantee shall provide written notice to the City and Subscribers at least 30 days in advance of any increase in rates and charges under Section 17.6. Notice to the City of proposed increases in rates and charges shall be filed in a form satisfactory under Section 17.6.

(B) Unless the Cable Regulatory Commission, or the City Council by resolution, has lawfully required prior review of Grantee's rate increase in accordance with the requirements and conditions of the Portland City Code, 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.

17.8 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 Standard Cable Service by hearing impaired individuals.

17.9 Downgrade and disconnect charges.

(A) Downgrade Charges.

(1) Grantee shall not impose any Downgrade Charges, except as otherwise provided herein. As used in this subsection, "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) 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 direct and incremental 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. 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.

17.10 Reserved City authority. The City reserves all regulatory authority arising from the Cable Television Consumer Protection and Competition Act of 1992.

Section 18. RECORDS AND REPORTS

18.1 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. 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.

18.2 Annual reports. Grantee shall Annually present a written report to the City (the "Annual Report"). Grantee shall submit the Annual Report no later than April 15th of each Year, following the end of the Grantee's calendar fiscal year. Except as otherwise provided by the City Council by ordinance, the Annual Report shall include information for the Grantee's operations within the City for the immediately previous Year, including, but not limited to:

(A) System structural and operating information;

(1) System ownership, including all levels of Parent Corporations and related ownership percentages;

(2) An organization chart for Grantee, listing of officers and members of the board of directors, department heads, and supervisors for major activity centers by category;

(3) Total Cable System mileage and overall homes passed;

(4) The number of Standard Cable Subscribers, pay subscribers (by service) and pay-to-basic percentages, along with numbers for other categories of Subscribers, such as by Tiers, as the City may require;

(5) Cable Services 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) A summary of previous Year's activities:

(1) Grantee's Local Origination Programming activities during the year and activity on Grantee's Channel designated for Local Origination Programming;

(2) A statistical summary of telephone responsiveness, identifying on a monthly average basis the percent of time the telephone system has all trunks busy and the number of callers to Grantee's

customer service or repair lines who fail to reach a customer service representative in less than one minute, or such other period as is approved by the City;

(3) Audits and investigations conducted to detect illegal connections and other attempts at unauthorized access to Grantee's Cable System;

(4) Grantee's development or incorporation of new technology on the Cable System, such as addressability, interactivity, pay-per-event Programming, teletext, data communications or other entertainment and non-entertainment services;

(5) Marketing and development of Leased Access Channels and usage patterns for such Channels, if any;

(6) Until completed, a description of the progress made in construction and completion of the Downtown Wiring District, including updates of the map and schedule set forth in Exhibit A; and

(7) A list of all material petitions, applications, communications, and reports submitted by the Grantee and its Parent Corporations to the FCC, the Securities and Exchange Commission or any other federal or state regulatory agency having jurisdiction in respect to any matters affecting Grantee's Cable Services in the City or otherwise affecting the City's rights under this Franchise. Grantee shall make copies of any such Documents and their replies from respective agencies available to the City upon request.

(C) Financial information:

(1) Financial statements for Grantee's Portland Area Cable System and, separately, for its Cable System within the City, prepared in accordance with generally accepted accounting principles. For purposes of Subsection 18.2(C), "Portland Area Cable System" means the regional Cable System of which the Cable System serving the Franchise Area is a part. 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 Cable Regulatory Commission, 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 principals. The financial statements and attached notes shall be in sufficient detail to include:

(a) Gross Revenues by category, such as basic, pay, pay-per-view, advertising, installation, and other miscellaneous revenues;

(b) Operating expenses by category, such as purchased Programming services, Local Origination Programming, technical support and maintenance, marketing, management fees, and other general and administrative expenses. Deferred or non-cash expenses shall be separately identified;

(c) Other expenses, such as depreciation and amortization, interest expenses, and income taxes paid and accrued, as applicable;

(d) Capital expenditures by category, such as Headend equipment, distribution plant, converters, programming equipment, test equipment, land, buildings and improvements, vehicles or other Facilities;

(e) Any incurrences or repayment of debt, and remaining outstanding debt by lender or type, including interest rates and future payment terms;

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

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

(2) A statement of Gross Revenues for the Grantee's Cable System within the City, consistent with the financial statements provided under Subsection 18.2(C)(1), audited by an independent Certified Public Accountant;

(3) Forecasts of Subscriber numbers and Gross Revenues by category through June 30th of the next Year;

(4) Planned construction, Upgrade or Rebuild activity of Grantee's Cable System within the City for the current Year and the projected costs of such activity;

(5) Annual audited financial statements for the Guarantor; and

(6) Tele-Communications, Inc.'s Annual corporate reports, including its audited financial statements.

18.3 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.

18.4 Format/public hearing. The City, after consultation with Grantee, may specify the form and details of all Grantee's reports required under this Franchise. If directed by the Cable Regulatory Commission, the Grantee's Annual Report shall be presented at a public hearing at which Grantee shall summarize the contents of the Annual Report and members of the general public may comment thereon.

18.5 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.

18.6 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 any information for which it claims confidentiality with the mark "Confidential", in letters at least one-half (1/2) inch in height, 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. The City shall retain the final discretion to determine whether to release the requested confidential information, in accordance with applicable laws.

Section 19. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION/MINORITY

BUSINESS ENTERPRISES

19.1 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.

19.2 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.

19.3 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 20. RIGHTS OF INDIVIDUALS

20.1 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.

20.2 Unauthorized monitoring or cable tapping.

(A) For purposes of Section 20.2, "Tap" or "Tapping" 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.

(B) 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.

(C) Grantee may tap a cable, line, signal input device or subscriber outlet or receiver to determine the number of viewers watching a program where the identities of the viewers are not determined, without the Subscriber's written consent.

20.3 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 place in the building, structure or any facility of any Subscriber any equipment capable of two-way communications without the written consent of the Subscriber and residents, revocable at the discretion of the Subscriber and residents, and shall not use the two-way communications capability of the system for unauthorized or illegal Subscriber surveillance of any kind. For purposes of this subsection, tenants who occupy premises shall be deemed to be Subscribers, regardless of who actually pays for the service. Written consent, as required herein, shall not be required of any Subscriber by Grantee as a condition of receiving Cable Services.

20.4 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 written permission of the owner or tenant of any property involved, except where there is an existing utility easement reserved by plat or other conveyance. 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, 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.

20.5 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 expressly authorized by federal law. For purposes of Section 20.5, "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 personally identifiable information, and other issues involving the protection of Subscriber privacy.

Section 21. FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

21.1 Material Franchise provisions.

(A) The events referred to in the following subsections are regarded by the City to be substantial considerations, material to inducing the City to enter into this Franchise. Upon the occurrence of any of these events, or upon the occurrence of such other event as may be determined by the City under Section 21.1(B) to violate a material franchise provision, the City may, without limitation, exercise its rights under Section 21 or as set forth elsewhere in this Franchise, or such other rights as it may possess:

(1) Unless otherwise specified by the City, any failure by the Grantee to fully execute and return to the City within 45 days any undisputed orders, contracts, agreements or Documents arising under this Franchise and requiring Grantee's signature or acceptance;

(2) The Grantee's failure, refusal or neglect to pay the City for use of the Streets as provided under this Franchise;

(3) The Grantee's failure, refusal or neglect to pay financial support for PEG Access under Section 7.5., or any requirement that such financial support must be credited against compensation payable to the City under Section 12.1;

(4) Any failure by Grantee to provide Programming and Channel capacity in accordance with Section 5;

(5) Any delays in Grantee's construction and extension of its Cable System, the installation of Hardwired Programming Origination Points, the acquisition and availability of Portable Remote Transmission Units, Interconnection or other similar requirements set forth in Section 6 through Section 9 and Exhibits A and B; or

(6) Any failure by Grantee to otherwise comply with the material requirements of Section 6 through Section 12 of this Franchise.

(B) The enumeration of particular material Franchise provisions in Section 21.1(A) shall not preclude the City from later identifying other material provisions of this Franchise.

21.2 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 Penalties per day, incident or other measure of violation, as may be appropriate under the circumstances;

(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 refunds to its Subscribers or Subscriber Classes in such amount and on such bases as are reasonable. 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;or

(5) (a) Reduce the duration of the term of this Franchise on such basis as is reasonable for any violations of the particular material Franchise provisions enumerated in subsections 21.1(A)(2) or 21.1(A)(3).

(b) The City shall not exercise the remedy provided under Subsection 21.2(A)(5)(a) in the event that:

(i) A good faith dispute arises between the City and the Grantee regarding whether any particular amounts earned by the Grantee are included within the definition of Gross Revenues under Section 3.25;

(ii) The good faith dispute is the subject of pending litigation between the Grantee and the City; and

(iii) The Grantee has paid, and continues to pay, any disputed amounts possibly owing to the City either into an escrow account acceptable to the City or to the court presiding over the pending litigation, for payment to the City or the Grantee depending on the final judgment entered in the litigation.

(B) Assessment of Penalties. It is the intent of the City to determine Penalties as a reasonable estimate of the damages suffered by the City, whether actual or potential. In any event where the Grantee fails, neglects or refuses to comply with this Franchise, or any of its terms or provisions, the damages suffered by the City as a result may include, without limitation, increased costs of administration and other damages difficult to measure. Therefore, Penalties assessed under this Franchise shall be considered liquidated damages. The Penalties provided for in this Franchise may be imposed if Grantee fails to comply with any material provision of this Franchise.

(C) Remedies for delays. In addition to the remedies set forth in Section 21.2(A), the City may, at its sole discretion, apply any one or more of the following remedies in connection with delays in Cable System construction and extension, installation of Hardwired Programming Origination Points, acquisition and availability of Portable Remote Transmission Units, Interconnection, and other similar matters set forth in Section 6 through Section 9 and Exhibits A and B:

(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;

(3) Declare a forfeiture of any construction bond required under Section 13.4 of this Franchise for any delay exceeding one year; or

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

(D) Forfeiture. In addition to other rights and remedies set forth elsewhere in this Franchise, the City may declare a forfeiture of this Franchise, and all of Grantee's rights and privileges pertaining thereto and arising thereunder, in the event that:

(1) Grantee violates any material provision of this Franchise;

(2) A court of competent jurisdiction determines that Grantee has practiced any fraud or deceit upon the City; 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) 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 Cable Regulatory Commission. The Commission's final determination, following a contested case proceeding, may be appealed to the City Council. The City Council shall consider the appeal de novo on the record established in the contested case proceeding, under rules established by the City Council.

21.3 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 21.2, 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 21.2.

(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 21.2 or such other rights as the City may possess.

21.4 Receivership. In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right by ordinance to declare a forfeiture of 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:

(A) 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 a City Council resolution; and

(B) 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.

21.5 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 16.1; or
- (5) Take such further action as the City deems appropriate.

(B) Until such time as the City exercises its rights under Section 21.5 the Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

21.6 Removal of plant and equipment. If the City has by ordinance declared a forfeiture of this Franchise as provided in Section 21.2(D), 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 Sections 16.1 and 16.2, 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 properly to 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 22. MISCELLANEOUS PROVISIONS

22.1 Compliance with laws.

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

(B) Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

(C) 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.

22.2 Renegotiation.

(A) Mandatory renegotiation. In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council or the Grantee expressly finds that such provision constituted a consideration material to this Franchise, then the City and the Grantee shall renegotiate the terms of this Franchise, subject to the arbitration procedures of Section 22.3. The party seeking renegotiation shall serve on the other party written notice of demand to renegotiate. The parties shall have 90 days to conduct and complete the renegotiation. If the City and the Grantee cannot successfully conclude the renegotiation within 90 days from the date of the demand, the matter shall be submitted to arbitration under Section 22.3.

(B) By mutual agreement, the City and the Grantee may meet at any time during the term of this Franchise to review and renegotiate matters of concern or interest to either of them. The topics of such renegotiation shall be stated in writing by each party prior to such meeting, but each party may include any topic or concern arising under this Franchise or otherwise.

22.3 Arbitration.

(A) Whenever the arbitration procedures provided under this Franchise are exercised by the City and the Grantee, the determination of the arbitrators shall be:

(1) Final and binding upon both the City and the Grantee under Sections 7.5(D) (Access Channel lineup), 7.11(B)(3)(PEG Access Channel assignments), 8.4(C) (Revision of line extension formula), 12.7 (Franchise fee modification), 14.10 (Conduit common use), 16.3 (Franchise modification due to changes in law), 22.2(A) (Franchise modification due to invalidity or unenforceability) and 22.8(A) (Franchise modification due to action by agencies or courts); and

(2) Not binding as to arbitration under Section 16.1 (Valuation of Cable System, on forfeiture or expiration).

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

(C) (1) If the City initiates arbitration, the City Council shall select one arbitrator in the resolution, and the Grantee by written notice shall select one arbitrator within 15 days after passage of the resolution. If the Grantee initiates arbitration, it shall identify its selected arbitrator in its written notice, and the City shall select one arbitrator within 15 days of 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, then the third arbitrator shall be appointed by the presiding civil judge of the Multnomah County Circuit Court.

(D) After all three arbitrators have been selected, they shall each take an oath to serve neutrally and impartially. The arbitration panel shall then schedule a date, time and place for hearing the presentations of the City and the Grantee. The hearing shall occur not less than 60 days after the appointment of the third arbitrator, unless extended by mutual agreement of the City and Grantee. The arbitrators shall make a written report to the City and the Grantee on their final determination within 60 days after completion of the hearing. The determination of a majority of the arbitrators shall constitute a final arbitration determination.

(E) The arbitrators shall have such powers as are set forth in ORS 36.335 (1991).

(F) The City and the Grantee shall each pay the cost of the arbitrator it selected. The cost of the third arbitrator, along with any other costs associated or arising from the arbitration, shall be divided equally between the City and the Grantee.

(G) In any arbitration proceeding regarding a modification of this Franchise, initiated under Section 16.3, Section 22.2 or Section 22.8(A), the arbitrators may order a modification of the Franchise in response to the events and circumstances initiating the arbitration proceeding. The arbitrators shall attempt to modify 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 arbitration proceeding. The party seeking the modification shall have the burden of establishing how the net rights and obligations remain substantially the same. If the arbitrators determine that it is not possible to so modify the franchise, then they shall make a finding so stating in their final determination and instead shall modify the franchise to provide as fair a balancing of the rights and obligations of the City and the Grantee as they are reasonably able to achieve in relation to the balancing of rights and obligations under the franchise prior to modification.

22.4 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 Rebuild, 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 16.1 or Section 16.2, 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.

22.5 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 16.3, Section 22.2 or Section 22.8.

22.6 No recourse against City . 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.

22.7 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.

22.8 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 16.3, as may be necessary to carry out the parties' intentions and purposes under this Franchise.

22.9 Comparability of other cable franchises.

(A) If, after the effective date of this Franchise, the City enters into or authorizes a franchise, permit, license or other agreement of any kind with any Person other than Grantee to enter the Streets for

the construction and operation of a Cable System providing Cable Services to Residential Subscribers 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 comparable to those contained in this Franchise, insofar as this does not conflict with applicable law. However, nothing in Subsection 22.9(B) shall limit or prevent the City from issuing any franchise, permit, license or other agreement of any kind for all of Grantee's Franchise Area or any portion thereof, that provides for greater requirements, or for a higher level of Cable Services to Subscribers, than that required of Grantee under this Franchise.

(B) Grantee agrees and acknowledges that, solely for the purposes of Subsection 22.9(A) and for no other purpose, the provisions of all other cable franchises issued or administered by the City and in effect as of the effective date of this Franchise, are reasonably comparable to or greater than the provisions of this Franchise.

22.10 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.

22.11 Notice. Any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City:

Office of Cable Communications and Franchise Management
City of Portland, Oregon
1120 SW 5th Avenue, Room # 1021
Portland, Oregon 97204

If to the Grantee:

TCI Cablevision of Oregon, Inc.
3500 SW Bond
Portland, OR 97201

22.12 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.

22.13 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.

22.14 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, and approved by ordinance enacted by the City Council.

Section 23. GUARANTY.

23.1 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 C to this Franchise. By executing the written guaranty in the form attached hereto as Exhibit C, 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 Council in the event Grantee for any reason fails to perform them.

23.2 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.

23.3 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 18.2(C)(5), 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 subsection, "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 24. WRITTEN ACCEPTANCE.

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

24.2 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 Hales
D. Olson/B. Walters/cdn
February 26, 1993

EXHIBIT A: DOWNTOWN SERVICE EXTENSION MAP

EXHIBIT A IS A MAP OF THE DOWNTOWN AREA SHOWING THE PHASES OF TCI SERVICE EXTENSION, BY YEAR, WHICH WILL RESULT IN COMPLETE EXTENSION OF THE SYSTEM SO THAT ALL BUSINESSES AND RESIDENTS ARE "SERVICEABLE" BY YEAR 5. THE ONLY EXCEPTION IS THE DOWNTOWN WAREHOUSE DISTRICT, WHICH IS SUBJECT TO LATER REVIEW IF NECESSARY.

EXHIBIT B

A. HARDWIRED PROGRAMMING ORIGINATION POINTS

1. Grantee shall construct the following activated Hardwired Programming Origination Points consistent with the requirements of Section 8.4 of the Franchise, to enable the transmission of Programming from each of the sites for distribution to Subscribers over Access or Local Origination Channels, and/or to all Interconnected points on the Grantee's Cable System. Grantee shall construct such Hardwired Programming Origination Points at the Grantee's expense, except as otherwise provided in the Franchise.

2. The Hardwired Programming Origination Points shall be constructed, and sufficient Downstream and Upstream Channel capacity and routing capability shall be provided, to enable live programming to originate from at least one of the Hardwired Programming Origination Points at a time, and be transmitted to Subscribers over PEG Access Channels and Local Origination Channels.

3. Prior to construction, Grantee shall consult with the site owner or manager and a designated representative of Portland Cable Access, in order to verify the suitability of the location as a Hardwired Programming Origination Point and to obtain the written permission of the site owner to install on the premises.

4. Grantee shall submit an Annual construction schedule to the City, along with its Annual Report, for the Hardwired Programming Origination Points, describing the schedule for completion of each origination point, including starting and completion dates and monthly milestones. Grantee shall report quarterly to the Cable Regulatory Commission on the progress made on completing the construction in accordance with the submitted schedule. The schedule shall provide for the completion and construction of all such points by the end of Year five of the Franchise, with at least two of such points being constructed each Year.

5. Hardwired Programming Origination Points. The Hardwired Programming Origination Points to be built by the Grantee under its Franchise with the City shall be as follows:

a. Portland Building
1120 SW Fifth Avenue Portland, OR
Three (3) sites, as specified by City, sharing one permanent modulator.

b. City Hall
1220 SW Fifth Avenue Portland, OR

One location, as specified by the City, served by a permanent modulator.

c. Portland Center for the Performing Arts
111 SW Broadway Portland, OR

Three locations:

1. Schnitzer Hall;

2. Intermediate Theater; and

3. Winningstad Theater.

- d. Civic Auditorium
SW Third and Clay
- e. Portland State University
1825 SW Broadway Portland, OR
Gymnasium or Neuberger Hall
- f. World Trade Center
121 SW Salmon Portland, OR
- g. Justice Center
1120 SW Third Portland, OR
14th Floor meeting room
- h. County Courthouse
1021 SW Fourth Avenue Portland, OR
- i. Northwest Film and Video Center
1219 SW Park Avenue Portland, OR
Berg-Swann Auditorium
- j. World Forestry Center
4033 SW Canyon Rd Beaverton, OR
- k. Hilton Hotel
921 SW Sixth Avenue Portland, OR
- l. Civic Stadium
SW 20th and Morrison
- m. Pioneer Courthouse Square. The City and the Grantee shall undertake to negotiate, in good faith, an agreement for the construction of a Hardwired Programming Origination Point for the Pioneer Courthouse Square. The construction of such Hardwired Programming Origination Point shall be completed before the end of Year Five of this Franchise, subject to such extensions of time as may be approved by the City Council under the same procedures for extensions of time for completion of certain areas of the Downtown Wiring District, as set forth in Section 8.3(D). The City shall facilitate the project by providing information to the Grantee on possible access routes to the Square under the Light Rail lines on SW Morrison and SW Yamhill. Furthermore, the City shall pay for a portion of the project using Access Capital Cost funds. The City and Grantee's share for construction of such project shall each be fifty percent (50%) of the construction costs of the Hardwired Programming Origination Point for Pioneer Courthouse Square.

6. The Hardwired Programming Origination Points listed as 5.c. through 5.l., above, shall be served by Portable Remote Transmission Units, as described in Part B., below, except for the Points listed as 5.a. and 5.b., which shall be provided with permanent modulators.

7. Grantee's work hereunder shall include providing amplifiers from the Hardwired Programming Origination Points with return modulators as necessary.

8. Designated Access Providers and Grantee's Local Origination Programming shall have priority over all other uses of the Hardwired Programming Origination Points, Portable Remote Transmission Units, and the related Cable System Channel capacity and routing capability. If there is no prior request from Grantee, the Designated Access Provider shall have priority for usage of the Hardwired Programming Origination Points, and related Cable System capacity, provided that the Designated Access Provider must give the Grantee at least 14 days prior notice in advance of the proposed use. Any conflicts in the use of Hardwired Programming Origination Points between a Designated Access Provider and the Grantee's Local Origination Programming shall be resolved, in good faith, by consultation between the parties. As between Designated Access Providers, the first Access Provider to send out notice, in good faith, of proposed usage shall have priority.

B. PORTABLE REMOTE TRANSMISSION UNITS

1. In addition to construction and extension of the Cable System to the Hardwired Programming Origination Points set forth in Part A.5 of this Exhibit, Grantee shall provide two (2) Portable Remote Transmission Units, consisting of any and all modulators necessary to transmit a return signal to the Grantee's Headend.

2. Grantee shall make such Portable Remote Transmission Units available to Designated Access Providers, upon written request from a Designated Access Provider, for the transmission of live local programming in Grantee's Franchise Area from the Hardwired Programming Origination Points set forth in Part A.5 of this Exhibit, and from such other Hardwired Programming Origination Points as may be constructed in the future. The Grantee shall cooperate with Designated Access Providers to establish reasonable rules for notice, checkouts and utilization of the Portable Remote Transmission Units. At a minimum, in the event of competing demand, Grantee shall make such units available for the transmission of live, remote PEG Access Programming from Hardwired Programming Origination Points, not less than a total of 25 hours per month.

EXHIBIT C

GUARANTY

THIS AGREEMENT is made this day of , 199_, between the Guarantor, the City of Portland, Oregon, and the Grantee. For the purpose of this Agreement, the terms "Guarantor" and "Grantee" have the meanings given in this Agreement, below.

WITNESSETH

WHEREAS, the City of Portland, Oregon, (the "City") has negotiated a cable renewal franchise with TCI Cablevision of Oregon, Inc., (the "Grantee"), to operate and maintain a cable television system (the "Cable System"); and,

WHEREAS, TCI West Inc., a Delaware Corporation (the "Guarantor") is a parent company of the Grantee and has a substantial interest in the Cable System and the conduct of the Grantee in complying with the Franchise Document (as defined below), which Franchise Document is hereby incorporated by reference to this Agreement; and

WHEREAS, Section 23 of the Franchise Document requires the Grantee to furnish a guaranty issued to cover the faithful performance of the Grantee's obligations under the Franchise Document; and,

WHEREAS, TCI West, Inc., (the "Guarantor"), has agreed to provide the guaranty required by the Franchise Document in order to induce the City to enter into the Franchise Document;

NOW, THEREFORE, in consideration of the foregoing, the Guarantor agrees:

1. The Guarantor hereby unconditionally guarantees the punctual performance of any and all obligations of Grantee contained in the Franchise Document. In the event Grantee for any reason fails to perform those obligations, the Guarantor agrees to perform or cause to be performed those obligations on Grantee's behalf. The Guarantor's liability under this Agreement shall mature immediately, without notice or demand by the City, and become due upon the occurrence of any failure of performance by the Grantee.

2. This guaranty is an absolute, continuing, and unlimited guaranty of performance of the Franchise Document by the Grantee. The City shall not be obliged to proceed first against the Grantee or any other person, firm or corporation.

3. The Guarantor consents that, without notice to the Guarantor, and without the necessity for any additional endorsement, consent, or guaranty by the Guarantor, the obligations of the Grantee may, from time to time, be amended, modified, compromised or released by the City, all without impairing or affecting in any way the liability of the Guarantor hereunder.

4. The Guarantor waives notice of acceptance of this guaranty, and further waives protest, presentment, demand for performance or notice of default to the Guarantor. The Guarantor agrees that it is the Guarantor's responsibility to be informed of the condition of the Grantee and the status of the Grantee's performance of its obligations, and the City has no duty to advise the Guarantor of any information known to it in that regard. This waiver, however, shall not be deemed a waiver of any requirement of the Franchise Document as to notice to the Grantee.

5. The City's failure to require strict performance of the Franchise Document shall not release the Guarantor from liability under this Agreement.

6. Any litigation between the City and the Guarantor arising under or regarding this Agreement 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. The terms and provisions of this Agreement shall be applied and interpreted according to the laws, statutes and judicial decisions of the State of Oregon.

7. This Agreement, unless terminated, substituted or cancelled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise Document, or as expressly provided otherwise in the Franchise Document.

8. The Guarantor may propose substitution of another Guarantor to perform the obligations of this Agreement. If the City finds the proposed substitute Guarantor reasonably satisfactory, another Guaranty Agreement may be substituted upon mutual agreement of the City and the Guarantor. Such substitution shall not affect liability incurred or accrued under this Agreement prior to the effective date of such substitution. No claim, suit or action under this Agreement by reason of any default of the Grantee shall be brought against the original Guarantor unless asserted or commenced within one year after the effective date of such substitution of the Agreement.

9. Any notices given pursuant to this Agreement shall be in writing and delivered personally to the following addressees or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Guarantor and the Grantee at **[addresses to be provided by Guarantor]**, and to the City at: Office of Cable Communications and Franchise Management, Room 1021, 1120 S.W. Fifth Avenue, Portland, Oregon 97204.

IN WITNESS WHEREOF, the Grantee, the City, and Guarantor have entered into this Agreement on the day of, 199_.

DEFINITIONS

(For purposes of this Agreement, the following terms are defined as indicated below.)

Grantee: TCI Cablevision of Oregon, Inc.

Franchise Document: Franchise Renewal Ordinance No. _____, passed and adopted _____ 1993.

Guarantor: TCI West, Inc

TCI WEST, INC.,

By: _____

Title: _____

State of _____)

) ss.

County of _____)

This Agreement was acknowledged before me on the _____ day of _____, 199_, by _____ as _____, as a duly authorized officer of TCI West, Inc.

EXHIBIT D

ACCEPTANCE

City Auditor
City of Portland, City Hall
1220 SW Fifth Avenue
Portland, OR 97204

This is to advise the City of Portland, Oregon (the "City") that TCI Cablevision of Oregon, Inc. (the "Grantee") hereby accepts the terms and provisions of Ordinance No. _____, passed by the City Council on _____, 1993 (the Franchise) granting a franchise for twelve years to TCI Cablevision of Oregon, Inc.. The Grantee agrees to abide by each and every term of the Franchise.

By executing and returning this acceptance form, the Grantee also attests that there are no Grantee Parent Corporations as defined under the Franchise apart from TCI West, Inc., TCI Holdings, Inc., and Tele-Communications, Inc..

TCI CABLEVISION OF OREGON, INC.

BY _____
TITLE _____
DATE _____

EXHIBIT E

GUARANTY IN LIEU OF BOND

THIS AGREEMENT is made this day of _____, 199_, between the Guarantor, the City of Portland, Oregon, and the Grantee. For the purpose of this Agreement, the terms "Guarantor" and "Grantee" have the meanings given in this Agreement, below.

WITNESSETH

WHEREAS, the City of Portland, Oregon, (the "City") has negotiated a cable renewal franchise with TCI Cablevision of Oregon, Inc., (the "Grantee"), to operate and maintain a cable television system (the "Cable System"); and,

WHEREAS, Tele-Communications, Inc., a Delaware corporation ("Guarantor") is a parent company of the Grantee and has a substantial interest in the Cable System and the conduct of the Grantee in complying with the Franchise Document (as defined below), which Franchise Document is hereby incorporated by reference to this Agreement; and

WHEREAS, Section 13.3(A) of the Franchise Document requires the Grantee to furnish a faithful performance bond to cover the faithful performance of the Grantee's obligations under the Franchise Document; and,

WHEREAS, the Guarantor is willing and has agreed to provide a guaranty in lieu of the performance bond as provided in Section 13.3(E) of the Franchise Document;

NOW, THEREFORE, in consideration of the foregoing, the Guarantor agrees:

1. The Guarantor hereby unconditionally guarantees the punctual performance of any and all obligations of Grantee as set forth in Section 13.3(A) of the Franchise Document. In the event Grantee for any reason fails to perform the obligations of the Grantee as set forth in Section 13.3(A), the Guarantor agree to perform or cause to be performed those obligations on Grantee's behalf. The Guarantor's liability under this Agreement shall mature immediately, without notice or demand by the City, and become due upon the occurrence of any failure of performance by the Grantee of its obligations as set forth in Section 13.3(A).

2. This guaranty is an absolute, continuing, and unlimited guaranty of performance of the obligations of the Grantee as set forth in Section 13.3(A) of the Franchise Document, except this guaranty is limited to the amount set forth in Section 13.3(A). The City shall not be obliged to proceed first against the Grantee or any other person, firm or corporation.

3. The Guarantor consents that, without notice to the Guarantor, and without the necessity for any additional endorsement, consent, or guaranty by the Guarantor, the obligations of the Grantee may, from time to time, be amended, modified, compromised or released by the City, all without impairing or affecting in any way the liability of the Guarantor hereunder.

4. The Guarantor waives notice of acceptance of this guaranty, and further waives protest, presentment, demand for performance or notice of default to the Guarantor. The Guarantor agrees that it is the Guarantor's responsibility to be informed of the condition of the Grantee and the status of the

Grantee's performance of its obligations, and the City has no duty to advise the Guarantor of any information known to it in that regard. This waiver, however, shall not be deemed a waiver of any requirements of the Franchise Document as to notice to the Grantee.

5. The City's failure to require strict performance of the Franchise Document shall not release the Guarantor from liability under this Agreement.

6. Any litigation between the City and the Guarantor arising under or regarding this Agreement 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. The terms and provisions of this Agreement shall be applied and interpreted according to the laws, statutes and judicial decisions of the State of Oregon.

7. This Agreement, unless terminated, substituted or cancelled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise Document, or as expressly provided otherwise in the Franchise Document.

8. The Guarantor may propose substitution of another Guarantor to perform the obligations of this Agreement. If the City finds the proposed substitute Guarantor reasonably satisfactory, another Guaranty Agreement may be substituted upon mutual agreement of the City and the Guarantor. Such substitution shall not affect liability incurred or accrued under this Agreement prior to the effective date of such substitution. No claim, suit or action under this Agreement by reason of any default of the Grantee shall be brought against the original Guarantor unless asserted or commenced within one year after the effective date of such substitution of the Agreement.

9. Any notices given pursuant to this Agreement shall be in writing and delivered personally to the following addressees or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Guarantor and the Grantee at P.O. Box 5630, Denver, Colorado 80217, and to the City at: Office of Cable Communications and Franchise Management, Room 1021, 1120 S.W. Fifth Avenue, Portland, Oregon 97204.

IN WITNESS WHEREOF, the Grantee, the City, and Guarantor have entered into this Agreement on the _____ day of _____, 199_.

DEFINITIONS

(For purposes of this Agreement, the following terms are defined as indicated below.)

Grantee: TCI Cablevision of Oregon, Inc.

Franchise Document: Franchise Renewal Ordinance No. _____, passed and adopted _____ 1993.

Guarantor: Tele-Communications, Inc.

TELE-COMMUNICATIONS, INC.

By: _____

Title: _____

State of _____)

County of _____) ss.

This Agreement was acknowledged before me on the _____ day of _____, 199_, by _____ as _____, a duly authorized officer of Tele-Communications, Inc.

Notary Public for _____
My Commission Expires:

GRANTEE:
TCI Cablevision of Oregon, Inc.
BY: _____
Title: _____
State of _____)

County of _____) ss.

This Agreement was acknowledged before me on the _____ day of _____, 199_, by _____ as _____, a duly authorized officer of TCI Cablevision of Oregon, Inc.

Notary Public for _____
My Commission Expires:

City of Portland, Oregon:
BY: _____
TITLE: _____
State of _____)

County of _____) ss.

This Agreement was acknowledged before me on the day of _____, 199_, by _____ as _____ of the City of Portland, Oregon.

Notary Public for _____
My Commission Expires: