

CABLE FRANCHISE AGREEMENT

**BETWEEN THE
CITY OF GRESHAM, OREGON
AND
VERIZON NORTHWEST INC.**

November 18, 2008

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**CABLE FRANCHISE AGREEMENT
BETWEEN THE
CITY OF GRESHAM, OREGON
AND
VERIZON NORTHWEST INC.**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Gresham, a municipal corporation duly organized under the applicable laws of the State of Oregon (the “City”), and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (“Grantee”).

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

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

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

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

WHEREAS, Grantee’s provision of Cable Services will further longstanding goals of providing for facilities-based, competitive Cable Services alternatives for cable customers in Grantee’s Service Area; and

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

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

THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.14 *Extended Service Area*: The portion of the Franchise Area depicted as Extended Service Area in Exhibit A.

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

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

1.17 *Franchise Area*: The incorporated area (entire existing territorial limits) of the City and such additional areas as may be included in the corporate (territorial) limits of the City during the term of this Franchise.

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

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

1.20 *Government Access Channel*: An Access Channel available for the use of the City.

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

- (a) fees charged for Basic Service;
- (b) fees charged to Subscribers for any service tier other than Basic Service;
- (c) fees charged for premium Channel(s), e.g. HBO, Cinemax, or Showtime;
- (d) fees charged to Subscribers for any optional, per-channel, or per-program services;
- (e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees associated with Cable Services;
- (f) fees for downgrading any level of Cable Service programming;
- (g) fees for service calls;
- (h) fees for leasing of Channels;
- (i) revenue from customer equipment, including converters (e.g. set top boxes, high definition converters, and digital video recorders) and remote control devices;
- (j) advertising revenue as set forth herein;

- (k) revenue from the sale or lease of access Channel(s) or Channel capacity;
- (l) revenue from the sale or rental of Subscriber lists;
- (m) revenues or commissions received from the carriage of home shopping channels;
- (n) fees for any and all audio programming services provided as Cable Service;
- (o) revenue from the sale of program guides;
- (p) late payment fees;
- (q) forgone revenue that Grantee chooses not to receive in exchange for trades, barters, services, or other items of value;
- (r) revenue from NSF check charges;
- (s) revenue received from programmers as payment for distribution of programming content on the Cable System, including launch fees; and
- (t) to the extent Grantee chooses to itemize amounts on its Subscriber or customer billings for Cable Service-related fees, taxes, other expenses incurred by Grantee that are imposed on Grantee by governmental agencies or other third parties, such itemized amounts are also part of Gross Revenue.

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

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

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

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

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

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

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

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

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

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

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

1.21.9 Revenues from the sales of capital assets or sales of surplus equipment shall be excluded, provided that this exclusion shall not include retail sales directly to Subscribers by Grantee of converters, remote controls and other Subscriber equipment used in the provision of Cable Service over the Cable System;

1.21.10 Reimbursement by programmers of marketing costs incurred by Grantee for the introduction of new programming pursuant to a written marketing agreement shall be excluded; or

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

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

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

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

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

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

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

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

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

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

1.31 *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area, the Extended Service Area, and any Service Areas added pursuant to 4.1.1.3.

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

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

1.34 *Telecommunications Facilities*: Grantee's facilities providing Telecommunications Services and Information Services, including its FTTP Network facilities.

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

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

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

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

2. **CABLE REGULATORY COMMISSION AS AGENT**

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

2.2 *Intergovernmental Agreement.*

2.2.1 The governing body of the City has adopted this Franchise as its own, under its independent government authority and has elected to provide for a Cable Regulatory Commission (the “Commission”) created through an Intergovernmental Agreement (attached as Exhibit B) (“Intergovernmental Agreement”). The cities of Fairview, Gresham, Troutdale, Wood Village and unincorporated Multnomah County (the “jurisdictions”) are parties to the Intergovernmental Agreement. The City has agreed to designate the Commission as its representative and agent under this Franchise, except as specifically stated otherwise herein, and to be bound by certain decisions and actions taken by the Commission as set forth in the Intergovernmental Agreement. Throughout this Franchise Agreement, references to the City are intended to include the Commission acting on behalf of the City, unless otherwise stated or such powers are reserved to the City in the Intergovernmental Agreement. In fulfilling the terms of this Franchise, the Grantee is entitled to rely upon, look to, communicate with, and comply with the decisions and orders of the Commission unless otherwise stated herein. Nothing in this Franchise shall be construed to empower the Commission to act contrary to the provisions of the Intergovernmental Agreement. The City retains all powers reserved to it in the Intergovernmental Agreement.

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

2.2.3 Any withdrawal from or amendment to the Intergovernmental Agreement shall not be construed as amending this Franchise.

2.2.4 Withdrawal of a jurisdiction from the Intergovernmental Agreement shall not affect this Franchise which shall remain in effect except as set forth in this Subsection 2.2.4. Certain provisions of this Franchise, including the PEG Access Channels, have been negotiated as an indivisible whole for the benefit of all Participating Jurisdictions (as hereinafter defined) and Grantee has relied on this fact in entering into this Agreement. If the City withdraws from the Intergovernmental Agreement, it shall be entitled to receive the five percent (5%) franchise fee set forth in Section 8 and the PEG/I-Net Grant set forth in Section 7.5 of this Franchise, for Grantee’s Gross Revenues attributable to the City’s territorial limits and the Grantee agrees to

good faith negotiations with the City with respect to the following provisions of the Agreement: PEG Access Channels under Section 7.1, audit reimbursement under Section 10.3.2.1, fines under Section 14.2.2, or a Security Fund under Section 14.9 (collectively, "Sections Subject to Renegotiation"). The purpose of the negotiation is to modify the Sections Subject to Renegotiation so as to continue to provide the benefits of the Sections Subject to Renegotiation to the City to the extent such benefits may be provided without any additional cost (whether by direct payment to the City, increased labor or material costs, or otherwise) to Grantee over and above the cost Grantee would have incurred had the City not withdrawn. If the Grantee and the City are unable to reach agreement on the modification of the Sections Subject to Renegotiation within ninety (90) days after the withdrawal of the City becomes effective, each party agrees to submit the matter to mediation at the request of the other party. Until the Grantee and the City reach agreement on any Sections Subject to Renegotiation, Grantee shall have no additional obligations under those sections beyond that which Grantee would have had had the City not withdrawn. Except as modified above, this Franchise Agreement shall remain in effect.

2.3 *Participating Jurisdictions:* The parties acknowledge that the cities of Fairview, Troutdale and Wood Village, as well as unincorporated Multnomah County, may choose with Grantee's consent and by approval and execution of an addendum to this Franchise Agreement, to be bound by the terms and conditions of this Agreement ("Participating Jurisdictions"). In such event, the terms and conditions of this Agreement shall be applied collectively to all the jurisdictions that participate and Grantee shall not be subject to duplicative requirements in any Participating Jurisdiction, particularly with respect to PEG Access Channels under Section 7.1, including the grant under Subsection 7.1.2; the Franchise Grant under Subsection 7.3.1; reimbursement of travel expenses under Section 10.1; audit reimbursement under Subsection 10.3.2.1; fines under Section 14.2; or a Security Fund under Section 14.9

3. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

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

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

3.3 Term and Effective Date:

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

3.3.2 *Effective Date*: This Agreement shall become effective on November 18, 2008 (the “Effective Date”).

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

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

3.6 *No Waiver*:

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

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

3.6.3 Neither party waives any of its rights under state or federal law, except as otherwise set forth in this Franchise Agreement. Moreover, neither party waives its rights under any applicable law regarding the adoption and enforcement of lawful regulations with respect to Grantee's FTTP Network as a Telecommunications Facility in the Public Rights-of-Way.

3.7 *Construction of Agreement*:

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

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

3.7.3 Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as they may be amended, including but not limited to the Communications Act. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of Grantee or the City, then Grantee and the City shall modify this Franchise to ameliorate such adverse effects on, and preserve the affected benefits of, the Grantee and/or the City to the extent possible consistent with the change in law. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at Grantee's or the City's option, the parties agree to submit the matter to mediation. In the event mediation does not result in an agreement, then, at Grantee's or the City's option, the parties agree to submit the matter to non-binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The non-binding arbitration and mediation shall take place in the Franchise Area, unless the parties' representatives agree otherwise. In any negotiations, mediation, and arbitration under this provision, the parties will be guided by the purpose set forth below. In reviewing the claims of the parties, the mediators and arbitrators shall be guided by the purpose of the parties in submitting the matter for guidance. The parties agree that their purpose is to modify the Franchise so as to preserve intact, to the greatest extent possible, the benefits that each party has bargained for in entering into this Franchise and ameliorate the adverse effects of the change in law in a manner not inconsistent with the change in law. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the mediator or arbitrator, this Subsection 3.7.3 shall have no further force or effect. To the extent permitted by law, if there is a change in federal law or state law that permits Grantee to opt out of or terminate this Franchise, then Grantee agrees not to exercise such option.

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

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

3.10 *Competing Cable Systems:*

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

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

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

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

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

4. **PROVISION OF CABLE SERVICE**

4.1 *Service Area:*

4.1.1 *Initial Service Area:* Grantee shall make Cable Service available to significant numbers of Dwelling Units in the Initial Service Area and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall make Cable Service available to all Dwelling Units in the Initial Service Area within three (3) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the City or any other actions or inactions of any government instrumentality or public utility not resulting from Grantee's own delay; (C) for periods of delay resulting from Grantee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Grantee

cannot access under reasonable terms and conditions after good faith negotiation, as determined by Grantee; (F) in developments or buildings where Grantee is unable to provide Cable Service for technical reasons or that require non-standard facilities that are not available on a commercially reasonable basis; (G) in areas where the Dwelling Unit density does not meet the density requirements set forth in Subsection 4.1.1.1; and (H) for documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's FTTP Network is attached, or caused by documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Grantee to foresee or control.

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

4.1.1.2 *Extended Service Area:* Within twenty-four (24) months following the Service Date, Grantee shall begin providing Cable Service in the Extended Service Area subject to the conditions of Subsection 4.1.1 above and the other terms set forth herein and shall make Cable Service available to all Dwelling Units in the Extended Service Area within four (4) years following the Service Date.

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

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

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

portion of the residential installation that exceeds a Standard Installation or actual costs incurred to connect any non-residential Dwelling Unit Subscriber.

5. **SYSTEM OPERATION**

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

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

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

5.2.1.1 All applicable tests required by the FCC; and

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

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

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

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

6. **SYSTEM FACILITIES**

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

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

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

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

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

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

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

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

7. **PEG ACCESS AND I-NET**

7.1 *PEG Access Channels:*

7.1.1 Subject to Section 3.10.2, Grantee shall provide eight (8) PEG Access Channels as part of Basic Service which shall be fully accessible to all Subscribers within the Service Area. Grantee shall provide one additional Access Channel as part of Basic Service, to be used by the City or its designee(s) for the distribution of PEG Access Channel programming information to Subscribers.

7.1.2 Within ten (10) days after the Effective Date of this Agreement, the City or its designee(s) shall inform Grantee of the general type of initial use of the PEG Access Channels (e.g. Public, Educational, or Governmental Access Channel) provided by Grantee under Subsection 7.1.1. Grantee may transmit PEG Access Channels within and without the City's jurisdictional boundaries. Grantee shall initially assign the PEG Access Channels on its channel line-up as requested by the City to the extent such channel assignments do not interfere with Grantee's existing or planned channel line-up. If the general type of content on a PEG Access Channel changes, Grantee shall be provided with at least forty-five (45) days notice of the change(s) so that Grantee can update its channel listing as appropriate. In the event Grantee changes the channel assignment of one or more PEG Access Channels, Grantee shall provide at least forty-five (45) days advance notice to the Commission and shall provide a grant of two

thousand five hundred dollars (\$2,500) for costs associated with notice of the PEG Access Channel reassignment. Grantee shall identify the PEG Access Channels in Grantee's on-screen channel listing, in the local area channel listings on Grantee's website and in print materials provided to Subscribers. Grantee shall ensure that the terminology used to identify the PEG Access Channels, including the channel identification, on Grantee's on-screen channel listing is not inaccurate or misleading.

7.1.3 Subject to Section 3.10.2, Grantee shall reserve eight (8) additional PEG Access Channels, for a total of seventeen (17) PEG Access Channels. Grantee shall activate a reserved PEG Access Channel following a written request from the City or its designee(s) when the following criteria have been met, as applicable to the type of PEG Access Channel to be activated:

7.1.3.1 The City or its designee(s) must have identified and documented a community need for additional programming capacity that the City or its designee(s) believe cannot be fulfilled by existing Public, Educational or Governmental Access Channels;

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

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

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

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

7.2 Designated Access Provider and PEG Connection:

7.2.1 The City has designated MetroEast Community Media located at 829 NE Eighth Street, Gresham, Oregon 97030-5643, or its successors or assignees, as the Designated Access Provider. The City may designate up to a total of six (6) Designated Access Providers to control and manage the use of the PEG Access Channels and resources provided by Grantee under this Franchise. Grantee shall cooperate with the Designated Access Providers in the use of the Cable System for the distribution of PEG Access Channels.

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

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

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

7.3 *Additional Requirements:*

7.3.1 In addition to the PEG/I-Net Grant, and in lieu of providing free Cable Service to public schools and other items, Grantee shall pay the Commission on behalf of the City, a Franchise Grant (the "Franchise Grant"). The Franchise Grant shall be payable as

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

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

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

7.4 *Institutional Network:*

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

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

7.5 *PEG/I-Net Grant:*

7.5.1 Subject to 3.10.2, Grantee shall provide an annual grant to the Commission, as agent for the City, consisting of three percent (3%) of Gross Revenues to be used to support PEG Capital Costs and I-NET Capital Costs (the "PEG/I-Net Grant").

7.5.2 The City shall allocate the PEG/I-Net Grant at the City's discretion to provide support for PEG Capital Costs and I-Net Capital Costs incurred by Designated Access Providers and PEG Institutions. No funds provided by Grantee as a PEG/I-Net Grant shall be

paid to another cable operator in the Franchise Area for equipment to be owned by another cable operator or an affiliate of another cable operator. The PEG/I-Net Grant provided by Grantee may be used by Designated Access Providers and PEG Institutions to fund Capital Costs to enable or enhance use of the I-NET owned by another cable operator so long as any equipment purchased with the PEG/I-Net Grant is not owned by another cable operator.

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

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

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

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

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

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

8.1 *Payment to the City:* Grantee shall pay to the City a franchise fee of five percent (5%) of annual Gross Revenue attributable to the City. In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Such payments, together with PEG/I-Net Grant payments under Section 7 of this Franchise, shall be remitted to the Commission in quarterly installments no later than forty-five (45) days following the end of each calendar quarter. Grantee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly franchise fee remittances within

ninety (90) days following the close of the calendar year for which such payments were applicable.

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

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

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

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

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

9. **CUSTOMER SERVICE**

9.1 *Customer Service Standards.* Grantee shall comply with the City's Customer Service Standards as of the Effective Date, which are attached hereto as Exhibit D, with the following minor variances to those standards.

9.1.1 *Minor Variances.*

9.1.1.1 *Local Office and Office Hours:* If Grantee chooses not to establish a local office in accordance with the requirements of Exhibit D Section II – Local

Office and Office Hours – Grantee shall: (a) provide for the pick up or drop off of equipment free of charge by having Grantee picking up equipment from a Subscribers residence or by Grantee providing Subscriber with pre-paid mailer; and (b) provide for bill payments over the phone free of charge through a live, qualified customer service representative.

9.1.1.2 *Telephone Answering Time:* The requirements of Exhibit D Section III.B – Telephone Answer Time – shall be replaced with: Under Normal Operating Conditions, calls received by Grantee shall be answered within thirty (30) seconds and, if the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. Grantee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by Grantee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

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

9.1.2 *Binding Nature:* The Customer Service Standards and the minor variances herein shall be binding and not subject to change for the term of this Franchise unless mutually agreed in writing by the parties, notwithstanding any other provision herein.

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

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

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

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

9.6 *Downgrade and Disconnect Charges:*

9.6.1 *Downgrade Charges:* Unless otherwise allowed by law, Grantee shall not impose any Downgrade Charges, except as otherwise provided in Subsection 9.6.1.1 below. As used in this Section, "Downgrade Charge" means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a change or reduction of Cable Services to less expensive Cable Services or tiers.

9.6.1.1 Grantee may impose Downgrade Charges if:

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

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

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

9.7 *Discriminatory Practices:* Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability in violation with applicable federal or state laws, rules and regulations.

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

9.9 *Privacy and Personalized Data:* Grantee shall comply with all applicable federal and state laws regarding privacy, unauthorized monitoring or cable tapping, sales of subscriber lists, and collection, use, sale or sharing of Personalized Data. For purposes of Section 9.9, "Personalized Data" means the name and address or other information regarding an individual Subscriber, which is associated with or extracted from data obtained from the Subscriber's use of Grantee's Cable Services.

10. REPORTS AND RECORDS

10.1 *Open Books and Records:* Upon reasonable written notice to Grantee and with no less than thirty (30) business days written notice to Grantee, the Commission on behalf of the City shall have the right to inspect Grantee's and any Affiliate's books and records pertaining to Grantee's provision of Cable Service in the Franchise Area at any time during normal business hours and on a nondisruptive basis at a mutually agreed location within the Portland metropolitan area, as reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Grantee may organize the necessary books and records for appropriate access by the Commission. Grantee shall maintain any books and records for at least five (5) years for Franchise compliance purposes. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. If any books, records, maps, plans or other requested documents are too voluminous, not available locally in the Portland metropolitan area, or for security reasons cannot be copied and moved, then Grantee may request that the inspection take place at a location mutually agreed to by the Commission and Grantee, provided that the Grantee must pay all reasonable travel expenses incurred in inspecting those documents above those that would have been incurred had the documents been produced in the Portland metropolitan area up to a maximum of two hundred dollars (\$200) per day.

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

10.3 *Audit of Fee Payments:*

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **INSURANCE AND INDEMNIFICATION**

11.1 *Insurance:*

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

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

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

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

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

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

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

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

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

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

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

11.2 *Indemnification:*

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

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

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

12. **TRANSFER OF FRANCHISE**

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

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

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

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

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

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

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

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

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

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

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

13. **RENEWAL OF FRANCHISE**

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

14. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

14.1 *Enforcement by the Commission:* Pursuant to the Intergovernmental Agreement, the Commission has the authority to take certain actions on behalf of the City and other jurisdictions jointly and separately, and in its own right, to enforce or administer this Franchise, except those powers retained by the jurisdictions. In addition to other rights under the Intergovernmental Agreement, the City retains the right to review any action of the Commission to: (1) find the Grantee in violation of this Franchise; or (2) impose any penalty or financial remedy. As provided in the Intergovernmental Agreement, the affected jurisdictions may

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

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

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

14.2.2 Impose reasonable penalties as set forth in Section 14.7, subject to the City's right of review;

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

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

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

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

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

cure of any noncompliance, the Commission shall provide written confirmation that such cure has been effected.

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

14.7 *Fines*:

14.7.1 Reasonable penalties under Section 14.2.2 shall be limited to the following:

		Up to 15,000 Subscribers	Over 15,000 Subscribers
Fines, per day, incident, or other measure of violation for the items below		\$500	\$700
	Annual Cap on Fines		
Failure to meet build commitment or provide free drop		\$15,000	\$20,000
Failure to provide PEG Channels or PEG/I-Net Grant		\$30,000	\$40,000
Failure to provide reports or insurance		\$15,000	\$20,000
Violation of Customer Service Standards		\$30,000	\$40,000
Violation of any other provision of the Franchise Agreement		\$15,000	\$20,000

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

remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed.

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

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

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

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

14.9.3 Neither cancellation, nor termination nor refusal by surety to extend the bond, nor inability of Grantee to file a replacement bond or replacement security for its obligations, shall constitute a loss to the City recoverable under the bond. However, if Grantee fails to maintain the security required by Section 14.9, after the procedures set forth in 14.4, 14.5, 14.6, the Commission may treat the delay as a substantial material default under Section 14.2.4.

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

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

14.10.2 Following the hearing, Grantee and all parties to the hearing shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the City shall determine whether to revoke this Franchise based on the information

presented by all parties, or, where applicable, grant additional time to Grantee to effect any cure. If the City determines that the Franchise shall be revoked, the City shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the City to an appropriate court, which shall have the power to review the decision of the City. The scope of review shall be as provided by applicable law. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the City.

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

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

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

15. **EQUAL EMPLOYMENT OPPORTUNITY**

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

16. **MISCELLANEOUS PROVISIONS**

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

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

16.3 *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is

no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

16.4 *Force Majeure*: If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibilities and duties under this Franchise.

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

16.5.1 Notices to Grantee shall be mailed to:

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

16.5.2 with a copy to:

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

16.5.3 Notices to the City or the Commission shall be mailed to:

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

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

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

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

16.9 *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

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

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

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

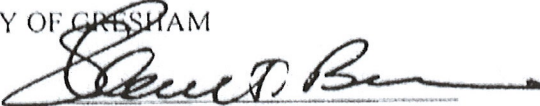
16.13 *Independent Review:* The City and Grantee acknowledge that they have received independent legal advice in entering into this Franchise. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any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

SIGNATURE PAGE FOLLOWS

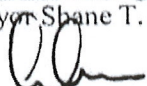
AGREED TO THIS 18th DAY OF November, 2008:

CITY OF GRESHAM

By:



Mayor Shane T. Bemis

By:


Erik Kvarsten, City Manager

Date: 11-19-08

APPROVED AS TO FORM:


City Attorney's Office


VERIZON NORTHWEST INC.

By:


Tim McCallion, President

Date:

11/20/08


FORM APPROVED
Attorney
Date 11/20/08

EXHIBITS

Exhibit A: Franchise Area Map

Exhibit B: Intergovernmental Agreement

Exhibit C: Quarterly Franchise Fee Remittance Form

Exhibit D: Customer Service Standards

Exhibit E: Grantee Parent Structure

Exhibit F: Sample Performance Bond

AGREED TO THIS 18th DAY OF November, 2008:

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By: _____

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11/19/08

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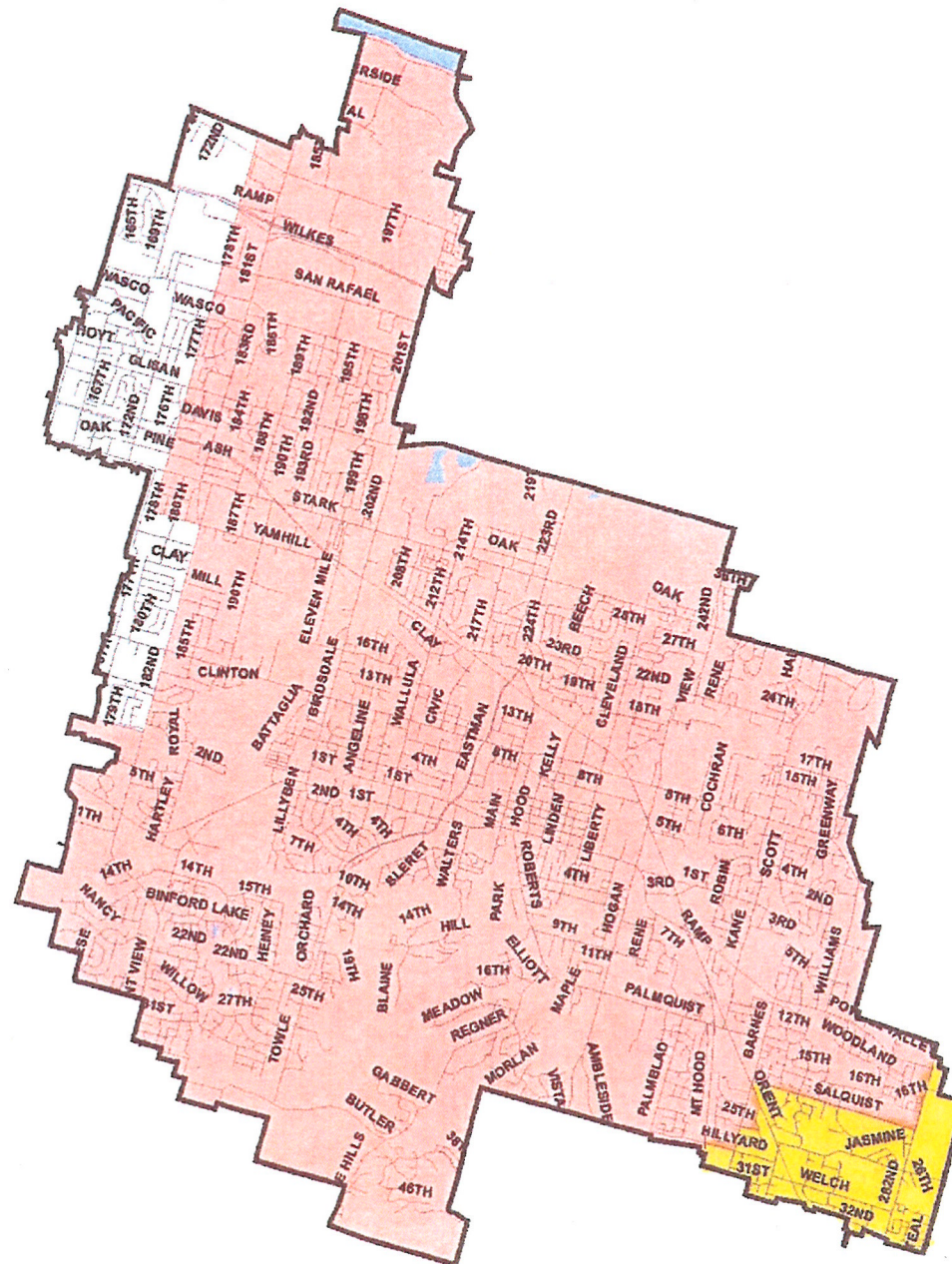
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Franchise Area Map For City of Gresham, Oregon



- Extended Service Area
- Initial Service Area
- Additional Service Area
- City Boundary

EXHIBIT A - FRANCHISE AREA MAP

EXHIBIT B
INTERGOVERNMENTAL AGREEMENT

The Jurisdictions' Intergovernmental Agreement, in effect on the Effective Date of this Franchise, is attached hereto for reference only. The City shall provide Grantee with a copy of any amendments to the Intergovernmental Agreement.

MT. HOOD CABLE REGULATORY COMMISSION
INTERGOVERNMENTAL AGREEMENT
AS AMENDED MARCH 1998

THIS AGREEMENT is between each of the cities of Fairview, Wood Village, Troutdale, Gresham and Portland, all municipal corporations duly incorporated under the laws of the State of Oregon, and Multnomah County, a home-rule county formed under the laws of the State of Oregon, hereinafter referred to as the "Jurisdictions." This Agreement is made pursuant to ORS 190.003 to ORS 190.110, the general laws and constitution of the State of Oregon, and the laws and charters of the Jurisdictions.

Section 1. General Purposes. The Jurisdictions have each separately entered into various franchise agreements providing for the construction and operation of cable communications systems within their boundaries. The City of Portland created the Portland Cable Regulatory Commission, and Multnomah County, Gresham, Troutdale, Fairview and Wood Village created the Multnomah Cable Regulatory Commission, each with the general purpose to regulate and administer cable franchise agreements for the Jurisdictions. The Jurisdictions wish to form a unified cable regulatory commission. The formation of a unified regulatory commission serves the public interest in that the boundaries of the Jurisdictions do not necessarily coincide with the service areas of the Grantees, or with the needs of the citizens within each Jurisdiction or franchise, regarding cable communications. In addition, a unified commission can provide enhanced public benefits in franchising and regulation, and economies of scale in its operation.

To further this public interest and these purposes, the Jurisdictions desire to create a unified cable regulatory commission to jointly regulate and administer franchise agreements within their boundaries. The commission will further serve as an advisory body to the Jurisdictions on matters relating to cable communications and function as the Jurisdictions' representative for regional, state or national cable communications policy matters.

Section 2. Definitions.

A. "Cable Communications System" or "System" - any system of antennas, cables, amplifiers, towers, microwave links, cable casting studios, and any other conductors, receivers, home terminals, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying, storing, processing or distributing audio, video, digital or other forms of electronic or electrical signals.

B. "Commission" means the Mt. Hood Cable Regulatory Commission as formed under this Intergovernmental Agreement.

C. "Grantee" - any person who is authorized by a franchise agreement or seeks authority to construct, operate and maintain a cable communications system operated within the territories of

the Jurisdictions.

D. "Jurisdiction" - any municipality or county which enters into this Agreement.

E. "Multnomah Community Television" means the designated provider of PEG access for the cities of Fairview, Gresham, Troutdale and Wood Village, and Multnomah County.

F. "PEG" means public; educational and governmental cable access within the meaning of franchise agreements administered by the Commission, and applicable law.

G. "Person" - any corporation, partnership, proprietorship, association, individual or organization authorized to do business in the State of Oregon, or any natural person.

Section 3. Commission Creation and Powers. A unified regulatory commission, the Commission is created to carry out the purposes set forth in this Agreement and to administer the cable communications franchises granted by the Jurisdictions. The Commission is vested with all the powers, rights and duties necessary to carry out these purposes that are vested by law in each Jurisdiction, its officers and agencies, subject only to the limitations contained in this Agreement and in the cable communications franchise agreements. "Law" includes the federal laws and Constitution, the Oregon constitution and laws as well as the charters, ordinances and other regulations of each Jurisdiction.

A. Regulatory Authority. The Commission has the authority to act on behalf of the Jurisdictions jointly and separately, and in its own right, to oversee and regulate any cable communications system operated pursuant to the cable communications franchise agreements entered into by the Jurisdictions. The Commission has full authority to take any action necessary to enforce or administer franchise agreements for operation of cable communications systems, except where the power to take a specific action is either limited or reserved to the Jurisdictions by the provisions of Section 4 of this Agreement.

B. Contracting Authority. The Commission may make such contracts, grants, and take such other action as it deems necessary and appropriate to accomplish the general purposes of this Agreement. All contracts made shall conform to the requirements of Oregon law.

Section 4. Powers Retained by Jurisdictions.

A. Discretionary Review. Commission action to; (1) find a Grantee in violation of its franchise agreement, or; (2) impose any penalty or financial remedy, or; (3) regulate, establish or approve any Grantee rate or charge, or; (4) determining PEG capital grant purposes and evaluation criteria as set forth in Section 9.E.2 of this Agreement, shall become effective 30 days after the Commission's final decision. Any such Commission final decision shall not be effective unless a copy of the final decision is filed with the Recorder of each affected Jurisdiction within 10 days of such action. Such final decisions are subject to review by the governing body of each affected

Jurisdiction. Within a 30-day period, any affected Jurisdiction may notify the Commission of its intent to exercise review authority. The Commission shall notify all affected Jurisdictions within 10 days of receiving the review notice. If a majority of the affected Jurisdictions acts within 60 days to overturn the Commission's final decision, such decision shall not become effective, and the matter shall be returned to the Commission for further proceedings as directed by the affected Jurisdictions.

1. Affected Jurisdiction means any Jurisdiction which is a party to the franchise agreement with the Grantee to which the Commission's final decision applies.

2. Recorder means a Jurisdiction's Clerk, Recorder or Auditor.

B. Full Authority. As set forth herein, the Jurisdictions reserve the authority to act on their own behalf. Each Jurisdiction agrees to make a good faith effort to weigh the impact of such actions on the overall operation of a cable system and the continuity of the Commission. Each Jurisdiction agrees to take no action in these areas until the Commission has had a prior opportunity to consider the matter.

Authority retained by the Jurisdictions includes:

1. Any decision to grant, revoke, terminate, extend, amend, renew or refuse to renew a franchise agreement.

2. Any decision concerning a change of ownership or control of a cable communications system or a Grantee.

3. Any decision to purchase or condemn a Grantee's interest, in part or in whole, whether or not pursuant to a termination, revocation or expiration of a franchise agreement.

4. Any decision regarding cable regulation which requires adoption of any ordinance or resolution by the Jurisdictions.

5. Any decision which requires the amendment of this Agreement.

6. Any authority which is reserved to or retained by the Jurisdictions by franchise agreement and which may not otherwise be delegated to the Commission.

Section 5. Commission Members.

A. The Composition. The Commission shall be composed of Commissioners appointed by the Jurisdictions. Each Jurisdiction, except Portland, shall select and appoint one representative to serve as its Commissioner. Portland shall select and appoint three representatives to serve as its Commissioners.

B. Quorum and Voting. The majority of the members of the Commission shall constitute a quorum. No Commission action shall be in effect except on a majority vote by those Commissioners present.

C. Term of Office and Succession. Commissioners shall be appointed to serve until their successors are appointed and assume their responsibilities, but shall serve under procedures authorized by the governing body of the Jurisdiction appointing them. However, a Jurisdiction's appointee shall not have any ownership interest in a Grantee. A vacancy on the Commission shall be filled by the governing body of the Jurisdiction whose position on the Commission is vacant.

Section 6. Meetings, Rules of Procedure and Officers.

A. Meetings to be Public. Meetings of the Commission shall be conducted pursuant to the Oregon Public Meetings law.

B. Rules of Procedure. At the first organizational meeting, or as soon thereafter as practicable, the Commission shall adopt rules governing its procedures including, but not limited to:

1. Times and places of regular meetings;
2. The method and manner of calling special meetings;
3. The method, term and manner of election of officers;
4. The responsibilities and duties of officers; and
5. The procedures for execution of writings and legal documents.

C. Officers. At the first organizational meeting, the Commission shall elect from among its members an interim chairperson and an interim vice-chairperson. The chairperson, and in his or her absence the vice-chairperson, shall preside at all meetings, call special meetings, and determine the order of business, until such time as rules requiring otherwise are adopted.

Section 7. Administration and Staffing Services.

The Commission shall contract with the City of Portland (the City) for administrative services as described in the attached Administrative Services Agreement (Exhibit 1). The Commission is authorized to amend, extend, or terminate the Administrative Services Agreement.

Section 8. Transfer of Staff and Assets.

A. Transferred Employees.

1. Upon termination of the administrative services agreement between the Commission and Multnomah County (the County), the County shall transfer Julie S. Omelchuck to the City's Office of Cable Communications and Franchise Management (Cable Office), providing that the County is no longer performing any cable regulatory services. Pursuant to ORS 236.630, Julie S. Omelchuck shall be placed in a position found by the City to be comparable to the position she enjoyed under the County's employment. The City shall consider Julie S. Omelchuck's education and physical qualifications, experience, and the salary, duties and responsibilities of her prior employment. The County shall furnish all of Julie S. Omelchuck's employment records to the City at the time of transfer. No affected employee shall be deprived of their employment by the County solely because of the transfer of administrative cable regulatory services to the City. The County shall find positions of employment within the County for all other affected employees.

2. The County shall pay each transferred employee all holiday and compensatory time, and any vacation leave time in excess of eighty hours, accumulated by such employee up to the date of the transfer. In addition, funds shall be transferred to the City from within the existing County cable office budget to cover accumulated sick leave, up to the date of transfer, for each transferred employee. The final amount of the payment for accumulated sick leave shall be determined by mutual agreement between the City and the Commission. The County shall reimburse the City for insurance premium costs, if any, resulting from health insurance coverage of preexisting conditions for any transferred employees. If at any time in the future Julie S. Omelchuck transfers back to the County by operation of the terms of Section 8A, the obligations for holiday, compensatory time and vacation leave time under this subsection shall apply equally to the City.

3. Any employees transferred by the County to the Cable Office shall be returned to the County if the transferred employee remains in a comparable employment position within the Cable Office and any one of the following events occurs: 1. The administrative services agreement between the City and the Commission is terminated; 2. The City withdraws from this Agreement; 3. The County withdraws from this Agreement; or 4. The Commission is dissolved under the terms of this Agreement.

4. This consolidation has presented unique circumstances resulting in the employee transfer provisions set forth in this Section. Due to these unique circumstances, the agreements contained in this Section shall not serve as precedent for any future employee transfer discussions between the City and the County.

B. Equipment assets, as listed in Exhibit 2, and general office supplies of the Multnomah Cable Regulatory Commission shall physically transfer to the City and shall become assets of the Commission.

C. The Jurisdictions shall share in the start up costs of the Commission proportionate to the FY 1993-94 budget contribution percentage of the respective Jurisdictions.

Section 9. Receiving and Distributing Funds.

A. The Commission shall comply with applicable state and local laws as to budget preparation and for audit of its books and records. The Jurisdictions may inspect all Commission books and records.

B. The annual budget adopted by the Commission shall be transmitted to the Jurisdictions by April 1. Each Jurisdiction shall review the Commission adopted budget prior to June 1 of each year. Upon approval by all Jurisdictions, the Commission-adopted budget shall become effective. If one or more Jurisdictions does not approve, the budget shall be returned to the Commission for modification and resubmitted to the Jurisdictions for approval. If all Jurisdictions do not approve a Commission budget by July 1, the previous fiscal year budget, less 10 percent, shall continue in effect until all Jurisdictions approve a Commission budget.

The Commission shall have the authority, subject to its approved annual budget, to expend funds for any lawful purpose up to the total amount of the approved budget. The Commission must seek approval by the Jurisdictions of budget amendments over the total amount of the approved budget. All Jurisdictions must approve such budget amendments for them to become effective. No Jurisdiction may amend, reduce or increase the approved Commission budget.

C. The cost allocation of each Jurisdiction in support of the Commission's approved budget shall be determined by the Commission during the annual budget process. The annual approved budget shall establish the specific cost allocation of each Jurisdiction and a schedule for all payments.

D. 1. The Commission is authorized to receive and collect cable franchise fees for all the Jurisdictions except Portland. The Commission shall distribute such franchise fees according to the terms of the franchise agreements with the Grantees, and the Commission budgets approved by the Jurisdictions. However, the Commission shall allocate, on an annual basis, sixty percent (60%) of cable franchise fees received from the cities of Fairview, Gresham, Troutdale, and Wood Village, and Multnomah County, to Multnomah Community Television for the provision of PEG access services within those Jurisdictions as the designated PEG provider. Fees collected in excess of budgeted amounts shall be returned to the Jurisdictions from which such fees are attributable.

2. The Commission shall not collect the City of Portland cable franchise fees. The City of Portland agrees to transfer quarterly its share of the cost allocation in accordance with the approved Commission budget.

3. All other funds arising out of cable franchise agreements shall be collected by the Commission. The Commission shall allocate such funds in accordance with the franchise agreements and the Commission budgets approved by the Jurisdictions.

E. 1. The Commission shall serve as the Grantmaking Board for decisions on

distributing PEG capital funds as grants, as provided in the cable franchise agreements administered by the Commission under this Agreement. The Commission shall establish procedures and timelines for decisions on distributing such grant funds.

2. The Commission shall establish the purposes for PEG capital grants, and evaluation criteria for grant applications, compatible with the terms and conditions of the cable franchise agreements. The Commission shall review such purposes and evaluation criteria at least biennially. Commission determinations of such purposes and evaluation criteria under this Section 9.E.2 shall be subject to review by the Jurisdictions under Section 4 of this Agreement.

3. The Commission shall distribute grants of PEG capital funds based upon such purposes and evaluation criteria as have been developed under Section 9.E.2.

4. The total amount of PEG capital funds, including the total amount of grant funds to be distributed by the Commission under this Section 9.E., shall be included in the Commission's annual budget as transmitted to the Jurisdictions under Section 9.B.

Section 10. Effective Date. This Agreement shall become effective upon its adoption by all Jurisdictions. Any Jurisdiction entering into this shall adopt an authorizing ordinance and shall forward a certified copy to the City of Portland. Within 30 days of the effective date of this Agreement, the City of Portland shall forward copies of the authorizing ordinances to the Secretary of State.

Section 11. Duration and Termination.

A. Duration. The duration of this Agreement is perpetual and the Commission shall continue from year to year, subject to subsection 11.B. The Commission shall forward this Agreement to the Jurisdictions every three years for their review.

B. Termination. In order for any Jurisdiction to withdraw from this Agreement and to prevent obligations for its financial contribution to the Commission for the ensuing year, a Jurisdiction may only withdraw from the Commission by filing a written notice of withdrawal with the Commission by November 1 of any year, effective at the end of that fiscal year. Membership shall continue until the effective date of the withdrawal. However, the withdrawing Jurisdiction shall not take action on the Commission's annual budget. Prior to the effective date, the member Jurisdiction may rescind its withdrawal notice at any time.

Section 12. Assets. If a Jurisdiction withdraws before dissolution of the Commission, the Jurisdiction shall have no claim against the assets of the Commission. In the event of dissolution, all remaining assets of the Commission, after payment of obligations, shall be distributed among the then existing Jurisdictions in proportion to the most recent budget cost allocation percentage of the respective Jurisdictions. Jurisdictions may agree to buy out each others portion of assets.

Section 13. Dissolution. The Jurisdictions may dissolve the Commission and terminate this Agreement at any time by mutual agreement of all Jurisdictions. The Commission shall continue to exist after the dissolution for such period, no longer than three months, as is necessary to wind up its affairs but for no other purposes.

Section 14. General Terms.

A. Severability. The terms of this Agreement are severable and a determination by any Court or agency having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part, shall not affect the remainder of this Agreement.

B. Interpretation. The terms and provisions of this Agreement shall be liberally construed in accordance with its general purposes.

C. Increasing Member Units of Government. The Commission may develop a method for allowing other units of local government to enter into this Agreement, subject to the full authority provision of subsection 4.B. A fee or cost for such entrance may be imposed.

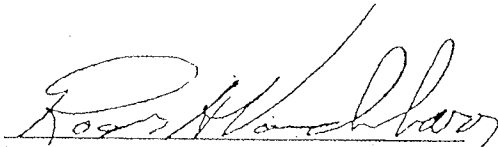
D. Amendments. The terms of this Agreement shall not be amended without the written authorization of the governing bodies of all Jurisdictions.

E. 1. General Indemnification. Each Jurisdiction shall be responsible for the negligent acts or omissions of the Jurisdiction, or its officers, agents or employees, in carrying out the terms of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260, et seq., and the Oregon Constitution, Article XI, Section 9.

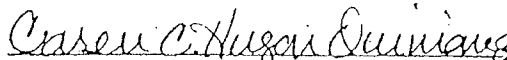
2. By entering into this Agreement, the Jurisdictions are creating a public body under ORS Chapter 190 which is separately responsible for providing coverage for its officers, agents and employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260, et seq.

APPROVED AND EXECUTED by the appropriate officer(s) who are duly authorized to execute this Agreement on behalf of the governing body of each Jurisdiction.

City of Fairview


Mayor

Attest:


City Recorder

City of Gresham

Jessie M. Robert
Mayor

[Signature]
City Manager

Multnomah County

[Signature]
County Chair

REVIEWED BY:
Thomas Spensler
County Counsel

City of Portland

[Signature]
Commissioner

APPROVED AS TO FORM:
Benjamin Walters, Deputy
City Attorney

City of Troutdale

[Signature]
Mayor

Attest:
[Signature]
City Recorder

City of Wood Village

[Signature]
Mayor

Attest:
[Signature]
City Recorder

EXHIBIT 1

12/23/92

AGREEMENT BETWEEN
THE CONSOLIDATED CABLE COMMUNICATIONS COMMISSION
AND THE CITY OF PORTLAND
FOR ADMINISTRATIVE SUPPORT SERVICES

WHEREAS, the City of Portland is a home rule city, incorporated under the laws of the State of Oregon, and

WHEREAS, the Consolidated Cable Communications Commission has been created by an Intergovernmental Agreement between the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village and Multnomah County, pursuant to ORS Chapter 190, the general laws and constitution of the State of Oregon and the laws and charters of the participating jurisdictions, and

WHEREAS, the Consolidated Cable Communications Commission has a need for administrative and support services, and

WHEREAS, the City of Portland has the ability to furnish such services and is willing to do so,

NOW THEREFORE, the City of Portland (City) and the Consolidated Cable Communications Commission (Commission) agree as follows:

Section 1. General Purpose. The general purpose of this Agreement is for the City to provide administrative support services to the Commission. It is the intention of the City and the Commission that the Commission shall retain full independent authority to act on all matters related to the purposes for which the Commission was created and to retain all powers granted to it under the Intergovernmental Agreement, as it was written and as it may be amended from time to time. By this Agreement, the City and the Commission do not intend to confer any liability upon the City for any action of the

Commission, independent of any liability that may now exist, or may arise in the future, because of the City's participation in the Intergovernmental Agreement which created the Commission.

Section 2. General Administrative Services.

A. The City agrees to provide the Commission with administrative and staffing support services in the areas of purchasing, fiscal administration, routine cable regulatory legal services, personnel and general support services, as set forth in this Agreement. The Commission shall follow City procedural requirements for purchasing, fiscal administration, personnel and general support services. The Commission shall retain full authority to act on all matters related to the powers granted to it by this Agreement.

B. The City shall defend, hold harmless and indemnify the Commission, its members or its agents from any and all claims, demands, settlements or judgments, including all costs and attorney fees, which arise from any City activity the City has agreed to provide pursuant to this Agreement. The Commission agrees to promptly notify the City Attorney of any claims or demands made against the Commission as a result of any activity of the Commission. The City shall not have any additional liability as a result of this Agreement for any action of the Commission apart from any liability which may result from the City's participation as a Jurisdiction in this Agreement.

Section 3. Purchasing. The City agrees to act as the purchasing agency of the Commission and will furnish purchasing agent services to the Commission upon its request provided that in any matter or purchase where the final determination of the successful bidder may be determined under Oregon law by

some criteria other than price, the Commission shall retain final authority to determine a successful bidder or proposal. The City of Portland City Council shall act as the local Public Contract Review Board for the Commission and have jurisdiction over any public contract matter properly brought before a local Public Contract Review Board pursuant to the terms of ORS Chapter 279.

Section 4. Fiscal Administrative Services. The City shall furnish to the Commission the full range of financial administration services requested by the Commission from time to time. These services shall include, but are not limited to, maintenance of Commission accounts, provision of accounts payable, accounting of all Commission revenues and expenditures, assistance in preparing an annual budget and when necessary, budget amendments, preparation of budget monitoring reports on the same frequency as utilized by the City, inclusion of the Commission's approved annual budget within the City's annual budget for transmission to and approval by the Multnomah County Tax Supervision and Conservation Commission, and financial review and external audit services.

The City shall be authorized to receive and expend funds on behalf of the Commission as adopted by the Jurisdictions in the annual budget and at the direction of the Commission. The City will account for such funds in a segregated, dedicated account.

No later than November 1 of each year, the City shall return to the Commission any compensation paid by the Commission to the City for the preceding fiscal year pursuant to Section 8, which was not expended or obligated by June 30 of that fiscal year.

Section 5. General Staff Support. The City agrees to provide sufficient staff to perform the administrative and support services provided in the Commission's approved annual budget. The Commission will set a work plan for each fiscal year and establish regulatory policies for the staff to implement on an ongoing basis. The City agrees to work through its Cable Commissioners to request changes in the Commission's work plan or policies. All decisions regarding creation, filling or reclassification of staff positions, or hiring, disciplining or terminating staff, shall be made by the City, after consultation with the Commission.

Section 6. General Support Services. The City agrees to provide to the Commission the full range of support services generally available to City bureaus and agencies on the same basis, terms, and conditions as such services are generally made available. These services include, but are not limited to, mail pick up and delivery services, access to City vehicles, printing and duplication, telecommunications services, data processing, and management and insurance of physical assets.

Section 7. Cable Regulatory Legal Services. The City agrees to provide routine cable regulatory legal services to the Commission as needed. The Commission may separately contract with third parties or with the City for extraordinary legal services such as rate review, renewal negotiations, litigation or administrative hearings regarding possible cable franchise violations.

Section 8. Compensation. The Commission agrees to pay the City

compensation for the administrative and support services to be provided under this Agreement. The payment shall be made out of the Commission's annual approved budget. By December 31 of each year, the City and the Commission shall agree on the amount to be paid for services for the following fiscal year. The amount shall be based on an estimate of the City's anticipated actual costs of providing such services to the Commission. The City shall keep records of such costs, and such records shall be available for inspection by the Commission upon request.

Section 9. Evaluation. The Commission shall conduct an annual evaluation of the City's administrative services to ensure that the Commission's needs are being met.

Section 10. Term. The term of this Agreement shall be perpetual, unless terminated by the parties pursuant to the terms herein.

Section 11. Termination. This Agreement may be terminated by either party effective July 1st of any year by giving written notice of the intent to terminate on or before the December 31st prior to the July 1st termination date. In addition, this Agreement may be terminated by written agreement of both the City and the Commission effective ninety (90) days after the effective date of the termination agreement.

Section 12. Notices. Notices to the Commission shall be sent to the location of its principal office, to the attention of the Chairperson of the Commission. Notices sent to the City shall be sent to the Office of Cable

Communications and Franchise Management. All notices required under this Agreement shall be sent by certified mail, return receipt requested.

Section 13. Transition. The Commission and the City recognize that on the effective date of this Agreement there continues in existence a similar administrative services agreement between the Commission and Multnomah County (County). These two agreements authorize both the City and the County to provide similar services for the Commission. In order to facilitate the orderly transfer from the County to the City of the administrative services provided to the Commission, the agreement between the Commission and the County may remain in force to a date no later than April 15, 1993. The Commission shall withdraw from the County and transfer to the City, at the Commission's election, the services covered by the County/Commission agreement and this Agreement. The transfer of all services provided by the County to the Commission under the existing County/Commission agreement shall be completed by no later than April 15, 1993.

Section 14. Effective Date. This Agreement will be effective upon its adoption by the Commission.

Chair,
Consolidated Cable
Communications Commission

Vera D'Arz
Mayor, City of Portland

Barbara Clark
Auditor, City of Portland

Benjamin Walters
City Attorney
Approved as to Form

MULTNOMAH CABLE REGULATORY COMMISSION
EQUIPMENT ASSETS INVENTORY

November 30, 1992

<u>ITEM</u>	<u>ASSET ID</u>	<u>MAKE/MODEL</u>	<u>SERIALS #</u>	<u>INSTALLED PRODUCTS</u>
Computers (1 only)	29474	Zenith laptop Supersport SX	004DE002864	42MB HD, 3.25" 1.44MB Floppy, 640KB RAM < 2 serial & Parallel & 1 Parallel Ports; Dos 3.3, WORDPERFECT.
Computer (1 only)	28435	WANG 381	Z033Z2	40MB HD, 5.25" 1.2MB & 3.5" 1.44MB Floppy, 650KB RAM, Hercules Video Card, 2 serial & 1 Parallel Ports, WANG;DOS 5.0, WANG System Services, WORDPERFECT, PRIDE, PCLIS, LOTUS
Monitor	-0-	Zenith	019ND0726NOB	
Printer (1 only)	-0-	Kodak Lazer Jet		
File Cabinets (2 each)	-0-	Steel, two drawer, metal		
Supply Cabinet (1 only)	02557	Steel 8' x 4'		
Desk	-0-	Metal with formica top		
Chair Brown Desk Chair	23786			

MULTNOMAH CABLE REGULATORY OFFICE
FURNITURE INVENTORY

Page 2 of 2

November 30, 1992

<u>ITEM</u>	<u>ASSET ID</u>	<u>MAKE/MODEL</u>	<u>SERIALS #</u>	<u>INSTALLED PRODUCTS</u>
Chair Brown Guest Chair	23785			
Chair Red Desk Chair	-0-			
Typewriter (1 only)	02564	IBM Selectric II	6890552	
Dictaphone (1 only)	05094	Sony BM-25A	622065	
Electric Stapler (1 only)	-0-	FC-90 Isaberg AB Sweden A908	111445	
Tape Recorder (1 only)	-0-	Realistic CAT NO. 14-1052A		
Adding Machines (2 each)	23784	Texas Instruments	135963	
Pencil Sharpener (1 only)	-0-	Boston	68000	
Coffee Pot (1 only)	-0-	Norelco 12 cup HB5193		

EXHIBIT C

QUARTERLY FRANCHISE FEE REMITTANCE FORM

Jurisdiction, State
Franchise Fee and PEG / I-Net Remittance Report

For the Month of : Month - Month

	Month-Year	Month-Year	Month-Year
1 Monthly Recurring Cable Service Charges (e.g., Basic, Enhanced Basic, Premium and Equipment Rental)	\$XXX.XX	\$XXX.XX	\$XXX.XX
2 Usage Based Charges (e.g., Pay Per View, Installation)	\$XXX.XX	\$XXX.XX	\$XXX.XX
3 Advertising	\$XXX.XX	\$XXX.XX	\$XXX.XX
4 Home Shopping	\$XXX.XX	\$XXX.XX	\$XXX.XX
5 Late Payment	\$XXX.XX	\$XXX.XX	\$XXX.XX
6 Other (Leased Access & Other Misc.)	\$XXX.XX	\$XXX.XX	\$XXX.XX
7 Franchise Fee Billed	\$XXX.XX	\$XXX.XX	\$XXX.XX
8 PEG Fee Billed	\$XXX.XX	\$XXX.XX	\$XXX.XX
Less:			
1 Bad Debt	\$XXX.XX	\$XXX.XX	\$XXX.XX
Total Receipts Subject to Franchise Fee Calculation	\$XXX.XX	\$XXX.XX	\$XXX.XX
Franchise Fee Rate XXX%	\$XXX.XX	\$XXX.XX	\$XXX.XX
Franchise Fee Due			\$XXX.XX
PEG / I-Net Grant Due	\$XXXX.XX	\$XXXX.XX	\$XXXX.XX
			\$XXXX.XX

Verizon is hereby requestion that this information be treated by the Franchise Authority as confidential business information.

EXHIBIT D
CUSTOMER SERVICE STANDARDS

Resolution No. 2479
Adopted by the Gresham City Council, June 5, 2001

RESOLUTION NO. 2479

**A RESOLUTION ADOPTING CUSTOMER SERVICE STANDARDS
AS APPROVED BY THE MT. HOOD CABLE REGULATORY
COMMISSION (MHCRC)**

The City of Gresham Finds:

1. The current franchises between the City of Gresham and cable providers require that the cable providers comply with the City's cable television consumer protection policy.
2. The City of Gresham has not adopted such policies and therefore FCC standards for customer service are applicable.
3. The Mt. Hood Cable Regulatory Commission has approved a recommendation from its Customer Service Standards Task Force that a single set of customer service standards be established by all MHCRC member jurisdictions. The Task Force reviewed the service standards of various jurisdictions and sought the input from current franchise holders in developing the draft Customer Service Standards.
4. The MHCRC has approved the Customer Service Standards and recommends adoption by each member jurisdiction.

THE CITY OF GRESHAM RESOLVES:

The City of Gresham adopts the Customer Service Standards as approved by the Mt. Hood Cable Regulatory Commission attached as Exhibit A.

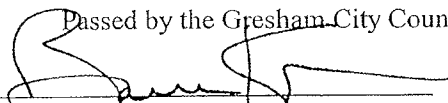
Yes: BECKER, HORNER, LASSEN, HANNA, BUTTS, HAVERKAMP

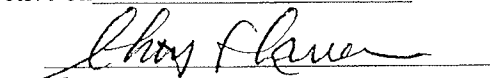
No: NONE

Absent: THOMPSON

Abstain: NONE

Passed by the Gresham City Council and effective on June 5, 2001.


City Manager


Mayor

Approved as to Form:


Senior Assistant City Attorney

FINAL CUSTOMER SERVICE STANDARDS

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- A. Normal Business Hours
- B. Normal Operating Conditions
- C. Service Interruption

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- B. Telephone answer time
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V. NOTICE REQUIREMENTS

VI. BILLING

- A. Bills shall be clear and fully itemized
- B. Billing disputes
- C. Refund checks
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VII. REPORTING

I. DEFINITIONS

A. Normal Business Hours

"Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week and some weekend hours.

B. Normal Operating Conditions

"Normal Operating Conditions " means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

The listed examples are not meant to be all-inclusive, and operators must adjust their staffing and operations to maintain compliance with the service standards in anticipation of events and conditions within their control.

C. Service Interruption

"Service Interruption" means the loss of picture or sound on one or more cable channels.

II. LOCAL OFFICE AND OFFICE HOURS

Customer service center and bill payment locations shall be open at least during Normal Business Hours and shall be conveniently located.

Cable operator customer service centers must be adequately staffed and able to respond to subscribers and the public not less than 50 hours per week, with a minimum of nine hours per day on weekdays and five hours on weekends excluding legal holidays.

As used herein, "adequately staffed" means customer service representatives are available to respond to customers who come to the service center in at least the following ways:

1. To accept payments;
2. To exchange or accept returned converters or other company equipment;
3. To respond to inquiries; and
4. To schedule and conduct service or repair calls.

III. TELEPHONE ANSWERING STANDARDS-

A. Cable system office hours and telephone availability

The cable operator shall maintain a local, toll-free or collect call telephone access line which shall be available to its subscribers 24 hours a day, seven days a week. Cable operators shall provide, in at least one prominent location, an easily identifiable telephone number for local customer service on all bills, account statements or statements of service to its subscribers.

Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational 24 hours a day, including weekends and holidays.

Trained company representatives shall be available to respond to customer telephone inquiries during Normal Business Hours.

After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

B. Telephone Answering Time

Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a calendar quarterly basis.

C. Busy Phones

Under Normal Operating Conditions, the customer shall receive a busy signal less than three (3) percent of the time.

IV. INSTALLATIONS, DISCONNECTIONS, OUTAGES AND SERVICE CALLS

Under Normal Operating Conditions, each of the following standards shall be met no less than ninety five (95) percent of the time measured on a quarterly basis:

Standard installations shall be performed within seven (7) business days after an order has been placed.

Under Normal Operating Conditions the cable operator shall begin work on Service Interruptions promptly and no later than 24 hours after the interruption becomes known. The cable operator must begin working on other service problems the next business day after notification of the service problem. Working on Service Interruptions must be more than merely acknowledging it.

The appointment alternatives for installations, service calls and other installation activities shall be either a specific time or, at maximum, a four-hour time block during Normal Business Hours.

The operator may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.

The cable operator shall be deemed to have honored a scheduled appointment under the provisions of this section when a technician arrives within the agreed upon time and, if the subscriber is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the cable operator.

A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. Rescheduling an appointment is an independent obligation and does not necessarily excuse the missed appointment.

If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer.

V. NOTICE REQUIREMENTS -

Communications between cable operators and cable subscribers

Notifications to subscribers--

The cable operator shall provide written information on each of the following areas at the time of service installation, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions programming carried on the system; and,
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

Customers shall be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by this Section V. Notwithstanding any other provision of Part 76 of the Code of Federal Regulations, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

VI. BILLING

Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within seven (7) calendar days.

Refunds--Refund checks shall be issued promptly, but no later than either the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier. The cable operator may withhold a refund pending the customer returning the equipment supplied by the cable operator if service is terminated.

Credits--Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

VII. REPORTING

Cable operators shall file reports to the Mt. Hood Cable Regulatory Commission on a quarterly basis showing the performance of their customer service standard obligations under this section. The quarterly reports shall cover the periods January 1 through March 31; April 1 through June 31; July 1 through September 31; and October 1 through December 31. The reports shall be due no later than 30 days following the end of a quarter. The reports shall include, at a minimum, figures and narrative indicating performance of the standards for:

Local office hours;

Telephone call center hours;

Telephone answering

Busy signal statistics

Standard installations

Service interruptions

Appointment windows: made, cancelled, and rescheduled

Notice requirements

Billing (refunds and credits)

EXHIBIT E
GRANTEE PARENT STRUCTURE AS OF SEPTEMBER 30, 2008

Verizon Northwest parent: GTE Corporation 100%

GTE Corporation Parents:

Verizon Communications Inc. 92.88%

NYNEX Corporation 5.93% (which is 100% owned by Verizon Communications Inc.)

Bell Atlantic Global Wireless, Inc. 1.19% (which is 100% owned by Verizon Investments Inc., which is 100% owned by Verizon Communications Inc.)

EXHIBIT F
PERFORMANCE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That (name & address) (hereinafter called the Principal), and (name and address) (hereinafter called the Surety), a corporation duly organized under the laws of the State of (state), are held and firmly bound unto (name & address) (hereinafter called the Obligee), in the full and just sum of _____ Dollars (\$ _____), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal and Obligee have entered into a Franchise Agreement dated _____ which is hereby referred to and made a part hereof.

WHEREAS, said Principal is required to perform certain obligations under said Agreement.

WHEREAS, the Obligee has agreed to accept this bond as security against default by Principal of performance of its obligations under said Agreement during the time period this bond is in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall perform its obligations under said Agreement, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise terminated, cancelled or expired as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express provisions and conditions:

In the event of default by the Principal, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.

This Bond shall be effective _____, 20____, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligee not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligee.

Bond No. _____

Neither cancellation, termination nor refusal by Surety to extend this bond, nor inability of Principal to file a replacement bond or replacement security for its obligations under said Agreement, shall constitute a loss to the Obligor recoverable under this bond.

No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.

No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligor named herein or the heirs, executors, administrators or successors of the Obligor.

The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.

This bond is and shall be construed to be strictly one of suretyship only. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall supersede and prevail in all respects.

This bond shall not bind the Surety unless it is accepted by the Obligor by signing below.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this ____ day of _____, 2008.

Principal

Surety

By: _____

By:

_____, Attorney-in-Fact

Accepted by Obligor: _____

(Signature & date above - Print Name, Title below)