CABLE FRANCHISE AGREEMENT

BETWEEN THE

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

AND

VERIZON NORTHWEST INC.

2007
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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Cities of Fairview, Gresham, Troutdale, and Wood Village, each a municipal corporation duly organized under the laws of the State of Oregon, and Multnomah County (each a Local Franchising Authority or "LFA") and Verizon Northwest Inc., a corporation duly organized under the laws of the State of Washington.

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

WHEREAS, LFA 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 installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Public Rights-of-Way in the Franchise Areas for the transmission of Non-Cable Services;

WHEREAS, Grantee’s FTTP Network will occupy the Public Rights-of-Way within LFA Franchise Areas, and Grantee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Areas; and

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

NOW, THEREFORE, in consideration of LFA’s grant of a franchise to Grantee, Grantee’s promise to provide Cable Service to residents of the Franchise/Service Areas of LFA pursuant to the terms and conditions set forth herein, the promises and undertakings herein,

THE PARTIES DO HEREBY AGREE AS FOLLOWS:

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

   B) Definitions. For the purpose of this Franchise, and all Exhibits attached hereto, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word “shall” is always mandatory and not merely directory.
(C) Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

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

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

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

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


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

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

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

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

1.1. Additional Service Areas: Shall mean any such portion of the Service Areas added pursuant to Section 3.1.3 of this Agreement.

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

1.3. Basic Service: Any service tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.
1.3A Cable Regulatory Commission” (“Commission”) means the Mt. Hood Cable Regulatory Commission, or its successor agency as designated by ordinance of the City Council.

1.3B Cable Service or Cable Services: “Cable Services” means (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

1.4. 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), meaning Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Areas. 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 directly to Subscribers within the Franchise/Service Areas and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

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

1.6. Channel: “Channel” means a time or frequency slot or technical equivalent on the Cable System, discretely identified and capable of carrying full motion color video, stereo or SAP (second audio pair) audio, and may include other non-video sub-carriers and digital information.

1.6A Communications Act: The Communications Act of 1934, as amended.

1.7A Control: The ability to exercise de facto or de jure control over day-to-day policies and operations or the management of Grantee’s affairs.

1.8A “Designated Access Provider” means the entity or entities designated by the Jurisdictions under Section 6 to provide Access in the Franchise Areas, and whose duties may include the management of certain Access facilities and resources.

1.8B “ Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is lawfully occupied for residential purposes. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.
1.7.  *Extended Service Areas:* The portion of the Franchise Areas as outlined in Exhibit A.

1.80 *FCC:* The United States Federal Communications Commission or successor governmental entity thereto.

1.8.  *Force Majeure:* An event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee’s FTTP Network is attached, or unavailability of materials and/or qualified labor to perform the work necessary.

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


1.11.  "Gross Revenues" means all amounts, in whatever form and from all sources, earned—either by the Grantee from the operation of Grantee’s Cable System within the City, or by any Affiliated Entity only to the extent such amounts are earned from the operation of Grantee’s Cable System to provide Cable Services within the City. “Gross Revenues” shall include, without limitation, amounts for the Basic Service Tier, Cable Programming Service Tiers, Pay Services, audio services, Subscriber installations and transactions, Leased Access, advertising, equipment rentals and all other revenues derived from the operation of Grantee’s Cable System to provide Cable Services. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. “Gross Revenues” shall also include amounts earned during any period regardless of whether: (1) the amounts are paid in cash, in trade or by means of some other benefit to the Grantee or any Affiliated Entity; (2) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; and (3) the amounts are initially recorded by the Grantee or an Affiliated Entity. “Gross Revenues” shall not be net of (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment. Notwithstanding the previous sentence, actual bad debt amounts written off, net of any amounts subsequently collected, may be deducted.
from Gross Revenue. “Gross Revenues”, however, shall not be double counted. Revenues of both Grantee and an Affiliated Entity that represent a transfer of funds between the Grantee and the Affiliated Entity, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliated Entity, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee’s revenue to an Affiliated Entity and which may otherwise constitute revenue of the Affiliated Entity, shall not constitute additional Gross Revenues for purposes of this Franchise. “Gross Revenues” shall include amounts earned by Affiliated Entities only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee’s Cable System and recorded such types of revenue in its books and Records directly but for the existence of Affiliated Entities. “Gross Revenues” shall not include sales or other similar taxes imposed by law on Subscribers which the Grantee is obligated to collect, nor amounts received from PEG Institutions for use of the Institutional Network.

1.12. **Information Services:** Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20).

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

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

1.15. “Institutional Network” or “I-Net” means dedicated capacity to provide one-way and bi-directional communication services to and among PEG Institutions and/or resources necessary to facilitate PEG Institutions’ effective use of I-Net capacity for conducting their business.

1.16. **Initial Service Areas:** The portion of the Franchise Areas as outlined in Exhibit A.

1.17. **Internet Access:** Dial-up or broadband access service that enables Subscribers to access the Internet.

1.17 A “Jurisdictions” has the same meaning as “LFA”.

1.18. **Local Franchise Authority (LFA) or “Jurisdictions”:** Each of the Cities of Fairview, Gresham, Troutdale, and Wood Village, and Multnomah County, or the lawful successor, transferee, or assignee of such city or county.
1.19. **Non-Cable Services**: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Areas including, but not limited to, Information Services and Telecommunications Services.

1.20. **PEG Institution** means any School; agency of government, excluding federal governments; public library; or not-for-profit organization, with at least one physical site located within the Franchise Areas.

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

1.22. **Programming** means the process of causing television programs or other patterns of Signals to be transmitted on the Cable System, and includes all programs or patterns of Signals transmitted or capable of being transmitted, on the Cable System. **PEG**: Public, Educational, and Governmental.

1.23. **Public Rights-of-Way**: The surface and the Areas 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 LFA. 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.

1.23A **School** means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.

1.24. **Service Areas**: All portions of the Franchise Areas where Cable Service is being offered, including the Initial Service Areas, Extended Service Areas, and any Additional Service Areas.

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

1.26. **Service Interruption**: The loss of picture or sound on one or more cable channels.

1.27. **Subscriber**: A Person who lawfully receives Cable Service over the Cable System with Grantee’s express permission.
1.28. **Telecommunications Facilities**: Grantee’s existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

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

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

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

1.32. **Transfer of the Franchise**:

1.32.1. Any transaction in which:

1.32.1.1. 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

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

1.32.2. However, notwithstanding Sub-subsections 1.36.1.1 and 1.36.1.2 above, 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.

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

Section 2A. **INTERGOVERNMENTAL AGREEMENT/ CABLE REGULATORY COMMISSION**

**Intergovernmental Agreement.** LFA has provided for regulation of this Franchise through a Cable Regulatory Commission ("Commission") created through an Intergovernmental Agreement (attached as Exhibit __xxx__). LFA has agreed to be bound by the decisions and actions taken by the Commission pursuant to powers, duties, and responsibilities delegated to the Commission under the Intergovernmental Agreement. Unless specifically stated otherwise in this Franchise, the Commission shall be the representative and agent of LFA in dealing with Grantee under the terms of this Franchise. In fulfilling the terms of this Franchise, Grantee is expected to rely upon, look to, communicate with, and comply with the decisions and orders of the Commission, its agents, and employees on all cable matters with respect to which the LFA has lawfully delegated the exercise of LFA’s authority under this Franchise. Nothing in this Franchise is intended to empower the Commission to act contrary to the provisions of the
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1. Grant of Authority: Subject to the terms and conditions of this Agreement and the Communications Act, LFA hereby grants Grantee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Areas, 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.

2.2. LFA Does Not Regulate Telecommunications: LFA’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 Verizon’s existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. Term: The effective date of this Agreement shall be January 1, 2008 ("Effective Date"). The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

2.4. 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 LFA reserves the right to grant other franchises for similar uses or for 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 and shall not interfere with existing facilities of the Cable System or Grantee’s FTTP Network.

2.5. 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.

2.6. No Waiver:

2.6.1. The failure of LFA 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 LFA, nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2. 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 LFA from performance, unless such right or performance has been specifically waived in writing.

2.7. **Construction of Agreement:**

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

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

2.7.3. Should any change to state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on Grantee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Grantee may terminate this Agreement without further obligation to LFA or, at Grantee’s option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8. **Police Powers:** Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of LFA’s police powers. However, if the reasonable, necessary and lawful exercise of LFA’s police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on Grantee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Grantee may terminate this Agreement without further obligation to LFA or, at Grantee’s option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. **PROVISION OF CABLE SERVICE**

3.1. **Service Areas:**

3.1.1. **Initial Service Areas:** Grantee shall offer Cable Service to significant numbers of Subscribers in residential Areas of the Initial Service Area and may make Cable Service available to businesses in the Initial Service Areas, within twelve (12) months of the Service Date of this Franchise, and shall offer Cable Service to all residential Areas in the Initial Service Area within four (4) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by LFA; (C) for periods of delay resulting from Grantee’s inability to obtain authority to access rights-of-way in the Service Areas; (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; and (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; and (G) in Areas where the residential dwelling unit density does not meet the density requirements set forth in Sub-section 3.1.1.1.

3.1.1.1. **Density Requirement:** Grantee shall make Cable Services available to residential dwelling units within the Service Areas where the average density is equal to or greater than 20 residential dwelling units per mile as measured from the nearest point on the FTTP Network. Should, through new construction, an Areas within the Initial Service Areas or Extended Service Areas meet the density requirements after the time stated for providing Cable Service as set forth in Subsections 3.1.1 and 3.1.2 respectively, Grantee shall provide Cable Service within sixty (60) days of receiving a service request.

3.1.2. **Extended Service Areas:** Within forty-eight (48) months following the Service Date, Grantee shall begin providing Cable Service in the Extended Service Areas subject to the conditions of Subsection 3.1.1 above and the other terms set forth herein; provided, however, that the Extended Service Areas may be modified in whole or in part by Grantee on 30 days notice to LFA.

3.1.3. **Additional Service Areas:** Except for the Initial Service Areas, and any Extended Service Areas, Grantee shall not be required to extend its Cable System or to provide Cable Services to any other Areas within the Franchise Areas during the term of this Franchise. If Grantee desires to add Additional Service Areas within the Franchise Areas, Grantee shall notify LFA in writing of such Additional Service Areas at least ten (10) days prior to providing Cable Services in such Areas.

3.2. **Availability of Cable Service:** Grantee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Areas in conformance with Section 3.1 and Grantee shall not discriminate between or among any individuals in the availability of Cable Service. In the Areas where Grantee provides Cable Service, Grantee shall connect, at Grantee’s expense, other than a standard installation charge, all residential dwelling units that are less than one-hundred seventy (170) feet of the Street. Grantee and the subscriber shall share equally the Incremental, direct cost of the part of an extension from the dwelling unit to the Street that is between one-hundred seventy (170) feet and five hundred (500) feet. The subscriber shall pay all Incremental, directs costs for the part of the extension between the Dwelling Unit and the Street that is greater than five hundred (500) feet.

4. **SYSTEM OPERATION**

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. LFA shall not assert jurisdiction over the Telecommunications Facilities of Grantee’s FTTP Network in contravention of applicable law.

5. **SYSTEM FACILITIES**
5.1. System Characteristics: Grantee’s Cable System shall meet or exceed the following requirements:

5.1.1. The System shall be designed with an initial analog and digital carrier passband between 50 and 860 MHz.

5.1.2. 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.

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

5.3. Emergency Alert System:

5.3.1. Grantee shall comply with all applicable federal regulation regarding emergency alert systems ("EAS"). The Jurisdictions may identify authorized emergency officials for activating the emergency alert system. The Jurisdictions may also develop a local plan containing methods of emergency alert system message distribution, subject to federal review and approval as provided by federal rules.

6. PEG ACCESS

6.1. PEG Set Aside:

6.1.1. Grantee shall provide eight (8) Activated PEG Access Channels, for distribution of Access Programming with such Channel assignments as are set forth in Section 6.1.2.(A).

6.1.2. (A) PEG Channel Assignments. Grantee shall provide Channel assignments for PEG Access and narrowcast, in accordance with Section 7.3(C), such Access Channels to the service Areas as follows:

(1) Channel 11 - public access (Franchise Areas)
(2) Channel 21 - public access (Franchise Areas)
(3) Channel 22 – public access (Franchise Areas)
(4) Channel 23 – public access (Franchise Areas)
(5) Channel 27 - educational access (community college boundaries)
(6) Channel 28 - educational access (public school district boundaries)
(7) Channel 29 – government access (Franchise Areas)
(8) Channel 30 - government access (Franchise Areas)

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

(C) Narrowcasting Access Channels. To the extent feasible given normal Cable System design, Grantee shall use good faith efforts to configure the Cable System to allow Designated Access Providers to cablecast Access Channels, identified in Section 7.3(A)(5) and (6), to Cable Services Subscribers located within the following specific geographic Areas, as such Areas exist on the effective date of this Franchise: Portland Community College and Mt. Hood Community College service boundaries discretely, or public school district boundaries discretely.

6.1.3 1) In addition to the PEG Access Channels provided under Section 6.1.1, Grantee shall reserve 28 digital Channels, for PEG Access use, for a total of 36 PEG Access Channels. The Jurisdictions may require Grantee to Activate the reserved PEG Access Channels when a Designated Access Provider demonstrates to the City, and the City provides such information to the Grantee, that additional reserved Channels are needed to meet an identified community need. In determining such need, the City shall use the following criteria:

A. The documented need for additional Channels cannot be fulfilled by the PEG Access Channels assigned to the Designated Access Provider making the request;

B. The PEG Access Channels assigned to the Designated Access Provider must be utilized for Access Programming 80 percent of any eight (8) hour block of time per day, over a one month period. For purposes of this calculation, Programming shall not include more than two repeats of a program.

6.1.3.2 Grantee shall Activate any additional PEG Access Channels within 90 days following Jurisdictions' written notice to Grantee that the Activation criteria under Sections 6.1.3.1 and 6.1.3.2 have been met by a Designated Access Provider.

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

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

6.2 Access Programming Information in Programming Guides.
(1) Grantee shall include the PEG Access Channels and Programming information in any program guides provided to its Cable Services Subscribers, including, but not limited to on-screen, print and on-line program guides which include channel and program listings of any local Broadcast Channels. Grantee shall bear all capital, implementation and operating costs to include the PEG Access Channels and Programming information in the programming guides.

(2) The Designated Access Providers shall provide to the Grantee, or its designee, the Access Channel and Programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.

6.3 Designated PEG Access Providers.

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

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

6.4 Access Channel Origination Points.

6.4.1 Access Origination Points. LFAs may designate up to six (6) points of origination, located within the Franchise Areas, for Access Channels provided for under Section 6.1. Grantee shall enable the Designated Access Providers to use the Channel origination points as central collection, switching and dissemination points for PEG Access Programming, including the control of the Interconnection of such Programming with other cable communication systems.

6.4.2 Access Interconnect Capacity. Grantee shall provide Activated Interconnection of the Cable System to the designated Access Channel origination points. Designated Access Providers shall have the exclusive right to control and schedule the operation of all Interconnections of the PEG Access Channels with other cable systems and other entities. The Designated Access Provider shall provide, at the Access Channel origination point, without charge to the Grantee, suitable space, environmental conditions, electrical power supply and pathway within the Access Provider facility to enable the Grantee to Activate the Access Channel Interconnect. The Designated Access Provider shall cooperate as is reasonably necessary for Grantee to fulfill such Interconnect obligations.

6.4.3 Changes in Access Channel Origination Points. Grantee shall provide all obligations in this Section to MetroEast Community Media’s Access Channel point of origination in place on
the effective date of this Franchise (located at 829 NE Eighth Street, Gresham, Oregon 97030-5643). If the City designates new Access providers for Channel origination or if a current Designated Access Provider moves its Channel origination location at its own instigation after the effective date of this Franchise, the Designated Access Provider and/or the Jurisdictions will fund the Incremental, direct costs to construct a connection from the new site or location to Grantee’s nearest FTTP Network Fiber in the Street.

6.5 Access Programming Interface with Grantee Video-On-Demand Capabilities.

Grantee shall include up to 25 hours, at any given time, of Access Programming on its video-on-demand ("VOD") platform to be accessible free of charge to Cable Services Subscribers on the same basis as commercially offered VOD content. Grantee agrees to work in good faith with the Designated Access Providers to establish a mutually agreeable process for placing Access Programming on the VOD platform, including but not limited to, addressing programming technical formatting; and including program information in VOD program guides. Designated Access Providers are responsible for selecting the Access Programming and providing it to Grantee in an appropriate format. Grantee and the Jurisdictions recognize that future development of VOD technology may allow for the Designated Access Providers and Grantee to agree on a mutually acceptable alternative to including Access Programming on Grantee’s VOD platform and increasing the amount of Access Programming available to Subscribers.

6.6 Live Origination Video Transport

In order to provide MetroEast the ability to originate discrete live Programming from PEG institutions throughout the Franchise Areas and put the live Programming signal(s) on Access Channels, Grantee shall provide, at a minimum, an Activated 100 Mbps symmetrical Ethernet service, or equivalent, at MetroEast’s Access Channel origination point. The 100 Mbps Ethernet service shall include Internet access and up to sixteen (16) static Internet protocol (IP) addresses in order for MetroEast to administer PEG Access Programming applications, including, but not limited to, on-demand, streaming and live origination PEG Programming applications

6.7 MetroEast Community Media. For purposes of the Section 7, “MetroEast Community Media” or “MetroEast” means the PEG Access provider, or its successors or assignees, designated by contract with the Jurisdictions. Access Resources allocated to MetroEast under this Section may be re-assigned at the Jurisdictions’ sole discretion to another Designated Access Provider.

6.8 Charges. All of the Channels, Cable System Capacity, capabilities, equipment, labor and other elements needed for the Grantee to provide PEG Access as required under this Section shall be provided without charge to the City or to any Designated Access Provider, except as specifically provided in this Section.
6.9 Changes in Technology. In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's Signal delivery technology, which directly or indirectly substantially affect the Signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of Designated Access Providers or Access Programmers are not diminished or adversely affected by such change.

6.10 Technical Quality.

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

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

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

6.10.4 The City shall require as a condition of any separate agreement between the City and an 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 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).

7. PEG INSTITUTIONAL NETWORK

7.1 Grantee acknowledges that the Jurisdictions have acquired Institutional Network ("I-Net") capacity, facilities, interconnects, services and resources from a variety of existing franchised cable services providers to design, construct and operate an Institutional Network and to facilitate PEG Institutions' uses of the I-Net. 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.

7.2 Grantee agrees that the Jurisdictions may use I-Net resources provided under this Franchise to support use by PEG Institutions of I-Net capacity, facilities, interconnects, services and resources not constructed, owned, controlled, operated or provided by Grantee.

7.3 The Jurisdictions and Grantee may mutually agree on I-Net capacity, facilities and/or services to be provided by Grantee to meet identified I-Net needs of PEG Institutions. Grantee may deduct the agreed upon Incremental, direct costs from Capital funds provided under Section 8 related to I-Net capacity, assets or services under this Subsection.
8. PEG Access Capital Funding:

8.1 Grantee shall pay to the Jurisdictions three percent (3%) of Gross Revenues Annually to provide support of PEG Access and Institutional Network Capital costs. The Jurisdictions shall allocate the funds as follows: one percent (1%) of Gross Revenues to provide support for Designated Access Providers’ Capital Costs; and two percent (2%) of Gross Revenues to support PEG Institutions’ Capital requirements to use the 1-Net and Access capabilities provided under this Franchise.

8.2 Payments. Following the effective date of this Franchise, Grantee shall make quarterly payments to the Jurisdictions under Section 8 for the preceding quarter Year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

6.1.4. 8.3 The Jurisdictions shall provide the Grantee a report annually about the distribution of funds granted pursuant to Section 8. At any time during normal business hours and upon reasonable notice, Grantee may inspect records of the Jurisdictions and the recipients of the PEG Capital funds under this Section relevant to the use of those funds.

8.4 PEG Access Support not Franchise Fees: Applicable Federal Law. Grantee agrees that financial support for Access Capital Costs arising from or relating to the obligations set forth in Section 8 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 8 may total more than five percent of Grantee’s Gross Revenues in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any franchise fee payments under this Franchise.

9. FRANCHISE FEES

9.1 As compensation for the benefits and privileges under this Franchise and in consideration of permission to use LFA Public Rights of Way, Grantee shall pay as a franchise fee throughout the duration of this Franchise, an amount equal to five (5%) percent of Grantee’s Gross Revenues related to Cable Services.

9.2 Payments and Quarterly Reports.

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

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

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

9.4 Limitation on Franchise Fee Actions: The parties agree that the period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.

9.5 Bundled Services: If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Grantee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders.

9.6 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 LFA 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 LFA interest at a rate per annum equal to the highest Bank Prime Rate during the Period of Delinquency plus one percent (1%). The "Bank Prime Rate" shall mean the prime lending rate as it appears in The Wall Street Journal during the Period of Delinquency. LFA'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 LFA may have for additional sums payment under provisions of this Article.

10. CUSTOMER SERVICE

Customer Service Requirements are set forth in Exhibit C.

11. REPORTS AND RECORDS

11.1 Audit of Franchise Fee Payments.

LFA, or its designee, may conduct an audit or other inquiry in relation to payments made by Grantee no more than once every five (5) years during the Term. As a part of the audit process, LFA or LFA's designee may inspect Grantee's books of accounts relative to LFA at any time during regular business hours and after thirty (30) calendar days prior written notice.

11.2 All records deemed by LFA or LFA's designee to be reasonably necessary for such audit shall be made available by Grantee in a mutually agreeable format and location. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30)
calendar days of a written request. Grantee may provide such responses within a reasonably time after the expiration of the response period above so long as Grantee has made a good faith effort to procure any such tardy response.

11.3 If the results of any audit indicate that Grantee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, than LFA shall pay the costs of the audit. If the results of the audit indicate Grantee underpaid the franchise fee by more than five percent (5%), then Grantee shall pay the reasonable, documented, third-party costs of the audit, which costs shall be limited to Ten Thousand Dollars ($10,000). LFA agrees that any audit shall be performed in good faith. If any audit discloses an underpayment of the franchise fee by more than five percent (5%), Grantee shall pay LFA the amount of the underpayment, together with interest computed as set forth in Section 7.5.

11.4 Any auditor employed by LFA 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 indicated an underpayment to LFA.

11.5 Open Books and Records: Upon reasonable written notice to Grantee and with no less than thirty (30) business days written notice to Grantee, LFA shall have the right to inspect Grantee’s books and records pertaining to Grantee’s provision of Cable Service in the Franchise Areas at any time during Normal Business Hours and on a nondisruptive basis, as are 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 LFA. Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate’s books and records not relating to the provision of Cable Service in the Service Areas. LFA shall treat any information disclosed by Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

11.6 Records Required: Grantee shall at all times maintain:

(a) Records of all written complaints for a period of three (3) years after receipt by Grantee. The term “complaint” as used herein refers to complaints about any aspect of the Cable System or Grantee’s cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

(b) Records of outages for a period of three (3) years after occurrence, indicating date, duration, Areas, and the number of Subscribers affected, type of outage, and cause;
(c) Records of service calls for repair and maintenance for a period of three (3) years after resolution by Grantee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

(d) Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Grantee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

(e) A map showing the Areas of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

12. INSURANCE AND INDEMNIFICATION

12.1 Insurance:

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

(a) 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 LFA.

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

(c) Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

(d) Employers’ Liability Insurance in the following amounts: (A) Bodily Injury by Accident: $100,000; and (B) Bodily Injury by Disease: $100,000 employee limit; $500,000 policy limit.

(e) LFA shall be designated as an additional insured under each of the insurance policies required in this Article 10 except Worker’s Compensation and Employer’s Liability Insurance.

12.2 Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

12.3 Each of the required insurance policies shall be with sureties qualified to do business in the State of Oregon, with an A- or better rating for financial condition and financial performance by Best’s Key Rating Guide, Property/Casualty Edition.

12.4 Upon written request, Grantee shall deliver to LFA Certificates of Insurance showing evidence of the required coverage.

12.5 Indemnification: Grantee shall indemnify, save and hold harmless, and defend LFA, its officers, agents, boards and employees, from and against any liability for damages or claims
resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Grantee's negligent construction, operation, or maintenance of its Cable System, provided that LFA shall give Grantee written notice of its obligation to indemnify LFA within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Grantee shall not indemnify LFA, for any damages, liability or claims resulting from the willful misconduct or negligence of LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Grantee in connection with PEG Access, use of the INET or EAS, or the distribution of any Cable Service over the Cable System.

12.6 With respect to Grantee's indemnity obligations set forth in Subsection _____, Grantee shall provide the defense of any claims brought against LFA by selecting counsel of Grantee's choice to defend the claim, subject to the consent of LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent LFA from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with LFA, Grantee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Grantee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of LFA and LFA does not consent to the terms of any such settlement or compromise, Grantee shall not settle the claim or action but its obligation to indemnify LFA shall in no event exceed the amount of such settlement.

12.7 LFA shall hold harmless and defend Grantee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of LFA.

12.8 Grantee shall not be required to indemnify LFA for acts of LFA which constitute willful misconduct or negligence, on the part of LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

13. TRANSFER OF FRANCHISE

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of LFA, 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 for transactions otherwise excluded under Section _____ above.

14. RENEWAL OF FRANCHISE

14.1 LFA and Grantee agree that any proceedings undertaken by LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.
14.2 Subject to and consistent with the procedures set forth in said Section 626 of the Communications Act, LFA shall notify Grantee of its ascertainment of future cable-related community needs and interests, as well as the past performance of Grantee under the then-current Franchise term. LFA further agrees that such ascertainment, when completed, shall be provided to Grantee promptly so that Grantee has adequate time to submit a proposal under 47 U.S.C. 546 and complete renewal of the Franchise prior to expiration of its term.

14.3 Consistent with 47 U.S.C. 546, , Grantee and LFA agree that at any time during the term of the Franchise, while affording the public appropriate notice and opportunity to comment, LFA and Grantee may commence informal negotiations regarding renewal of the then current Franchise and LFA may grant a renewal thereof.

14.4 Grantee and LFA consider the terms set forth in this Section to be consistent with the express provisions of 47 U.S.C. 546.

15. ENFORCEMENT AND TERMINATION OF FRANCHISE

15.1 Remedies for Franchise Violations.

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

1. Impose reasonable penalties, up to $1,000 per day, incident or other measure of violation;
2. To the extent authorized by law, require Grantee to reduce its rates and charges by such amount or amounts as is reasonable in light of the violation;
3. To the extent authorized by law, require Grantee to correct or cure the violation prior to any rate increase becoming effective, or otherwise delay consideration of any rate request until the violation is corrected or cured;
4. Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or
5. Revoke this Franchise.

(B) In determining which of the foregoing remedies is appropriate, and in the exercise of specific remedies, the LFA shall consider, among other things, (1) the nature and extent of the violation, (2) whether Grantee has had a history of similar violations, (3) the remedy that can be expected to deter such violations in the future, and (4) the damage suffered by the public and the cost of remedying the violation.
(C) The LFA also has the right to shorten the term of this Franchise or revoke this Franchise in the manner described herein upon the occurrence of any of the following acts or events:

1. Grantee fails to meet the Service Date requirements of this Franchise;
2. Grantee fails to comply with the insurance and indemnification requirements of this Franchise, including but not limited to, providing insurance or performance bonds;
3. Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the LFAs or any one of them; or
4. Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the Cable System.

15.2 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 Areas in this determination. Notice to terminate under this Section shall be given to the City in writing, with such termination to take effect no sooner than one hundred and 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.

16. MISCELLANEOUS PROVISIONS

16.1 Actions of Parties: In any action by LFA 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. [In the event that one or more LFAs do not approve this Agreement, it shall remain valid, in effect, and binding on all LFAs that have approved this Agreement.]

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 LFA.

16.4 Force Majeure: Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.
16.5 Furthermore, the parties hereby agree that it is not LFA's intention to subject Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Grantee which outweigh the benefit to be derived by LFA and/or Subscribers.

16.6 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.

Notices to Grantee shall be mailed to:

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

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

Notices to LFA shall be mailed to:

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

16.7 Entire Agreement: This Franchise and the Exhibits hereto constitute the entire agreement between Grantee and LFA, 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 that conflict with the provisions of this Agreement are superseded by this Agreement.

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

16.9 Captions: The captions and headings of articles and sections 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.
16.10 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.

16.11 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.

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

16.13 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 LFA or any third party, unless otherwise authorized by law. 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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set forth in this Agreement or LFA authority to manage Public Rights-of-Way in the Franchise Area.

16.14 Independent Review: LFA and Grantee each acknowledge that they have received independent legal advice in entering into this Agreement. 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 AS OF THE DATE OF LAST SIGNATURE BELOW:

CITY OF ____________________  APPROVED AS TO FORM:

By: ____________________________  ____________________________
    [Name, Title]                [Name, Title]

Date: ____________________________

VERIZON NORTHWEST INC.

By: ____________________________
    Tim McCallion, President

Date: ____________________________

EXHIBITS

Exhibit A: Service Areas
Exhibit B: Reserved
Exhibit C: Customer Service Standards
EXHIBIT A

SERVICE AREAS
EXHIBIT B
RESERVED
EXHIBIT C

CUSTOMER SERVICE STANDARDS

This exhibit sets forth the minimum customer service standards that the Franchisee must satisfy. In addition, and subject to the provisions of this Agreement, Grantee shall at all times satisfy any additional requirements established by applicable federal, state or local law or regulation, as the same may be amended from time to time, including, without limitation consumer protection laws.

MHCRC CUSTOMER SERVICE STANDARDS

I. DEFINITIONS
   A. Normal Business Hours
   B. Normal Operating Conditions
   C. Service Interruption

II. LOCAL OFFICE AND OFFICE HOURS

III. TELEPHONE ANSWERING STANDARDS
   A. Telephone availability
   B. Telephone answer time
   C. Busy signals

IV. INSTALLATIONS, OUTAGES AND SERVICE CALLS

V. NOTICE REQUIREMENTS

VI. BILLING
   A. Bills shall be clear and fully itemized
   B. Billing disputes
   C. Refund checks
   D. Credits for service

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)

SECTION 1: