

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 00-147

Approves Cable Franchise Agreement with RCN Telecom Services of Oregon, Inc.

The Multnomah County Board of Commissioners Finds:

- a. The Mt. Hood Cable Regulatory Commission (MHCRC), created by Intergovernmental Agreement dated December 24, 1992 (IGA), carries out cable regulation and administration on behalf of Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale, and Wood Village (Jurisdictions). The MHCRC acts in an advisory capacity to the Jurisdictions in connection with any decision to grant a franchise agreement.
- b. On January 24, 2000, RCN requested the MHCRC to develop a franchise agreement for competitive cable and broadband communications services in the Jurisdictions.
- c. Other potential competitive cable and broadband communications providers have approached the MHCRC staff regarding their intent to pursue construction of competitive cable and broadband communications facilities in Multnomah County and elsewhere in the Jurisdictions.
- d. On January 27, 2000, by Resolution 00-016, the Board authorized the MHCRC to develop and negotiate documents with such potential providers, including proposed franchise agreements for competitive cable, services other than cable, and broadband communications services in Multnomah County.
- e. As provided in the MHCRC IGA, Section 4.B., Multnomah County reserves full authority to accept, reject, or modify proposed franchise agreements for cable, broadband or other services recommended by the MHCRC.
- f. The MHCRC developed such franchise agreements and, on July 17, 2000, recommended that the County approve the attached franchise with RCN Telecom Services of Oregon, Inc. (RCN) to provide competitive cable and communications services to Multnomah County residents.
- g. In conjunction with the MHCRC's final action on July 17, RCN and MHCRC staff signed the attached supplementary letter clarifying mutual understandings with respect to the franchise.

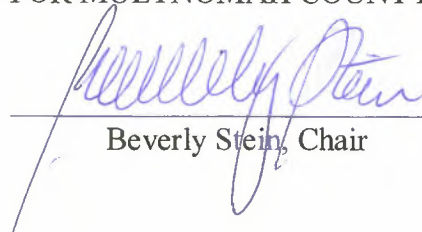
The Multnomah County Board of Commissioners Resolves:

1. The MHCRC / RCN Franchise between RCN Telecom Services of Oregon, Inc. and the Jurisdictions attached as Exhibit A to this Resolution is approved by Multnomah County.
2. The RCN Letter, dated July 18, 2000, addressed to David Olson of MHCRC staff attached as Exhibit B to this Resolution is approved by Multnomah County.
3. The Chair of the Multnomah County Board of Commissioners is authorized to execute the Franchise agreement attached as Exhibit A, which includes the understandings in the Letter, attached as Exhibit B, on behalf of Multnomah County.

ADOPTED this 7th day of September, 2000.

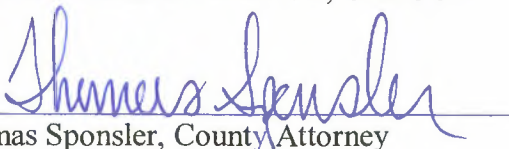


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Thomas Sponsler, County Attorney

MHCRC / RCN FRANCHISE**August 11, 2000****Section 1. NATURE AND TERM OF GRANT****1.1 Grant of Franchise.**

(A) The Jurisdiction hereby grants to RCN Telecom Services of Oregon, Inc. ("Grantee"), who is qualified to do business in Oregon, and to its successors and assigns, a franchise to construct, operate and maintain a System to provide Broadband, Cable, Institutional, and Telecommunications Services in the Streets of the Jurisdiction.

(B) As a condition of this Franchise, Grantee agrees to be bound by all the Franchise terms and provisions. In consideration of the substantial benefits it receives from this Franchise, Grantee covenants that it will not at any time sue or proceed against the Jurisdiction in any claim or proceeding challenging any lawful term or provision of this Franchise as unreasonable, or arbitrary or that the Jurisdiction or Grantee did not have the authority to agree to such terms or conditions: Provided, however, nothing in this subsection 1.1(B) is intended to limit Grantee's ability to respond to any challenge or dispute regarding any provision of this Franchise.

(C) The parties to this Franchise have agreed that all Services provided under this Franchise shall be deemed Broadband, Cable, Institutional, and/or Telecommunications Services, as applicable. If a determination binding on the parties during the term of this Franchise determines otherwise with respect to one or more services provided by Grantee, or if the parties mutually determine otherwise, then the parties will negotiate modifications to this Franchise pursuant to the procedures and criteria of Section 19.2(B) hereof.

(D) This Franchise shall not be interpreted to prevent the Jurisdictions from imposing additional lawful conditions, including additional compensation conditions for use of the Streets, should Grantee provide services other than the Services set forth in Section 1.1(A) hereof.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Broadband, Cable, Institutional, and Telecommunications Services in the Franchise Area, or directly involved in the management or operation of Grantee's System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

(F) This Franchise is subject to the general lawful police power of the Jurisdictions affecting matters of local government concern and not merely existing contractual rights of Grantee. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the Jurisdictions.

1.2 Term of Franchise.

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

MHCRC / RCN Franchise

(B) The term of this Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall be extended until December 31, 2013, if:

- (1) On or before March 31, 2006, Grantee completes construction of Grantee's System in accordance with the requirements of Section 12 of this Franchise;
- (2) At the time Grantee certifies to the Jurisdictions that construction of the System has been completed, Grantee is otherwise in substantial compliance with the terms and conditions of this Franchise;
- (3) The Mt. Hood Cable Regulatory Commission reports to the Jurisdictions its finding, within the time specified in Subsection 12.2(F), that Grantee has satisfied the requirements of Subsections 1.2(A)(1) and (2); and,
- (4) The Jurisdiction accepts, by resolution, the Commission's report under Subsection 1.2(A)(3).

1.3 Effective Date.

Unless otherwise specified by the Jurisdiction, the effective date of this Franchise shall be the later of July 1, 2000 or the date all conditions precedent to effectiveness are satisfied.

1.4 Franchise Not Exclusive.

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

(B) Competing Cable Systems

- (1) If, after the effective date of this Franchise, a Jurisdiction enters into and authorizes a Cable Services franchise, permit, license or other form of agreement with any person other than Grantee to enter the Streets for the construction and operation of a Cable System providing Cable Services within any part of Grantee's Franchise Area in which Grantee is actually providing Cable Services, the material provisions of such agreement shall be reasonably non-discriminatory and competitively neutral with respect to the material provisions of this Franchise, unless otherwise restricted by law.
- (2) For the purposes of this Section 1.4(B), the material provisions of this Franchise shall mean:
 - (a) A franchise fee or comparable fee based upon a percentage of gross revenues or other measurement equivalent to the percentage of Gross Revenues that Grantee pays as a franchise fee under Section 15 of this Franchise;
 - (b) Support for PEG Access based upon a percentage of gross revenues or other measurement equivalent to the percentage of Gross Revenues that Grantee pays as a PEG Access Capital support under Section 9 of this Franchise; together with associated interconnects, access origination points and any facilities-based requirements contained in this Franchise;

- (c) Support for the Institutional Network based upon a percentage of gross revenues or other measurement equivalent to the percentage of Gross Revenues that Grantee pays under Section 9 of this Franchise, together with associated interconnection and other facilities-based requirements contained in this Franchise; and,
 - (d) Provide the same number of channels, or capacity, for PEG Access after the Cable System is activated and providing cable service to subscribers, as Grantee is required to provide under this Franchise;
- (3) In the event that any person, (including without limitation a governmental entity), uses facilities in the Streets to provide a multi-channel video service, (including without limitation an open video system), without a franchise, the Jurisdiction shall, to the extent authorized by law, impose on such person equivalent obligations which shall be reasonably non-discriminatory and competitively neutral with respect to the material provisions of this Franchise.
- (4) Solely for the purposes of this Subsection 1.4(B), "Cable Services" shall mean the one-way transmission of :
- (a) video programming, or
 - (b) other programming service;

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

(C) Additional Provisions

- (1) Nothing in Subsection 1.4(B) shall be construed as limiting, restricting or preventing a Jurisdiction from issuing any franchise, permit, license or other form of agreement for all of Grantee's Franchise Area or any portion thereof, that provides for equal or greater requirements, or for a similar or higher level of Cable Services to subscribers, than that required of Grantee under this Franchise.
- (2) Grantee agrees and acknowledges that, solely for the purposes of Subsection 1.4(B), the provisions of any other franchise issued or administered by a Jurisdiction with respect to the provision of Cable Services and in effect as of the effective date of this Franchise, are reasonably non-discriminatory and competitively neutral.
- (3) Grantee agrees and acknowledges that the provisions of Subsection 1.4(B) shall not apply to any franchise, permit, license or other form of agreement issued by a Jurisdiction with respect to the provision of telecommunications services, in effect as of the effective date of this Franchise or at any time thereafter.

(D) If Grantee believes that a Jurisdiction has breached its obligations under Section 1.4(B), then Grantee's sole remedy is to seek to have its corresponding franchise obligations modified by mediation in accordance with Section 25.2 or by arbitration in accordance with Section 25.3 of this Franchise.

1.5 Charter and General Ordinances.

To the extent authorized by law, Grantee's Franchise with the Jurisdiction is subject to the Charter of the Jurisdiction and any general ordinances and resolutions passed pursuant thereto, now in effect or hereafter made effective, affecting matters of general Jurisdictional concern and not materially in conflict with Grantee's existing contractual rights, now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the various codes, ordinances and resolutions of the Jurisdiction regarding permits, fees to be paid or the manner of construction. Grantee shall comply with all applicable Jurisdiction ordinances, resolutions, rules and regulations adopted or established pursuant to the Jurisdiction's lawful authority.

Section 2. BROADBAND SERVICES / INTERGOVERNMENTAL AGREEMENT

2.1 Broadband Principles and Open Access

In developing the Broadband-related provisions of this Franchise, the Jurisdictions have established and relied upon the policies, principles, and assumptions set forth in this Section to guide the preparation of such provisions and express the intent of the Jurisdictions.

(A) Demand for Improved Residential Access To Competitive Choices In Services.

Rapid developments in technology and competition in the communications marketplace have hastened the growth of, and demand for residential access to, high-speed or "Broadband" services, including Broadband Internet service. During the Term of this Franchise, the Internet and the World Wide Web will continue to develop rapidly as dominant platforms for services, information exchange, communication, electronic commerce, and the marketplace of ideas. As the Internet develops, adequate access to the Internet for most users increasingly will require a Broadband connection to utilize the full capability of the Internet and the World Wide Web.

(B) Internet Growth Depends on Openness

The Internet has grown exponentially since inception primarily because of its open architecture and ease and affordability of access, based on the development by and commitment of the public and private sectors to open standards, nondiscriminatory operations, interoperability under agreed-on protocols, and "End-to-End" organizational principles. "End-to-End" means the intelligence of the Internet rests primarily at its 'ends', where Internet users place information and applications. "End-to-End" principles discourage any artificial or unnecessary technical or economic constraints which impair or impede the robust and free-flowing exchange of Internet traffic between and among users. As a result of the Internet's open architecture, both consumers and providers have enjoyed significant freedom to gain non-discriminatory access to the Internet and each other. This "open access" has produced tremendous growth, vitality, and constant innovation in Internet applications and tools.

(C) Open Access Must Be Maintained On Broadband Internet

As access to the Internet via Broadband becomes critical to taking full advantage of the Internet during the term of this Franchise and beyond, these End-to-End principles of openness, including open architecture and open access, should be maintained to the greatest extent possible. Therefore, any franchisee that is authorized to place facilities in the Streets should be subject to lawful conditions that ensure that facilities that take advantage of public property provide access on an open, non-discriminatory basis.

(D) Jurisdiction Goals

In developing and issuing this Franchise, the Jurisdiction seeks for its residents the successful development and availability of:

- (1) the construction and deployment throughout the Jurisdictions, in a timely manner, of facilities-based network designed to provide Broadband Services competitively and on a non-discriminatory basis;
- (2) facilities-based, Broadband Services utilizing a non-discriminatory technical platform capable of providing direct Broadband Internet access to the Internet Service Provider of the customer's choice, whether or not such ISP is affiliated with the franchisee; and
- (3) an attractive package of competitive residential cable and non-cable communications services, on a bundled or unbundled basis, including state-of-the-art voice, video and Data services.

2.2 Intergovernmental Agreement

(A) The governing body of the Jurisdiction has adopted this Franchise as its own, under its independent government authority. In addition, the Jurisdictions have elected to provide for a Cable Regulatory Commission ("Mt. Hood Cable Regulatory Commission" or "MHCRC") created through an Intergovernmental Agreement entered into, among and by all the Jurisdictions. A copy of the Intergovernmental Agreement has been separately provided to Grantee. The Jurisdictions have agreed to be bound by the decisions and actions taken by the MHCRC pursuant to powers, duties, and responsibilities set forth in the Intergovernmental Agreement. Unless specifically stated otherwise herein, the MHCRC will be the primary representative and agent of the Jurisdictions in dealing with the Cable Services provided by Grantee under the terms of this Franchise. Throughout this Franchise, all reference to the "Jurisdictions" in the plural is intended to refer to the MHCRC acting on behalf of the Jurisdictions, unless the context requires otherwise or such powers are reserved to the individual Jurisdictions under the Intergovernmental Agreement. 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 MHCRC, its agents, and employees on all matters over which they have authority. Nothing in this Franchise is intended to empower the Commission to act contrary to the provisions of the Intergovernmental Agreement. The Jurisdictions retain all powers not delegated to the MHCRC.

(B) Each Jurisdiction has the right to withdraw from the Intergovernmental Agreement. In the event a Jurisdiction withdraws, it will have the discretion either to create its own regulatory process or to designate its own governing body to handle matters previously

delegated to the MHCRC. In such case, Grantee will deal separately with the Jurisdiction that has withdrawn. Each of the Jurisdictions that is a party to the Intergovernmental Agreement agrees that it will not withdraw from the Intergovernmental Agreement without first providing written notice to Grantee and giving Grantee an opportunity to state its position on such withdrawal. Similarly, the Jurisdictions agree that they will not amend the Intergovernmental Agreement without first providing written notice to Grantee and giving Grantee an opportunity to state its position on any proposed amendment.

(C) Any withdrawal from or amendment to the Intergovernmental Agreement will not be construed as amending this Franchise or permitting the withdrawal of any of the remaining Jurisdictions, or the Grantee, from this Franchise.

(D) Divisibility.

(1) Unaffected Sections. Any Jurisdiction which elects to withdraw from the Intergovernmental Agreement shall be entitled to receive the five percent (5%) franchise fee payment, as provided in Section 15 of this Franchise, for Grantee's Gross Revenues attributable to that Jurisdiction's territorial limits. Except for the Sections specifically identified in Subsection 2.2(D)(2), a Jurisdiction's withdrawal from the Intergovernmental Agreement shall not affect any of the Sections of this Franchise, and the Franchise shall otherwise remain in effect between the Grantee and the withdrawing Jurisdiction.

(2) Sections to be Renegotiated

(a) The public benefits provided under this Franchise, including but not limited to PEG Access Channels, PEG Access Capital funds and the Institutional Network, have been negotiated by the Jurisdictions and the Grantee as an indivisible whole. Grantee has relied upon the Jurisdictions negotiating as a single entity to provide economic assurances, allowing for the consideration of these public benefits in return. The withdrawal of any Jurisdiction from the Intergovernmental Agreement shall require that Jurisdiction and Grantee to renegotiate the following Sections of this Franchise:

- Section 5.2(B) Deletion or Reduction of Programming Categories;
- Section 7. PEG Access;
- Section 8. PEG Institutional Network Capacity;
- Section 9. PEG Access Capital Funding;
- Section 12.2 Construction Plan and Schedule;
- Section 16.3 Faithful Performance Bond;
- Section 16.4 Construction Bond;
- Section 16.5 Letter of Credit;
- Section 21 Records and Reports;
- Section 24 Franchise Violations and Remedies, Expiration and Renewal; and
- Section 25.10 Notices.

The renegotiated Sections shall, to the extent practicable, continue to provide the benefits to the Jurisdiction provided hereunder, but only to the extent such benefits may be provided without any additional costs (whether by direct payment to the Jurisdiction, increased labor costs, increased material costs or otherwise) to Grantee over and above the cost it would have incurred had the Jurisdiction not withdrawn. If the parties are unable to reach agreement on the modification of these identified Sections within 90 days after the withdrawal of the Jurisdiction becomes effective, the parties may submit the renegotiation to binding arbitration, which shall take place under the terms of Section 25.3 or to mediation under the terms of Section 25.2. Until such time as an agreement with respect to a particular Section is effective, the Section as provided in this Franchise shall remain in effect as if the Jurisdiction had not withdrawn.

- (b) A withdrawing Jurisdiction will not be entitled to any of the PEG Access services provided under this Franchise, unless it continues to pay to the Access Corporation a percentage of franchise fee revenues proportionately equivalent to those paid by the remaining Jurisdictions. Grantee shall not be obligated to provide other public benefits to withdrawing Jurisdictions on any proportional basis, and a withdrawing Jurisdiction will not be entitled to any of the other public benefits provided under this Franchise, except as an ancillary third-party beneficiary of those benefits being provided by Grantee to the remaining Jurisdictions. A withdrawing Jurisdiction will not be entitled to the regulatory services of the Commission provided for under the Intergovernmental Agreement.

Section 3. DEFINITIONS

Introduction

(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 the 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. “Section” or “Subsection” means a provision of this Franchise, unless otherwise specified.

“Access Charge”

means the fee charged by Grantee to, or collected from, any Person or entity, Affiliated or otherwise, for use of all or any element of Grantee’s System Facilities for carriage of such Person’s or entity’s commercial communications to its own clients or Subscribers.

“Activation” or “Activated”

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

“Affiliated Entity” or “Affiliate”

means any entity having ownership or control in common with the Grantee, in whole or in part, including, without limitation, Grantee’s Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.

“Application Service Provider” or “ASP”

means any third party entity using the System to deploy, host, manage or provide packaged software-based services to single or multiple customers, generally on a subscription basis.

“Bandwidth”

means the frequency or range of frequencies in the electro-magnetic or optical spectrum, occupied by a Signal whether Analog or Digital. Bandwidth is generally measured for analog Signals in kHz or MHz (for example, a standard Analog television Channel generally has a Bandwidth of 6 MHz). Bandwidth is generally measured for Digital Signals in terms of the capability of the System to carry Digital bits between or among points at certain rates of speed, expressed as Bits-per-second or Bps.

“Basic Service Tier “

means the level of Programming service which includes, at a minimum, all Broadcast Channels, all PEG Access Channels required in this Franchise, and any additional Programming added by Grantee.

“Broadband”

means the always-on capability of the System to transmit voice, video, or data, including Internet access, on demand, at speeds in excess of 200 Kbps Downstream and 128 Kbps Upstream.

“Broadband Platform”

means the System Facilities used in the provision of Broadband Services to Subscribers.

“Broadband Services”

means any service delivered by a Broadband Platform, including but not limited to IP Telephony, interactive gaming, and other Broadband-capable or Broadband-enhanced services made available to Subscribers by the Grantee.

“Broadcast Channels”

means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534.

“Cable Access” or “Access”

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

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

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

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

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

“Cable Access Channel” or “Access Channel”

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

“Cable Access Corporation” or “Access Corporation”

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

“Cable Access Facilities” or “Access Facilities”

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

“Cable Access Resources” or “Access Resources”

means all operating support and other financial means by which PEG Access may be funded.

“Cable Programming Service Tier”

is any combination or package of video Cable Services generally offered by Grantor to all Subscribers, but does not include the Basic Service Tier, Pay Services, Internet access or Telephony offered over a cable Modem, or individual programs, Programming, or transactional services offered on a standalone, per-program, or per-transaction basis.

“Cable Services”

means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Capacity”

means the maximum capability of the System to carry Signals. Capacity may be described in terms of a portion of the total electromagnetic or optical spectrum.

“Capital” or “Capital Costs”

means the expenditure of funds for services, products or other resources, whose useful life can be expected to be one Year or longer.

“Channel”

means a portion of the electromagnetic or optical frequency spectrum, or technical equivalent, on the System, discretely identified and capable of carrying full motion color video, mono or stereo audio, and may include other non-video sub-carriers and Digital information.

“Clerk”

means the clerk, auditor, recorder or equivalent custodian of the official records of each Jurisdiction, or any alternate recipients designated by the Jurisdiction.

“Closed Channel”

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

“Commercial Subscribers”

means any Subscriber other than a Residential Subscriber.

“Data”

means information; raw facts or Bits. Data can be input into a computer and processed in various ways. For a computer to handle Data, it must be translated into a form the computer can intelligibly process. The smallest discrete element of Data that a computer can process is a Bit.

“Designated Access Provider”

means the entity or entities designated by the Jurisdictions under Section 7.1.

“Digital”

means any information, including but not limited to text, sound, images, or color, that has been translated into a corresponding binary series of 1s and 0s; any information may be digitized.

“Downstream”

means the direction of Signals from the Headend toward Subscribers or Interconnect points served by the System.

“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.

“Ed-Net”

means the State of Oregon’s institutional network. “Ed-Net” was originally described in ORS 354.505 through ORS 354.550 (1995). The legislature transferred responsibility for management and operation of this network to the State of Oregon Department of Administrative Services in 1997. The authority to operate this network is addressed in ORS 291.032 through 291.038 (1999).

“Facility”

means any tangible component of the System.

“FCC”

means the Federal Communications Commission.

“Fiber” or “Fiber Optic Cable”

means a transmission medium consisting of a cable made of thin fibers of glass or functionally similar material, that carries laser light impulses encoded in Digital Signals, rather than electrical energy, and is capable of transmitting large amounts of Data per second without emitting electromagnetic radiation.

“Fiber Node”

means the local transition point between the Fiber distribution portion and the coaxial distribution portion of the System.

“Franchise”

means this franchise agreement, as fully executed by the Jurisdictions and the Grantee.

“Franchise Area”

means the territory within the boundaries of the cities of Portland, Fairview, Wood Village, Troutdale, and Gresham, together with all territory within the boundaries of Multnomah County not included within the territory of any incorporated city.

“Frequency Re-use”

means the use of System Signal Capacity in a given area of the radio frequency spectrum for different transmissions to and from different locations, Hubs or user sites, simultaneously.

“Gross Revenues”

means all amounts, in whatever form and from all sources, derived from the operation of Grantee’s System to provide services authorized by this Franchise, including but not limited to Broadband, Cable, Institutional Services, and Telecommunications Services, earned either by the Grantee from the operation of Grantee’s System within the Jurisdictions, or by any Affiliated Entity to the extent such amounts are derived from the operation of Grantee’s System within the Jurisdictions. “Gross Revenues” shall include, without limitation, amounts for the Cable Basic Service Tier, Cable Programming Service Tiers, Pay Services, audio services, Subscriber installation and service transactions, Leased Access, advertising, equipment rentals, telephone services, and all other revenues derived from the operation of Grantee’s System to provide services authorized by this Franchise, including but not limited to Broadband, Cable, Institutional Services, and Telecommunications Services. Revenues which are not directly attributable to specific Subscribers, including but not limited to, Access Charges, advertising revenue and home shopping commissions, shall be allocated to systems and Jurisdictions on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Such allocation basis and its measurement shall be subject to the approval of the MHCRC. “Gross Revenues” 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 Affiliated Entity; (2) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; and (3) the amounts are initially recorded by the Grantee or an Affiliated Entity. “Gross Revenues” shall not be net of (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment. “Gross Revenues”, however, shall not be double counted. Revenues of both Grantee and an Affiliated Entity that represent a transfer of funds between the Grantee and the Affiliated Entity, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliated Entity, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee’s revenue to an Affiliated Entity and which may otherwise constitute revenue of the Affiliated Entity, shall not constitute additional Gross Revenues for purposes of this Franchise. “Gross Revenues” shall include amounts earned by Affiliated Entities only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee’s 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 (a) sales or other similar taxes imposed by law on Subscribers which the Grantee is obligated to collect (PEG support fees and Franchise Fees are not such taxes), or (b) fees and charges collected on behalf of any ISP or ASP, which is not an Affiliate of Grantee, resulting from or attributable to such ISP or ASP's provision of services to Subscribers using Grantee's Broadband Platform.

"Guarantor"

means RCN Telecom Services, Inc., a Pennsylvania Corporation, and RCN Corporation, a Delaware corporation, or their successors.

"Headend"

means Grantee's Facility for reception and dissemination of Signals on the System, including coaxial cable, Fiber Optic cable and connectors, antennas, wires, satellite dishes, monitors, switchers, modulators, processors, equipment for the Interconnection of the System with adjacent cable systems or other separate communications networks, and all other related equipment and Facilities.

"Hub"

means an intermediate location in the System between the Headend and the Fiber Nodes, where Signals are routed to the individual Fiber Nodes of the System.

"Incremental Direct Cost"

means an amount actually expended by Grantee which can be specifically identified as meeting one and only one obligation under this Franchise, and which Grantee would not otherwise have expended in order to operate and conduct the business of its System or to meet another obligation of this Franchise.

"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 System with any system or other separate communications network so that services of technically adequate quality may be sent to and received from such other systems.

"Institutional Network" or "I-Net"

means Capacity on the System of Grantee (or other systems connected with Grantee, as specified) which provides for one-way and/or bi-directional voice, video, and Data communication services, Analog or Digital, to and among Institutional Subscribers for their use. The I-Net includes all Facilities required to make such Capacity available including but not limited to Fiber, coaxial cable, switching, patching, electronic transmitting, receiving, and Signal conversion necessary for effective use of the I-Net.

“Institutional Services” or “I-Net Services”

means one-way and bi-directional communications services provided over the Institutional Network to facilitate the operations of PEG Institutions.

“Institutional Subscriber”

means a PEG Institution receiving Institutional Services.

“Internet”

means the decentralized, worldwide, interconnected network of individual computer systems, linked through a common Protocol, operated by government, business, academia, organizations, groups, and individuals.

“Internet Service Provider” or “ISP”

means an organization or company which provides Internet access to individuals, businesses, or other groups.

“Internet Protocol” or “IP”

means a standard Protocol used by systems communicating across the Internet.

“IP Telephony”

means a Service offered by Grantee whereby Subscribers can conduct real time two-way voice communications utilizing Internet Protocol technology on the System.

“Jurisdictions”

in the plural means the Oregon cities of Portland, Fairview, Wood Village, Troutdale, and Gresham, together with Multnomah County, Oregon. If any other city enters into the Intergovernmental Agreement and adopts this Franchise, and Grantee executes the Franchise and files a guaranty by the Guarantor, as provided in Sections 26 and 27, such city shall also be included with the “Jurisdictions.” “Jurisdiction” in the singular means variously, depending on the context, an individual member unit of government, such as a city or county, or to the collective units of local government which have adopted this Franchise; or the MHCRC created by the Jurisdictions pursuant to the Intergovernmental Agreement.

“Leased Access Channel”

means any Channel or portion of a Channel designated for commercial use for a fee or charge by Persons unaffiliated with the Grantee. For the purposes of this definition, “commercial use” means the provision of video programming, whether or not for profit.

“Legal Counsel”

means the city attorney or county counsel of each Jurisdiction, unless the Jurisdiction has designated an alternative recipient.

“Local Origination Programming”

means any local video Programming produced or selected under the editorial control of Grantee, or produced by a local franchisee and selected and carried by Grantee on its System.

“Modem”

means a device (peripheral or built-in) that enables separate computers to communicate intelligibly with each other when sending and/or receiving communications via Grantee’s System or any other communications system. A sender’s Modem modulates Data into Signals; a receiver’s Modem demodulates such Signals utilizing common Protocol(s) to render such Signals intelligible.

“Narrowcasting”

means the ability of the System to cablecast Signals to specific geographic areas or to a specific selected audience that is less than Grantee’s entire Subscriber base.

“Non-Commercial”

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

“Office of Cable Communications and Franchise Management”

means the Office of Cable Communications and Franchise Management of the City of Portland, Oregon, and its successors and assigns, which by agreement with the Mt. Hood Cable Regulatory Commission (MHCRC) provides necessary staff support to enable the MHCRC to carry out its official duties.

“Parent Corporation”

means Grantee’s direct and indirect parents, including RCN Telecom Holding Company, Inc., a Delaware corporation, RCN Telecom Services, Inc., a Pennsylvania corporation, and its ultimate parent RCN Corporation, a Delaware Corporation, as now or hereafter constituted, and includes any other existing or future entities with greater than fifty percent ownership or control over Grantee.

“Pay Service”

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

“PEG Institution”

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

authorized accrediting agencies; any agency of government; public libraries; and Designated Access Providers.

“Person”

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

“Programmer”

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

“Programming”

means the process of causing patterns of Signals to be transmitted on the System, and includes all programs or patterns of Signals transmitted or capable of being transmitted, on the System.

“Protocol”

means a mutually-agreeable set of rules and/or formats, including agreed-on language, used by computer programmers when writing code for specific computer (e.g. the Internet), hardware, or software applications. Computers and Networks interact according to standard Protocols, which determine the behavior that each side of a Network connection expects from the other.

“Record”

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

“Residential Services”

means Broadband, Cable, and/or Telecommunications Services delivered to single or multiple Dwelling Units.

“Residential Subscriber”

means any Subscriber receiving Residential Services.

“Residential Network”

means the System designed principally for the delivery of Residential Service to individual Dwelling Units.

“Service Area”

(A) means that portion of the Franchise Area which is within the Urban Growth Boundary, as now or hereafter constituted. In the event that the Urban Growth Boundary ceases to exist as a legal measurement, then the last existing Urban Growth Boundary shall be controlling.

(B) **“Added Service Area”**

means the portion of the Franchise Area which is added within the Urban Growth Boundary after the effective date hereof. Within the Added Service Area, Grantee shall provide Services as set forth in Section 11.5.

“Signal”

means any electrical or light impulses from sender(s) to receiver(s) carried on the System, whether Analog or Digital, including any combination of audio, video, voice or Data.

“Standard Installation”

means an installation, within the Service Area, of no more than 170 feet from the nearest Street, from which it is technically feasible and/or designed to serve the site, to the site’s installation point, and which qualifies a Subscriber for installation at standard rates.

“Standard Video Channel”

means a portion of the electromagnetic frequency spectrum which is capable of delivering both the audio and video portions of a television Signal at an acceptable level of quality to Residential Subscribers.

“Streets”

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

“Subscriber”

means any Person who is lawfully receiving, for any purpose or reason, any Broadband Services, Cable Services, or Telecommunications Services provided by Grantee by means of or in connection with Grantee’s System, whether or not a fee is paid for such service

“System”

means Grantee’s plant, Facilities, equipment, and closed Signal transmission paths, including without limitation antennas, cables, amplifiers, towers, microwave links, studios, real and personal property, and any and all other conductors, home terminals,

converters, remote control units, and all associated equipment or Facilities designed and constructed for the purposes of distributing Broadband Services, Cable Services, Institutional Services and/or Telecommunications Services to Subscribers and of producing, receiving, amplifying, storing, processing or distributing Signals, whether owned, rented, leased, leased-purchased or otherwise controlled by or within the responsibility of Grantee, or of such other cable system or communications system operator as is specifically provided herein. Unless otherwise specified, "System" refers to the Grantee's System authorized under this Franchise

"System Equipment"

means all System cable, Fiber, connections and hardware, active and passive electronics, and software required, except for User Equipment, to Activate and make available any service provided over the System.

"Tap"

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

"Telecommunications"

unless otherwise provided herein, means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Service"

unless otherwise provided herein, means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Telecommunications Services also includes the lease or sale of Indefeasible Rights of User Interest in System Facilities for Telecommunications use by any person. "Indefeasible Right of User Interest" (IRU) means a form of acquired capital in a telecommunications system, in which the holder of the interest possesses a right to use the telecommunications system, but not the right to control, maintain, construct or revise the telecommunications system.

"Upgrade"

means an improvement in Capacity or any other technical aspect of the System; or the act of making such improvement.

"Urban Growth Boundary"

means an acknowledged urban growth boundary contained in a Jurisdiction's comprehensive plan or an acknowledged urban growth boundary that has been adopted by a metropolitan service district council, (as defined in ORS 195.060(2) (1999)), governing the coordination of local government planning and urban services.

“User Equipment”

means all internal wiring; audio video or Data receiving, processing and transmitting devices in cases where Fiber is provided as part of the Institutional Network; and other related equipment required on Subscribers’ premises in order to utilize any Institutional or Residential Service through connection to System Equipment on the System.

“Upstream”

means the direction of Signals transmitted to or toward the Headend and/or away from the sender of the Signal(s), either from remote points on the System or from Interconnection points on the System.

“Year,” “Annual” or “Annually”

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

Section 4. FRANCHISE AREA

Subject to the provisions of this Franchise, Grantee shall provide Broadband, Cable and Telecommunications Services, as well as all other services necessary to meet the PEG and Institutional Network obligations under this Franchise, within the Franchise Area.

Section 5. RESIDENTIAL NETWORK AND PROGRAMMING**5.1 Channel Capacity.**

(A) Grantee shall provide to Residential Subscribers an Activated minimum Capacity of 860 MHz (providing a minimum of 110 Activated Standard Video Channels).

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

(C) Grantee’s System shall provide a minimum Activated Upstream Capacity of 35 MHz accessible from Residential Subscriber locations. This Upstream Capacity shall require no additional installation of equipment for use except on users’ premises.

(D) Nothing in the System design and implementation shall preclude the delivery of stereo Signals, including stereo Signals on PEG Access Channels. The System shall be designed so that Signals are transmitted in their entirety to Subscribers as received.

(E) Grantee shall periodically Upgrade its System as may be necessary to maintain the System’s technology at a level of capacity and performance comparable to the most advanced levels provided on a non-experimental basis in industry practice. To this end, Grantee shall, upon request at any time following the end of the seventh year of the Franchise, meet with the Jurisdictions and jointly with them determine whether an Upgrade is needed and if so, its nature, extent and timing. If an Upgrade is needed, and the Jurisdictions so order, Grantee shall implement the Upgrade. This process of determining the need for Upgrade may, at the discretion of the Jurisdictions, be made part of a Franchise renewal process.

5.2 Broad Programming Categories.

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

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

(B) Deletion or Reduction of Programming Categories.

- (1) Grantee shall not delete or so limit as to effectively delete any broad category of Programming identified in Section 5.3 and within its control without the consent of the Jurisdictions or as otherwise authorized by law.
- (2) In the event of a modification proceeding under federal law, the mix and quality of services provided by Grantee upon completion of System construction, plus the broad categories of service required by Section 5.2, and the PEG Channels required under this Franchise, shall be deemed the mix and quality of services required under this Franchise throughout its term.

5.3 Obscenity.

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

5.4 Parental Control Device.

(A) 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.

(B) Upon request by a subscriber, Grantee shall without charge, fully scramble or otherwise block audio and video programming so that one not a subscriber to that programming does not receive it. At the time of subscription and at least annually thereafter, Grantee shall inform Subscribers of (i) the possibility (if any) that the subscriber may be able to hear or view portions of the audio or video on channels to which they do not subscribe; (ii) their right to have channels blocked at no charge; and (iii) how blocking may be requested. If Grantee receives a complaint from a subscriber

about the receipt of audio or video signals to which the subscriber does not subscribe, Grantee shall inform the subscriber of the blocking option.

(C) Grantee shall respond to requests under this section at least as quickly as it responds to installation requests.

5.5 Leased Access Channels.

Grantee shall comply with applicable federal Leased Access requirements.

5.6 Broadcast Channels.

Grantee shall provide Broadcast Channels to all Residential Subscribers to the extent required by law.

Section 6. LOCAL ORIGATION PROGRAMMING

6.1 Programming Services.

Grantee shall directly or indirectly facilitate the provision of Local Origination Programming to Residential Subscribers, and shall designate not less than one Activated Local Origination Channel, available on Grantee's System for that purpose.

6.2 Interconnection and Carriage.

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

Section 7. PEG ACCESS

7.1 Designated PEG Access Providers.

(A) The Jurisdictions may designate up to 12 Non-Commercial PEG Access providers to control and manage the use of any or all Access Facilities and Resources provided by Grantee under this Franchise. To the extent of such designation by the Jurisdictions, as between the Designated Access Provider and Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities and Resources.

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

7.2 Access Channel Capacity on the Residential Network.

(A) Downstream Channels. Grantee shall provide, for use by Designated Access Providers, not less than nine (9) Activated Downstream Standard Video Channels, within

the frequency range reserved for Analog transmissions, to serve all Residential Subscribers within the Franchise Area.

(B) Closed Channel. Grantee shall provide, at its own expense, the capability to scramble one (1) of the Downstream Channels referred to in Section 7.2 (A) to serve as either an open Channel or Closed Channel at the Designated Access Provider's discretion to the extent allowed under Federal law. The Jurisdictions shall be responsible for the coordination of the Closed Channel.

(C) Digital Capacity. Grantee shall reserve, for PEG Access use, either ten percent (10%) of the total Activated Residential Network Downstream Digital Capacity or thirty-six (36) Digital Channels, whichever is less. These Channels shall have the Capacity to carry entertainment quality and full motion equivalent Channels. Grantee shall technically configure the Digital Access Channel Capacity as mutually agreed upon by the Grantee and the Jurisdictions. Grantee shall Activate Digital Capacity under this Subsection upon request by the Jurisdictions for PEG Access use in order to meet a community need identified by a Designated Access Provider.

(D) Digital Transition. At such time as Grantee no longer offers Cable Programming Service Tiers or a Basic Service Tier in an Analog format to Residential Subscribers, then Grantee may decommission analog format PEG Access Channels under Section 7.2 (A) upon sixty (60) days notice to the Jurisdictions.

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

(F) Broadband Platform. Grantee shall provide the Facilities and Capacity necessary to provide access to its Broadband Platform for PEG Access, at no charge. At a minimum, Grantee shall provide to Designated Access Providers an Activated interface, power, grounding and space to co-locate a web server and a video encoder at Grantee's Headend (server and encoder to be provided by the Access Providers). Grantee shall provide initial Capacity to transmit Access Channels and archived Access Programming at a minimum bit rate of 4 megabits per second. Grantee shall periodically review the adequacy of Capacity under Section 7.2(F) upon request of the Jurisdictions, and shall cooperate in increasing the Capacity to meet community needs and technology advances. Grantee may not restrict use of the Capacity, other than restrictions necessary for network management that apply to all.

7.3 Access Channels on Lowest Service Tier.

All Access Channels required by this Franchise shall be provided to every Cable Service Subscriber, except as otherwise provided under this Franchise. Grantee shall ensure that the Access Channels are useable by the Subscriber without any additional charge; provided that a Subscriber to only analog services may be required to pay for any converter necessary to use Digital Access Channels under Subsection 7.2(C). If Grantee offers a Basic Service Tier, all analog Access Channels will be provided as part of that tier. Digital Access Channels will be provided as part of every Digital service package, or to any Subscriber with a Digital converter or other device that enables reception of Digital Signals.

7.4 Access Channel Assignments.

(A) The Jurisdictions may designate up to twelve (12) points of origination located within the Service Area for Access Channels. Grantee shall provide the technical capability and Upstream and Downstream Capacity to transmit Signals for Access Channels from the designated origination points for carriage on Downstream Channels under Section 7.2.

(B) Upon Activation of the System to provide any services in each Fiber Node area, Grantee shall provide assignments for PEG Access Channels and Narrowcast such Access Channels to particular service areas as follows:

- (1) Channel 11 - Public Access (discrete City of Portland and other Jurisdictions)
- (2) Channel 21 - Public Access (discrete City of Portland and other Jurisdictions)
- (3) Channel 22 - Public Access (discrete City of Portland, discrete City of Gresham, discrete Multnomah County, Fairview, Troutdale, and Wood Village combined)
- (4) Channel 30 - Government Access (discrete City of Portland, discrete City of Gresham, discrete Multnomah County, Fairview, Troutdale, and Wood Village combined)
- (5) Channel 27 - Educational Access (Portland Community College service area and Mt. Hood Community College service area discretely)
- (6) Channel 23 - Public Access (discrete City of Portland and other Jurisdictions)
- (7) Channel 28 - Educational Access (Each public school's service area within the Franchise Area discretely)
- (8) Channel 29 - Public Access (discrete City of Portland and other Jurisdictions)
- (9) Channel 26 - Public Access (discrete City of Portland and other Jurisdictions)

(C) PEG Access Channel assignments, as provided under this Section, may be adjusted or reassigned only with the specific written approval, in advance, of the Jurisdictions. Grantee shall provide at least ninety (90) days notice of any such changes in the Analog Access Channel assignments to ensure consistency with the analog PEG Access Channel designations of other franchised Cable Service providers within the Jurisdiction; and shall cooperate with the Jurisdictions to assign Channel designations for Digital Access Channels in a manner that helps achieve consistency in such designations among systems serving the Franchise Area. If technology changes render Channel assignments obsolete, Grantee shall negotiate with the Jurisdiction to determine equitable placement of Access Channels.

7.5 Additional Access Requirements.

(A) Access to I-Net and Interconnect. Grantee shall provide Activated Channel Capacity sufficient to enable Signal transmission to and from Interconnection points on the System, including I-Net Facilities.

(B) Simultaneous Use of Upstream Capacity. The System shall provide functioning ability to transmit Digital or Analog PEG Access Programming Upstream from live

origination points under Subsection 7.5(C) and return the Programming on Downstream Channels and on all Interconnection links simultaneously.

(C) Live Origination Points. Grantee shall provide, at a minimum, the transmission capability for Designated Access Providers to originate discrete, live Programming, in either Digital or Analog format, from 60 points or sites throughout the Service Area. During System construction under Section 12, and upon receiving planned System maps under Section 8.1(C), the Jurisdictions shall notify Grantee of specific live origination points to Activate. Once construction is completed under Section 12 and if fewer than 60 origination points have been identified to Grantee, the Jurisdictions may notify Grantee of additional live origination points to Activate, up to a total of 60 points. For those points Activated after completion of construction, Grantee may charge the Incremental Direct Cost to construct from the origination point to the nearest Fiber Node, and shall Activate such points within 60 days of a request.

(D) Access Interconnect Capacity.

- (1) Grantee shall provide an Activated Fiber Optic Interconnect between its System Headend and each of the Access Channel origination points under Section 7.4(A).
- (2) Should Grantee for any reason Interconnect with another cable operator's headend, Grantee shall inform the Jurisdictions of the proposed Interconnection, and at the Jurisdictions' request, shall provide an Activated Interconnect with sufficient Capacity and capability to transmit Access Channels under Subsection 7.2(A) and (C). Grantee shall be responsible for all Capital Costs to accomplish the Interconnection of Access Channels, including all design, engineering, equipment and installation necessary for the transmission of all Analog and Digital Channels from each Access Channel origination point under Section 7.4(A). 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.
- (3) The Jurisdictions may require Grantee to Interconnect with any other cable system contiguous to or within the Franchise Area at such cable system's headend or at Grantee's Headend for PEG Access purposes. If the Jurisdictions require such Interconnections in conjunction with either System construction under Section 12, or I-Net construction under Section 12 and Section 8.1(C), then Grantee shall provide the Interconnection at no cost to the Jurisdictions. If the Jurisdictions require such an Interconnection without reference to Sections 12 or 8.1(C), then Grantee may charge the Jurisdictions the Incremental Direct Cost for such Interconnection.
- (4) Any connections or Interconnection may be in addition to or redundant to those provided by other entities under their respective franchises with the Jurisdictions.
- (5) The Jurisdictions may, at their discretion, temporarily waive an Interconnection requirement where Grantee proposes another, equally effective means of achieving the same ends.

(E) Narrowcast Capability. To the extent feasible given System design, Grantee shall use good faith efforts to configure the System to allow Designated Access Providers to

Narrowcast Programming to Subscribers within the specific geographic areas as set forth in Section 7.4(B) as such areas exist at the time of construction.

7.6 Charges.

All of the Channels, 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 Jurisdictions or to any Designated Access Provider, except as specifically provided for in Section 7.

7.7 Change in Technology.

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

7.8 Change in Designated Access Provider Location.

Grantee shall provide all obligations in this Section 7 to the Designated Access Provider locations in place on the effective date of this Franchise. If the Jurisdictions designate new Access providers or if a current Designated Access Provider moves its site or location at its own instigation after the connection is provided by Grantee, the Designated Access Provider and/or the Jurisdictions will fund the Incremental Direct Cost to construct the System from the new site or location to the nearest Activated Fiber Node. Grantee shall be responsible for providing all capabilities under Section 7 for new Access locations, except for the construction cost from the new site to the Fiber Node.

7.9 Timing.

Unless otherwise specifically stated herein, Franchisee must provide all the facilities and equipment (including but not limited to the Interconnections required hereunder) and Activate required PEG Channels by the same time it first begins providing service to any Subscriber.

7.10 Technical Quality.

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

(B) Grantee shall have no responsibility for the technical quality of the Access Programming until the Signals are delivered to its System.

(C) In order to permit effective monitoring of the quality of Access Channel Signals by Access Providers and the Jurisdictions, Grantee shall install a residential drop at each Designated PEG Access Provider's site under Section 7.1(A) hereof, and at the Office of Cable Communications and Franchise Management. These installations shall be

completed within the initial construction period, as residential Fiber Nodes are Activated in or near areas containing the drop sites.

Section 8. PEG INSTITUTIONAL NETWORK

8.1 Institutional Network Enhancement

(A) The Jurisdictions and Grantee acknowledge that Grantee's obligations to construct, install, Activate, Interconnect and maintain Institutional Network Facilities are meant to supplement and enhance the I-Net installed and operated by the incumbent Cable Services Franchise holders. I-Net Facilities may include, but are not limited to, Fiber Optic cable, coaxial cable, equipment, services, conduit, Jurisdiction-owned conduit or Fiber Optic cable, and space in Grantee-owned Facilities. However, it is also the intent of the Jurisdictions to ensure that the functionality of the I-Net it obtains through this Franchise, or through other franchises, should not be affected by the entrance and exit of entities from the marketplace. Therefore, the Jurisdictions may (i) require duplication of Facilities where it deems it necessary; (ii) require Grantee to provide, at no charge, connections required for PEG purposes, as contemplated by Section 7.5(F); and (iii) require Grantee to transfer control of its I-Net to another person, at no charge, should it appear that Grantee is unable to carry out its obligations under this Franchise.

(B) In order to facilitate effective I-Net enhancement by the Grantee, in a manner that allows the Jurisdictions the optimal benefits of Incremental Direct Cost for I-Net Facilities, Grantee shall, throughout the life of the Franchise, 1) involve the Jurisdictions in each phase of the System design, construction and Activation; 2) provide cost estimates, at the Jurisdictions' request, for I-Net Facilities; and 3) allow a reasonable period of time for the MHCRC to make decisions about I-Net Facilities it wishes to fund; and 4) cooperate in I-Net planning efforts of the Jurisdictions.

(C) In conjunction with the System construction under Section 12, Grantee shall submit to the Jurisdictions, planned System strand maps, RF design maps and Fiber route maps. Within thirty (30) days of receiving the maps, the Jurisdictions shall notify Grantee of specific I-Net Facilities to include in the System design and to provide cost estimates for such facilities. The Jurisdictions shall notify Grantee, within sixty (60) days of receiving cost estimates and detailed I-Net Facilities design, which I-Net Facilities it wants constructed, installed, Activated or Interconnected and which I-Net Facilities shall be Grantee-owned or Jurisdiction-owned. Grantee shall, within 60 days of a cost estimate and design approval by the Jurisdictions or at the same time as Grantee Upgrades or constructs its System Facilities, construct or Upgrade I-Net Facilities requested by the Jurisdictions. Grantee may charge the Jurisdictions for the requested I-Net construction, installation, Activation or Interconnection in an amount no greater than the Incremental Direct Cost to Grantee, except that to the extent Grantee constructs, installs, Activates or Interconnects requested I-Net facilities not in conjunction with its own System construction under Section 12, Grantee's charges to the Jurisdictions shall be limited to Incremental, Direct Capital Costs of equipment and materials.

(D) Grantee shall construct, install, Activate and Interconnect I-Net Facilities at the request of the Jurisdictions throughout the life of the Franchise. Following completion of System construction under Section 12, at any time during the term of the Franchise,

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Grantee shall provide the Jurisdictions with its plans, including route maps, for any construction or Upgrade of System Facilities. Within 30 days of receiving the plans, the Jurisdictions shall notify Grantee of specific I-Net Facilities to include in the System design and to provide cost estimates for such I-Net Facilities. The Jurisdictions shall notify Grantee, within 60 days of receiving cost estimates and detailed I-Net Facilities design, which I-Net Facilities it wants constructed, installed, Activated or Interconnected and whether the I-Net Facilities shall be Grantee-owned or Jurisdiction-owned. Grantee shall, within 60 days of a cost estimate and design approval by the Jurisdictions or at the same time as Grantee Upgrades or constructs its System Facilities, construct or Upgrade I-Net Facilities requested by the Jurisdictions.

(E) I-Net Facilities may be incremental to Grantee's System, such as additional Fiber strands in a planned cable, or additional space in a planned equipment shelter. In cases where I-Net Facilities are incremental to Grantee's System, Grantee shall own and maintain the I-Net Facilities for use by I-Net Subscribers. Other I-Net Facilities requested by the Jurisdictions may be stand-alone, such as separate cables (either along Grantee's route for its System or a separate route), or separate conduit (placed in Grantee's trench or on a separate route). The Jurisdictions shall own the stand-alone facilities. At the Jurisdictions' request, and pursuant to Subsections 8.3 (B) and (C), Grantee shall maintain and repair Grantee-owned or Jurisdiction-owned facilities which Grantee has constructed, Activated or Interconnected.

(F) Grantee shall sign over ownership rights of any stand-alone I-Net Facilities that are constructed, installed, Activated or Interconnected at the request of the Jurisdictions. The use of these I-Net Facilities shall be subject to the Limits of Use in Section 8.6.

(G) At the request of the Jurisdictions, Grantee shall meet requirements for placing I-Net Facilities including but not be limited to, the following:

- (1) Underground conduit: Requested conduit may be placed in the same trench as planned construction, or along independent routes. This is a stand-alone asset and shall be owned by the Jurisdictions.
- (2) Aerial duct: Requested aerial duct may be lashed in-common to planned aerial routes. This asset shall be owned by the Jurisdiction.
- (3) Fiber Optic cable: Requested cables, whether placed in Jurisdiction-owned or Grantee-owned duct or attachments, shall be owned by the Jurisdictions.
- (4) Fiber Optic strands: The Jurisdictions may request additional strands be included in a Grantee-planned cable, for exclusive use by the Jurisdictions. This asset shall be owned by Grantee.

(H) Hardware installation or splicing: Equipment or services, such as Fiber splicing or hardware specific to the I-Net, shall be provided by Grantee at Incremental Direct Cost to other purchasing or field activities, with the per-unit costs determined by the larger efforts of Grantee. Upon completing construction, installation, Activation or Interconnection of I-Net Facilities, Grantee shall submit to the Jurisdictions a deed or other form of documentation, in a form acceptable to the Jurisdictions, indicating Jurisdiction ownership of stand-alone I-Net Facilities. Upon written request from the

Jurisdictions, Grantee shall facilitate access to I-Net Facilities (whether Grantee-owned or Jurisdiction-owned) at the Incremental Direct Cost of such access.

(I) Grantee shall make space available in the System Headend and reserve a minimum of three (3) six (6)-foot rack spaces in each Hub for I-Net Facilities, both Company-owned and Jurisdiction-owned. Grantee shall be responsible for battery-backed DC power at the Headend and Hubs for I-Net equipment.

(J) Ducts for I-Net Purposes

- (1) Together with the materials submitted under Subsection 8.1 (C) or (D), Grantee shall indicate what Facilities will be underground. If requested by the Jurisdictions, after such notification, Grantee shall install for the Jurisdiction one duct for each duct that Grantee installs, up to four ducts, or one single four-inch (4") duct, for municipal purposes. If Grantee is joint trenching its ducts with another franchisee, the parties may jointly satisfy the requirements of this section through the provision of one duct for each duct installed, up to four ducts, or one single four-inch (4") duct. The cost of such ducts may not be deducted from any fees payable to the Jurisdiction, or otherwise be charged to the Jurisdiction. Upon completing installation and construction of any such ducts in the Streets of any Jurisdiction, Grantee shall submit to the Jurisdiction a deed or other form of ownership documentation, in a form acceptable to Legal Counsel, indicating the Jurisdiction's ownership of such ducts. Upon written request from the Jurisdiction, Grantee shall facilitate access to the Jurisdiction's ducts at the Jurisdiction's expense.
- (2) By no later than December 31, 2000, Grantee and the Jurisdictions may agree on an amount to be paid to the Jurisdictions for I-Net purposes in lieu of the requirements of Subsection 8.1(J)(1). Such payment shall consist of, at a minimum, the estimated total cost to Grantee of installing ducts for the Jurisdictions under Subsection 8.1(J)(1). The payment shall be based upon a calculation of the estimated miles of underground System plant to be built in the Service Area multiplied by the Duct Installation Cost. For purposes of this Subsection, "Duct Installation Cost" shall mean Grantee's incremental cost per foot of duct installation which Grantee would have incurred through "open trench" construction, including conduit, trenching, backfill, dirt disposal and labor for installing the ducts which would otherwise be provided under Subsection 8.1(J)(1). In determining the overall payment, Grantee and the MHCRC shall further consider whether the duct could be provided through joint trenching. The payment schedule shall be over a reasonable period of time. The overall amount of the payment, as well as the payment schedule, shall be subject to the mutual agreement of the Grantee and the MHCRC. If the Grantee and the MHCRC agree upon a total payment amount and a payment schedule, then after these terms have been approved in writing by the MHCRC, these terms shall be incorporated into this Franchise as if set forth in full within this Subsection.

8.2 Jurisdictional Use of Surplus Ducts.

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

request by the Jurisdictions, Grantee shall install or affix and maintain wires and equipment for I-Net purposes within any of Grantee's surplus ducts or conduit. All work to affix and/or maintain Jurisdiction wires and equipment for I-Net purposes shall be performed by Grantee and shall be performed at an expense to the Jurisdictions no greater than the Incremental Direct Cost to the Grantee.

8.3 Management, Maintenance and Usage Fees for I-Net Facilities.

(A) The Jurisdictions may designate I-Net Facilities Management Entity or Entities, including itself, to control and manage use of any or all I-Net Facilities provided by Grantee under this Franchise. To the extent of such designation by the Jurisdictions, as between the I-Net Management Entity and the Grantee, the I-Net Management Entity shall have sole and exclusive responsibility for overseeing and managing the use of such I-Net Facilities.

(B) Grantee shall provide the I-Net Management Entity with a reliable level of repair and maintenance, consistent with what Grantee makes available to commercial or Residential Subscriber of the System. At a minimum, Grantee shall meet the following performance standards for I-Net Capacity and Services:

- (1) Grantee shall make I-Net Services and Capacity available to PEG Institutions within thirty (30) days of a written request.
- (2) Grantee shall maintain a minimum of Ninety nine point nine percent (99.9%) service availability to an I-Net Subscriber measured over a period of one (1) Year.
- (3) Grantee shall respond to repair requests from the I-Net Management Entity at any time within two (2) hours of the request.
- (4) Grantee shall provide ongoing maintenance at its discretion, as it deems necessary. Grantee shall provide at least one week advance notice to the I-Net Management Entity of any maintenance requiring temporary interruption of services, except in emergency situations.
- (5) Grantee and I-Net Management Entity shall develop a mutually agreeable priority listing of critical circuits and their terminal locations. When notifying Grantee of service complaints, the Management Entity shall identify critical circuits requiring priority repair. Grantee shall escalate repair of critical circuits to the extent reasonable under the circumstances.
- (6) When Grantee responds to repeat requests for service and there is no I-Net problem found, Grantee may charge the I-Net Management Entity for the service call at a reasonable rate.
- (7) All service agreements between Grantee and I-Net Management Entities or I-Net Subscribers shall, at a minimum, meet the requirements of this Franchise. If an I-Net Management Entity or I-Net Subscriber and Grantee are unable to mutually agree on the terms of a service agreement, the Jurisdictions shall make a final determination consistent with the terms of this Franchise.

(C) At such time that the I-Net Management Entity is using I-Net Facilities on the System, Grantee may charge the I-Net Management Entity a periodic fee for maintaining

and repairing I-Net Facilities. The fee shall only include the Incremental Direct Cost for maintaining and repairing I-Net Facilities, either Grantee-owned or Jurisdiction-owned, and shall not include the value of the use of such Facilities. Grantee shall pay all pole attachment fees, easements and permitting fees for the construction of I-Net Facilities. Grantee shall Annually establish the fee based on reasonable projections for maintenance costs for the following Year and on actual maintenance costs for the previous Year.

8.4 Interconnection of I-Net to Other Systems.

(A) Upon request by the Jurisdictions, Grantee shall Interconnect I-Net Facilities to:

- (1) Other Institutional Networks of cable operators serving jurisdictions contiguous with the Franchise Area;
- (2) The Fibers set aside for Jurisdictional use under other Telecommunications franchises, insofar as such Interconnection is technically feasible; and
- (3) Any other Jurisdiction-owned or -operated communications systems, insofar as such Interconnection is technically feasible.

If the Jurisdictions authorize such Interconnection, the Jurisdictions shall pay Grantee no more than the Incremental Direct Cost of such Interconnection.

(B) The Jurisdictions understand that Interconnection requires cooperation from other network operators. The Jurisdictions shall make every reasonable effort to assist Grantee in achieving the cooperation necessary to realize Interconnection.

8.5 Limits on Use.

The I-Net may be used by PEG Institutions for Non-Commercial, public, educational and governmental purposes, and for the transmission of Programming, but for no other purpose.

Section 9. PEG ACCESS CAPITAL FUNDING

9.1 Annual Payments

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

(A) Grantee shall pay to the Jurisdictions one percent (1%) of Gross Revenues, excluding Gross Telecommunications Revenues as defined in Section 10, to provide support for Access Corporation Capital Costs funds. Pursuant to the terms of agreements between the Access Corporations and the Jurisdictions, the Jurisdictions shall use these funds to defray Access Capital Costs identified by the Access Corporations in their approved budgets. Funds not utilized in the year provided may be carried over into future years for Access Capital Costs and/or the Jurisdictions may apply such carryover amounts to funds granted by the Jurisdictions under Section 9.1(B).

(B) Grantee shall pay to the Jurisdictions one percent (1%) of Gross Revenues, excluding Gross Telecommunications Revenues as defined in Section 10, as a dedicated Access Capital Development Fund to be granted by the Jurisdictions to PEG Institutions for

Capital projects. If the Jurisdictions approve grant projects that involve construction by the Grantee, the grant recipients shall pay no more than Incremental Direct Cost for such construction.

(C) Grantee shall pay to the Jurisdictions one percent (1%) of Gross Revenues, excluding Gross Telecommunications Revenues as defined in Section 10, to be used at the Jurisdictions' discretion for Institutional Network Capital or PEG Access Capital purposes, subject to Sections 9.1 (D) and (E) below.

(D) During the construction of the System under Section 12.2, instead of actual cash payments to the Jurisdictions under Section 9.1 (C), Grantee shall advance an in-kind credit line of up to \$1,500,000. The Jurisdictions may use the line of credit for funding I-Net Facilities in accordance with Section 8.

(E) Subsequent to completion of construction under Section 12.2, Grantee shall increase or reduce payments under Section 9.1(C) to account for the difference (the "Difference") between (a) the total cumulative in-kind credit amount actually used by the Jurisdictions and (b) one percent (1%) of Gross Revenues, excluding Gross Telecommunications Revenues as defined in Section 10, earned during the construction period. Such payment adjustments shall be made in accordance with a schedule agreed on between Grantee and the MHCRC, beginning with the payment for the second calendar quarter subsequent to completion of construction, until the entire Difference has been accounted for. In no event shall the adjustment made to each quarterly payment be less than six and one-quarter percent (6.25%) of the total Difference accrued during construction, except that the Jurisdictions shall never be required to refund monies to the Grantee under this provision.

9.2 Payments.

Following the effective date of this Franchise, Grantee shall make quarterly payments to the Jurisdictions under Sections 9.1 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, provided that this schedule shall be subject to the provisions for advance payment under Section 9.1(C).

9.3 PEG Access Support not Franchise Fees; Applicable Federal Law.

Grantee agrees that financial support for Access Capital Costs arising from or relating to the obligations set forth in Section 9 shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the Jurisdictions. Grantee agrees that although the sum of franchise fees, payable under Section 15, and the payments set forth in Section 9, 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 Section 15 of this Franchise.

9.4 Review of Records.

Grantee may inspect Records of the Jurisdictions and the recipients of the PEG Access Capital Costs funds at any time during normal business hours and upon reasonable notice

regarding the use of funds under Section 9 in order to determine whether such use is in accordance with the purposes of PEG Access or I-Net Capital Costs as defined in this Franchise.

Section 10. TELECOMMUNICATIONS

10.1 Definitions.

For purposes of this Section 10, the following definitions shall apply:

“Gross Telecommunications Revenues”

means Gross Revenues derived by Grantee from the operation of the System for the provision of Telecommunications Services (i) originating or terminating in the Jurisdiction and (ii) attributable to a circuit location in the Jurisdiction regardless of where the circuit is billed or paid.

“Telecommunications System”

means all wires, cables, ducts, conduits, vaults, poles and other necessary Facilities owned or used by the Grantee for the purpose of providing Telecommunications Services and located in, under and above Jurisdiction Streets, excluding ducts, conduits and vaults leased from another Jurisdiction franchisee, licensee or permittee.

10.2 Certification

This Franchise does not authorize Grantee to operate as a competitive telecommunications provider in the State of Oregon. Grantee represents that it has applied for and received all necessary regulatory authority, including certification from the Public Utility Commission of Oregon.

10.3 Use of Grantee System limited to Franchisees

Nothing in this Franchise shall preclude the Grantee from entering into a contract for the use of any portion of its Telecommunications System with any Person or other entity for any services, whether specified herein or not, provided that said Person or entity is another Franchisee, licensee, or permittee and has assumed responsibility for obtaining any required authority from the Jurisdiction.

10.4 Jurisdiction Use of Telecommunications Services and/or Telecommunications System.

If the Jurisdiction requests Telecommunications Services from Grantee, other than as provided under Section 8, Grantee may deduct the charges for such services from Franchise fee payments. Grantee shall charge the Jurisdiction Grantee's most favorable rate offered at the time of the Jurisdiction's request charged to a similar user within Oregon for a similar volume of service, subject to any of Grantee's tariffs and regulations on file with the Oregon Public Utility Commission. Other terms and conditions of such services shall be specified in a separate agreement between the City and Grantee.

10.5 Acquisition of other Telecommunications System Facilities.

Upon Grantee's acquisition of any Telecommunications System Facilities in the Streets, or upon any addition or annexation to the Jurisdiction of any area in which Grantee retains any such Facilities in the Streets, Grantee shall submit to the Jurisdiction a written statement describing all Facilities involved, whether authorized by franchise or any other form of prior right, and specifying the location of all such Facilities. At the Jurisdiction's sole option, as expressed by ordinance or resolution adopted by the Jurisdiction governing body, Facilities acquired by Grantee shall immediately be subject to the terms of this Franchise, within a reasonable period of time to bring such acquired Facilities into compliance with this Franchise.

10.6 Certification for 911

In providing Telecommunications Services, Grantee shall fully participate and comply with all applicable State requirements regarding 911 services.

10.7 Compensation for Sale of Facilities

(A) As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets, the Grantee shall pay Franchise fees to the Jurisdictions, through the duration of this Franchise, in accordance with Section 15. However, revenues which are derived from the sale of Facilities shall be excluded from the Gross Revenues on which franchise fees are based under Subsection 15.1(A). This exclusion applies only to the outright sale of Facilities, and does not apply to any lease or grant of an IRU of any portion of the System, nor to the Grantee's provision of Leased Access Channels, nor to any Access Charges earned by the Grantee for carriage of Internet access services or other Broadband or Telecommunications Services provided by third parties.

(B) As additional compensation to the amounts set forth in Subsection 15.1(A):

- (1) In the event Grantee sells any portion of its System, Grantee shall pay a one-time franchise fee to the Jurisdictions of one percent (1%) of the sales price.
- (2) The calculation of the one percent (1%) franchise fee allocable to any Jurisdiction on sale revenues shall be based on the sale price of the appropriate Jurisdiction's portion of the System. The calculations of the one percent franchise fee on sale revenues shall be calculated under the following formula:

Franchise fee = (.01) X Ts X (Fp ÷ Ft), where:

Ts = Total sales price for the Facility;

Fp = the length of the Facilities sold, located within the Jurisdiction, expressed in fiber-miles; and,

Ft = the total length of the Facilities sold, expressed in fiber-miles.

An illustrative example of this calculation would be as follows: Out of a fiber optic bundle of twenty four (24) fibers in a forty mile loop, Grantee sells two (2) fibers to a purchaser for a total sales price of five hundred thousand dollars (\$500,000). Ten miles

of the fiber optic loop are located within the City of Portland. The calculation would be as follows: Franchise fee allocable to the City of Portland = $(.01) \times \$500,000 \times ((2 \times 10) \div (2 \times 40)) = \$1,250$.

Section 11. SERVICE, CONSTRUCTION, AND INTERCONNECTION

11.1 Universal Service.

Grantee shall provide all services authorized under this Franchise, including but not limited to Broadband, Cable and Telecommunications Services to all Subscribers in the Franchise Area under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide such services to any Person within the Franchise Area.

11.2 Standard Installation.

Except as otherwise provided in Sections 11.3, 11.4 and 11.5, Grantee shall provide Standard Installation of Residential Services within sixty (60) days of a service request to all Residential Subscribers and PEG Institutions throughout the Service Area at Grantee's published rates and charges. However, until the date scheduled for completion of System construction, this obligation need only be met in areas served by Activated portions of Grantee's System

11.3 Isolated Installations.

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

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

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

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

11.4 New Subdivisions.

Subject to Section 11.6, Grantee shall provide Broadband, Cable, and Telecommunications Services in new subdivisions within 60 days of the time when:

(A) At least fifty percent (50%) of the subdivision's potential Dwelling Units have been issued building permits;

(B) A Dwelling Unit in the subdivision has requested service; and,

(C) The new subdivision is planned in a way which, when fully developed, would provide at least twenty (20) Dwelling Units per cable plant mile as measured from the nearest point on the existing System.

11.5 Added Service Area.

Within any Added Service Area, Grantee shall provide the services authorized under this Franchise, including but not limited to Broadband, Cable and Telecommunications Services, when there is an average density of at least twenty (20) Dwelling Units per mile of any cable plant extension necessary to provide Cable Services to such area.

11.6 Installation and Service for Schools

Grantee shall provide without charge the Basic Service Tier and Cable Programming Service Tiers, and one (1) Standard Installation, to all Schools in the Franchise Area. Extensions in excess of the Standard Installation shall be subject to the isolated installations formula of Section 11.3. For purposes of Subsection 11.7, "Schools" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.

Section 12. SYSTEM CONSTRUCTION

12.1 System Design.

(A) Grantee shall construct the System as required to meet the technical specifications and all other requirements of this Franchise. All equipment shall be of the highest level of quality by common industry standards. The System shall incorporate hybrid Fiber/coaxial cable design, with Fiber Nodes. The Fiber Nodes shall serve an average of no more than 150 homes each. The System shall include a Broadband Platform, and all Facilities and equipment in place, tested and Activated so that high-speed Internet Access can be provided to Subscribers, beginning at the time each Fiber Node is Activated to provide Residential Services. Grantee's System shall meet all minimum FCC standards that are in effect for cable systems at the time of construction.

(B) Grantee may use any transmission technology (as that term is defined in federal law), provided that the System is designed so that it will have characteristics that in all relevant respects meet or exceed the characteristics of the System described in this Franchise, including but not limited to, the following:

- (1) the System must have adequate, initial Activated Capacity and additional available installed Capacity that can be Activated without the addition of active components to the plant;
- (2) the System must be highly reliable compared to the most modern cable systems being constructed;
- (3) the System must be designed so that it can be configured to deliver more Bandwidth to and from each Subscriber, without substantial delay or construction;
- (4) the System must be able to respond to changing consumer needs and interests with the minimum delay or disruption;

- (5) the System must be designed to meet emergency standby power, emergency override and Headend performance requirements under Section 13.3;
- (6) the System must be designed so that the amount of required maintenance, and the mean time to repair, is minimized;
- (7) System Equipment must receive all closed captioned Signals and provide such signals to Subscribers so long as the closed caption Signal is originated consistent with FCC standards;
- (8) the System must transmit to Subscribers all local Signals received in stereo or with secondary audio tracks (broadcast and Access). In the case of AM/FM radio transmission, the above specifications, where applicable, shall apply; and,
- (9) Grantee must provide Facilities and equipment for PEG Access that have the functionality, reliability, expandability and scalability of the most modern PEG and I-Net Facilities being provided in any Jurisdiction.

If Grantee does not build the System required by this Franchise, and the Jurisdiction, in its sole discretion, determines that the System does not, or is not likely to satisfy the requirements of this Section 12.1(B), or to comply with any enforceable provision of Sections 12 through 13, the Jurisdiction may direct Grantee to modify its System design to the Jurisdiction's satisfaction so that the same are satisfied, with the modifications completed as part of the construction of the System, in accordance with the deadlines specified in Section 12.2.

12.2 Construction Plan & Schedule.

(A) Grantee shall Commence Construction of the System no later than six (6) months following the effective date of the Franchise. Grantee shall complete construction and Activation of the System throughout the Franchise Area by March 31, 2006.

(B) Grantee estimates that its System will have a total of 1,650 Nodes, and agrees that the Jurisdictions shall use this total number of Nodes to monitor the progress of System construction under Subsections 12.2(B)(1-5). Grantee shall construct the System in accordance with the following schedule:

- (1) Phase One Completion Area. Within eighteen (18) months of the Effective Date, Grantee shall construct and Activate at least 75 Nodes.
- (2) Phase Two Completion Area. Within thirty (30) months of the Effective Date, Grantee shall construct and Activate at least two-fifths (2/5ths) of the Total Nodes within the Service Area.
- (3) Phase Three Completion Area. Within forty-two (42) months of the Effective Date, Grantee shall construct and Activate at least three-fifths (3/5ths) of the total Nodes within the Service Area.
- (4) Phase Four Completion Area. Within fifty-four (54) months of the Effective Date, Grantee shall construct and Activate at least four-fifths (4/5ths) of the total Nodes in the Service Area.

(5) Completion of Construction. No later than March 31, 2006, Grantee's System shall be complete.

(C) Changes and Delays

(1) Changes. Any changes to the construction schedule shall be subject to approval by the Jurisdictions, and shall preserve the overall System construction progress represented in the schedule prior to the changes.

(2) Delays.

(a) If Grantee believes that its ability to complete the system construction has been materially affected due to either i) unreasonable delay in obtaining permits for system construction, or ii) unreasonable delays in receiving pole application approvals, Grantee shall provide written notice to the Jurisdictions requesting an extension of the construction schedule.

(b) After receiving notice from Grantee under Subsection 12.2(C)(2)(a), the Jurisdictions shall schedule a hearing within sixty (60) days to determine the nature and extent of the delay, and whether to provide any extensions in the construction schedule. The hearing procedures shall follow those adopted by the MHCRC. Any extensions shall be limited to no more than the delay directly caused by the reasons cited by Grantee in its request for an extension under Section 12.2(C)(2)(a). The Jurisdictions shall act reasonably in responding to Grantee's request for an extension. Any extensions shall be limited to no more than the delay directly caused by the reasons under Subsection 12.2(C)(2)(a)(i) and (ii) cited by Grantee in its request for an extension.

(D) In addition to the planned System maps under Section 8.1(C), Grantee shall submit to the Jurisdictions its final System strand maps, RF maps and fiber route maps for each phase prior to Commencement of Construction on each phase. The final System maps shall include, but are not limited to, as applicable to each phase, the overall design of the System (including maps and design documentation), routing of plant, the Fiber count in Fiber cable, the location of the Headend, Hubs and Fiber Nodes, specifications for all major electronic equipment to be used, and information demonstrating that the System will meet or exceed all Franchise requirements. If Grantee claims any portion of the information required is a business or trade secret or proprietary information and wishes to protect such information against disclosure, then Grantee may invoke the procedures provided for under Section 21.6(B) of this Franchise.

(E) Grantee shall provide quarterly written progress reports to the Jurisdictions during construction, and shall meet with the Jurisdictions, as requested by the Jurisdictions, to discuss the progress of System design and construction.

(F) At such time as Grantee has completed the construction of the System, Grantee shall send written notice to the Jurisdictions. The Mt. Hood Cable Regulatory Commission shall have one (1) year from receipt of such notice to make a final determination as to whether Grantee has satisfactorily completed construction in accordance with this Franchise. The MHCRC shall report to the Jurisdictions its findings, conclusions, and any applicable recommendations in conjunction with such final determination.

(G) For the purposes of Section 12, to "Commence Construction" means to begin installation of any part of the System or milestone phase thereof, including, but not limited to, the construction or modification of any Facility, building or structure, or the stringing of any strand wire or cable, or the laying of any conduit, or the installation of any active or passive electronic equipment to facilitate the required System construction. If necessary, the Jurisdictions shall have final authority to determine if Grantee has satisfactorily commenced construction under this Subsection.

(H) As-built maps shall be provided to the Jurisdictions no later than sixty (60) days following the Activation of each Hub site during construction. Grantee shall provide maps to the Jurisdictions showing the location of Grantee's System in the Streets on a scale of Three thousand five hundred feet (3,500') per inch or whatever standard scale the Jurisdictions adopt for general use. Grantee shall also provide such maps in an electronic format acceptable to the City Engineer for each Jurisdiction.

12.3 Quality and Workmanship.

The System constructed or erected by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

12.4 Inspection of Construction.

The Jurisdictions shall have the right to inspect any construction or installation work performed under this Franchise. The Jurisdictions shall have the right to make such tests as they deem necessary to ensure compliance with the terms of this Franchise and applicable provisions of law.

12.5 Construction for PEG Access and I-Net.

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

Section 13. TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS

13.1 Technical and Safety Standards.

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

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

(C) Grantee shall install and maintain its System in accordance with the requirements of the National Electrical Safety Code, and in such manner that the System shall not

interfere with any installations of the Jurisdictions or any public utility or Institutional Network user, or any franchisee, licensee or permittee of the Jurisdictions

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

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

13.2 Performance Testing.

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

- (1) All tests required by the FCC;
- (2) All other tests specified in this Franchise; and,
- (3) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise.

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

- (1) Proof of performance when Activating any new construction;
- (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
- (3) Tests in response to Subscriber complaints;
- (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, Headend (satellite receiver) systems, and condition of standby power supplies; and,
- (5) Cumulative Leakage Index tests, at least Annually, designed to insure that one hundred percent (100%) of Grantee's System has been ground or air tested for Signal leakage in accordance with FCC standards.

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

(D) Grantee shall perform System tests twice each calendar year, at intervals of no greater than every seven (7) months, at a number of randomly chosen Subscriber television receiver connections in the Franchise Area corresponding to at least the minimum number of test points for the size of Grantee's System as specified in FCC regulations. Tests may be done at actual television receiver connections or at connections to the System which are the equivalent of standard Subscriber connections, including 100-foot cable drops that are connected to the Subscriber Tap. The Jurisdictions shall be given the opportunity to review and approve test sites in advance. At least one-third of the test locations shall be at the far end of the distribution trunk cables. Test points shall include locations with drops configured for each service tier offered by Grantee. The tests may be witnessed by representatives of the Jurisdictions, and Grantee shall inform

the Jurisdictions of the time and place of each test no less than three (3) weeks prior to the test. Written test reports shall be submitted to the Jurisdictions. The Jurisdictions may conduct independent tests of the System for which Grantee shall give its fullest cooperation. If ten percent (10%) or more of the locations tested fail to meet the performance standards, Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed, and at least five (5) additional randomly chosen locations. If a second test results in failure of ten percent (10%) or more, the failure shall constitute a violation of this Franchise, and the Jurisdictions may apply such penalties as they deem appropriate.

13.3 Specific Technical Facilities or Capabilities.

The following specific technical facilities or capabilities shall be provided on the System by Grantee:

(A) 100% Emergency Standby Power. Grantee shall maintain standby power generating capacity at the System Headend and at all Hubs. It also shall maintain standby power supply systems throughout the trunk and distribution networks. All such standby power systems shall be rated to provide at least two (2) hours duration. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Jurisdictions upon request. As part of the plans submitted pursuant to Section 12.2, Grantee shall provide for the Jurisdictions' review and approval a detailed description of the Headend and Hub power supplies, and a detailed description of the standby power supply systems that will be used elsewhere on the System, including a description of the way in which back-up power will be provided (gas, battery, or other means), the size of the enclosures required, how they will be installed and shielded, and a description of the noise level and emissions from the unit. Grantee may be required to provide additional back-up power should it provide any service where the ability to maintain a reliable connection is critical to health or security.

(B) Emergency Override.

- (1) Grantee shall comply with all applicable federal regulation regarding emergency alert systems, including equipment standards and procedures for alerting capacities. The Jurisdictions may identify authorized emergency officials or locations for Activating the emergency alert system. The Jurisdictions may also develop a local plan containing methods of emergency alert system message distribution.
- (2) In addition, upon request of the Jurisdictions Grantee shall implement a system for providing restricted audio and video override of all audio and video Channels during emergencies, with override to be placed under the Jurisdictions' control. The System should have the capability of directing messages to individual Jurisdictions, or to all Jurisdictions. Before requesting the implementation of the emergency alert system, the Jurisdictions shall consider Grantee's costs and the benefits to the citizens of local audio and video override. If directed by the Jurisdictions, the emergency alert system shall provide for Activation by designated officials or locations, with coded access for both audio and video (character-generated) messages. If directed by the

Jurisdictions, the audio override shall include a squeal alert tone to precede the verbal and video messages. Upon request by the Jurisdictions, Grantee shall cooperate with the Jurisdictions to test the emergency override system, for periods not to exceed one (1) minute in duration and not to occur more often than once every six (6) months.

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

Section 14. CUSTOMER SERVICE AND CONSUMER PROTECTION

14.1 Cable Television Consumer Protection Policy.

Grantee shall comply with the Jurisdictions' cable television consumer protection policy.

14.2 Subscriber Contracts.

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

Section 15. COMPENSATION AND AUDITING

15.1 Amount of Compensation.

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

(B) The Jurisdictions may impose an additional fee for the use or occupancy of the right of way by the System to provide any service that is not specifically authorized by this Franchise, except to the extent that it is prohibited from doing so by state or federal statute. Nothing in this Franchise, however, shall be construed to permit Franchisee to provide other services without the prior authorization of the Jurisdictions.

15.2 Payments and Quarterly Reports.

(A) Payments

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

(B) Quarterly Reports.

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

15.3 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.

15.4 Cost of Publication.

Grantee shall pay the cost of publication of this Franchise and any amendments thereto, as such publication is required by any of the Jurisdictions' Charters.

15.5 Alternative Franchise Compensation.

In the event the obligation of Grantee to compensate the Jurisdictions through franchise fees is lawfully suspended or eliminated, in whole or in part, and cannot be restored through any arrangement or under any condition, then Grantee shall pay to the Jurisdictions compensation equivalent to the compensation paid to the Jurisdictions by other similarly situated users of the Streets for Grantee's use of the Streets, to the extent the Jurisdictions have the legal right to require such compensation.

15.6 Maximum Legal Compensation.

The parties acknowledge that, at present, with respect to that portion of the Franchise that reflects the exercise of the Jurisdictions' franchising authority under 47 U.S.C. § 521 et seq., applicable federal law limits the Jurisdictions to collection of a maximum permissible franchise fee of five percent (5%) of gross revenues derived from the operation of the System to provide Cable Services. In the event that at any time during the duration of this Franchise, the Jurisdictions are authorized to collect an amount derived from the operation of the System to provide Cable Services greater than or less than five percent (5%) of gross revenues, then the Jurisdictions and Grantee shall modify this Franchise pursuant to the provisions of Section 19.2.

15.7 Additional Commitments not Franchise Fees.

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay franchise fees. Although the total sum of such franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12)-month period, Grantee agrees that the additional payments or commitments are not franchise fees as defined under 47 U.S.C. § 542, nor are they to be offset or credited against any franchise fee payments due to the Jurisdictions.

15.8 Acceptance of Payment and Recomputation.

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

15.9 Audits and Reviews.

(A) The Jurisdictions and their agents and representatives shall have authority to arrange for and conduct audits or reviews of the relevant financial Records of Grantee or of any Affiliated Entity for the purpose of verifying franchise fee payments or other financial obligations payable hereunder. The Jurisdictions may determine the scope of audit or review in each instance. However, in no instance shall an audit or review be initiated during the first twelve (12) months from the effective date of this Franchise. All amounts paid by Grantee shall be subject to audit or review by the Jurisdictions, provided that such audit or review be completed within five (5) years from the date payment was due. If the Jurisdictions request in writing that Grantee provide, or cause to be provided, any information reasonably within the scope of the audit or review, and Grantee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Grantee fails to provide, or fails to cause to be provided, such requested information.

(B) The Jurisdictions will notify Grantee in writing at least forty-eight (48) hours prior to the date of an audit or review and, to the best of the Jurisdictions' ability, identify the Records they want to review prior to the scheduled date for the audit or review. Grantee shall make such books and Records of Grantee or any Affiliated Entity as the Jurisdictions reasonably deem relevant to the determination of Gross Revenues and franchise fees or other financial obligations due hereunder available for inspection, copying and audit at a location within the Portland metropolitan region, during normal business hours. The reasonable costs to the Jurisdictions of the audit or review shall be borne by Grantee if the audit reveals that Grantee has underpaid franchise fees or its other financial obligations by five percent (5%) or more during the period in question; otherwise the cost shall be borne by the Jurisdictions.

(C) Grantee shall pay to the Jurisdictions, or Jurisdictions shall pay to Grantee, any undisputed amounts that are due to the Jurisdictions or due to be refunded to Grantee as determined by any audit.

(D) If Grantee is determined to have made an underpayment in an amount that exceeds five percent (5%) of the total amount due at the time such payment was due, in addition to paying the cost of the audit, Grantee shall pay simple interest to the Jurisdictions on the amount of the underpayment at a rate of two percent (2%) per annum above the publicly-announced prime rate of interest charged by Bank of America NT & SA, or its successors, to its most credit worthy commercial customers as of the date of the audit ("Bank of America's Prime Rate") from the date on which payment was due until the

date on which full payment of the underpayment and the interest charge is received by the Jurisdictions.

15.10 Liability for Licenses and Taxes.

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

Section 16. GENERAL INDEMNIFICATION AND INSURANCE

16.1 Indemnification.

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

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

(C) Defense of the Franchise. Grantee agrees and covenants to indemnify, defend and hold the Jurisdictions, their officers, agents and employees, harmless from injury, damage, loss, liability, cost or expense, including expert witnesses and other consultants, court and appeal costs and reasonable attorney fees or expenses, arising from or in any way related to the grant of, or terms of, this Franchise. This agreement to indemnify, defend and hold harmless encompasses, but is not limited to, injury, damages, losses, liabilities, costs or expenses, including expert witnesses and other consultants, court and appeals costs and reasonable attorney fees and expenses that in any way arise in

connection with a claim or defense that the Jurisdictions: (1) lacked authority under federal or state law, their respective charters, city codes or ordinances in issuing this Franchise to Grantee; (2) violated federal or state laws, if any, in awarding this Franchise to Grantee; (3) acted in any disparate or discriminatory manner against any incumbent franchisee in awarding this Franchise to Grantee; (4) granted this Franchise to Grantee in violation of any incumbent franchisee's contractual rights; (5) are required to alter the terms of another Franchise because of the terms of this Franchise; or, (5) accepted terms or conditions in the Franchise awarded to Grantee which violate federal or state laws.

16.2 Insurance.

(A) Grantee shall maintain commercial general liability insurance and commercial automobile insurance that protects Grantee and the Jurisdictions, their officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:

(B) Grantee shall obtain, at Grantee's expense, and keep in effect during the term of this Franchise:

(1) Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability Insurance for the indemnity provided under this Franchise. The following will be carried:

Coverage Limit

General Aggregate \$2,000,000

Products-Completed Operations Aggregate \$2,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

Fire Damage (Any on Fire) \$50,000

(2) "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined Single Limit per occurrence shall not be less than five hundred thousand dollars (\$500,000).

(C) Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated B+ or better by Best's Insurance Rating. The Jurisdictions reserve the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

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

(E) The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of Section 16.2 without thirty (30) days written notice first being given to the Jurisdictions. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of Section 16.2 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

(F) Grantee shall provide the Office of Cable Communications and Franchise Management, 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 Legal Counsel as to the adequacy of the certificate and of the insurance certified under the requirements of Section 16.2. Failure to maintain adequate insurance as required under Section 16.2 shall be cause for immediate revocation of this Franchise by the Jurisdictions.

(G) In the alternative to providing a certificate of insurance to the Jurisdictions certifying insurance coverage as required in Section 16.2, Grantee may provide the Jurisdictions with a statement regarding its self-insurance. Grantee's self-insurance shall provide the same amount and level of protection for Grantee and the Jurisdictions, their officers, agents, and employees as otherwise required under Section 16.2. The adequacy of the self-insurance shall be subject to the review and approval of the Jurisdictions' Legal Counsel. If Grantee elects to provide self-insurance under Section 16.2, any failure to maintain adequate self-insurance shall be cause for immediate revocation of this Franchise by the Jurisdictions.

(H) The Jurisdictions shall require as a condition of any separate agreement between the Jurisdictions and a Designated Access Provider, that the Designated Access Provider shall include 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 place 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 Grantee or its officers, agents or employees).

16.3 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, Grantee shall furnish proof of the posting of a faithful performance bond running to the Jurisdictions with good and sufficient surety approved by the Jurisdictions, in the penal sum of One Million Five Hundred Thousand Dollars (\$1,500,000), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be reduced to Seven Hundred Fifty Thousand Dollars (\$750,000) upon completion and certification of construction of the System and further reduced to Four Hundred Thousand Dollars (\$400,000) two years thereafter.

(B) Grantee shall pay all premiums charged for any bond required under Section 16.3, and unless the Jurisdictions specifically direct otherwise, shall keep the same in full force and effect at all times through the later of either:

(1) The date this Franchise expires; or

(2) If required by the Jurisdictions, the removal of all of Grantee's System installed in the Jurisdictions' Streets.

(C) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days' written notice first being given to the Office of Cable Communications and Franchise Management. The bond shall be subject to the approval of the Legal Counsel as to its adequacy under the requirements of this Section. During the term of the bond, Grantee shall file with the Office of Cable Communications and Franchise Management a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Jurisdictions.

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

16.4 Construction Bond.

During all times when Grantee is performing any construction work in or under the Streets requiring a permit from a Jurisdiction, Grantee shall post a faithful performance bond, a cash deposit or irrevocable letter of credit, as is required for the Jurisdiction's permit, running to the Jurisdiction, with good and sufficient surety approved by the Jurisdiction, in the sum required by the permit. The bond or letter of credit shall be conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of the Franchise. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the Jurisdiction. Upon such approval, the Jurisdiction agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the Jurisdiction a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the approval of the Jurisdiction as to its adequacy under the requirements of Section 16.4.

16.5 Letter of Credit

(A) In addition to the Performance Bond and Construction Bond described in Section 16.3 and 16.4, no later than the effective date of this Franchise, Grantee shall establish and provide to the Jurisdictions, for the purposes set forth in this Section 16.5, a Letter of Credit in the amount of One Hundred Fifty Thousand Dollars (\$150,000). The Letter of Credit shall be filed in a form acceptable to the Jurisdictions and issued by a local financial institution acceptable to the Jurisdictions.

(B) The Letter of Credit shall be maintained at One Hundred Fifty Thousand Dollars (\$150,000) throughout the term of this Franchise. If the Jurisdictions draw down the Letter

of Credit for any of the reasons stated herein, Grantee shall re-establish the Letter of Credit in the full amount required herein.

(C) The Letter of Credit may be assessed by Jurisdictions for various purposes including, but not limited to, the following:

- (1) Failure of Grantee to pay Jurisdictions sums due under the terms of this Franchise.
- (2) Reimbursement of costs borne by Jurisdictions to correct violations of this Franchise not corrected by Grantee.
- (3) Liquidated damages or penalties assessed against Grantee due to violations of the requirements of this Franchise.
- (4) Failure to comply with the Customer Service Standards.

(D) If Grantee fails within thirty (30) days after the date of written notice to pay to Jurisdictions any amount the Jurisdictions determine is due them, or to satisfy an obligation under this Franchise which the Jurisdictions determine can be remedied by a draw upon the Letter of Credit, the Jurisdictions may thereafter withdraw the amount thereof from the Letter of Credit. Upon such withdrawal, the Jurisdictions shall notify Grantee of the amount and date thereof. Within seven (7) days following receipt by Grantee of written notice from Jurisdictions that any amount has been withdrawn from the Letter of Credit, Grantee shall restore such Letter of Credit to the amount required under this Franchise. Failure by Grantee to so restore the Letter of Credit shall be considered a material violation of this Franchise.

(E) The Letter of Credit deposited pursuant to this Section shall become the property of Jurisdictions in the event that this Franchise is lawfully terminated or revoked for cause by reason of the violation by Grantee, and Grantee has exhausted all of its remedies relating thereto. Grantee, however, shall be entitled to the return of the Letter of Credit deposited in accordance with this Section, or any portion thereof remaining upon normal expiration of the term of this Franchise, assuming it is in compliance with all its obligations thereunder.

(F) The rights reserved to Jurisdictions with respect to the Letter of Credit are in addition to all other rights of Jurisdictions whether reserved by this Franchise or authorized by law or equity, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall constitute a waiver of any other right the Jurisdictions may have.

Section 17. GENERAL STREET USE AND CONSTRUCTION

17.1 Construction.

(A) Grantee may not perform any construction work associated with construction of its System, or cause any other Person to replace, remove or relocate facilities in preparation for construction, until it satisfies the following conditions. The conditions are material. Grantee's failure to satisfy these conditions does not relieve it of any other obligation under this Franchise.

- (1) Grantee must demonstrate, to the satisfaction of the Jurisdictions, that it has obtained financing sufficient to permit it to construct and operate the System in accordance with this Franchise; and

(2) Grantee must provide assurances, satisfactory to the Jurisdictions, that the funds on which it relies are committed to use in the Jurisdictions, and cannot be diverted elsewhere.

(B) Subject to other provisions of this Franchise and the applicable regulations of a Jurisdiction, Grantee may perform all construction necessary for the operation of its System. All construction and maintenance of any and all Facilities within Streets incident to Grantee's System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for and obtain all permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities, within the Streets. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by a Jurisdiction to Grantee. In addition, all construction, operation and maintenance of the System shall be in accordance with applicable laws and regulations regarding the prevention of soil erosion.

(C) In addition to the requirements of Section 12 regarding initial System construction, prior to beginning any subsequent construction, Grantee shall provide a Jurisdiction with a construction schedule for work in the Streets. Within sixty (60) days following the date when Grantee's construction of Facilities in the Streets is completed, Grantee shall provide the Jurisdiction with As-built maps showing the location of the installed Facility in the Streets, on a scale of Three Thousand Five Hundred feet (3,500') per inch or whatever standard scale the Jurisdictions adopt for general use. Grantee shall also provide such maps in an electronic format acceptable to the City Engineer for each Jurisdiction.

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

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

17.2 Locates.

Grantee shall comply with the requirements of the Oregon Utility Notification Law, (ORS 757.542 to 757.562 and 757.993 (1999)), and the rules and regulations promulgated thereunder.

17.3 Relocation.

A Jurisdiction shall have the right to require Grantee to change the location of any of Grantee's System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Grantee shall be eligible for such

relocation funds as may be available under applicable federal or state law. Should Grantee fail to remove or relocate any such Facilities by the date established by a Jurisdiction, the Jurisdiction may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the Jurisdiction due to Grantee's delay. If a Jurisdiction requires Grantee to relocate its Facilities located within the Streets, the Jurisdiction shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

17.4 Restoration of Streets.

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

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration and maintenance of the Street and its surface within the area affected by the excavation. A Jurisdiction may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The Jurisdictions reserve the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the Jurisdiction, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 17.4 shall be done in strict compliance with all rules, regulations, resolutions and ordinances of the Jurisdiction.

17.5 Maintenance and Workmanship.

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

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

17.6 Acquisition of Facilities.

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

17.7 Reservation of Jurisdiction Street Rights.

Nothing in this Franchise shall prevent the Jurisdictions from constructing sewers; grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's System. However, if any of Grantee's System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's System shall be removed or replaced in the manner a Jurisdiction shall direct. Any and all such removal or replacement shall be at Grantee's expense. Grantee shall be eligible for such relocation funds as may be available under applicable federal or state law. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by a Jurisdiction's written notice to Grantee, the Jurisdiction may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the Jurisdiction due to Grantee's delay.

17.8 Use of Conduits by a Jurisdiction.

A) A Jurisdiction may install or affix and maintain wires and equipment owned by the Jurisdiction for Municipal Purposes upon any and all of Grantee's ducts, conduits or equipment in the Streets and other public places, to the extent space therein or thereon not needed by Grantee is reasonably available. Except for the charges of Incremental Direct Cost for I-Net use of conduits or Fiber pursuant to Section 8.2, there shall be no charge to the Jurisdiction for the Jurisdiction's use of surplus ducts, conduits or equipment for Municipal Purposes. For the purposes of this Section, "Municipal Purposes" includes, but is not limited to, the use of Grantee's structures and installations for a Jurisdiction's fire, police, traffic, water, telephone, and/or signal systems, but not for commercial purposes in competition with Grantee.

B) The Jurisdictions shall not have access to Grantee's surplus conduits or ducts without Grantee's prior approval, except in the event of an emergency requiring that the Jurisdictions obtain immediate access to those conduits or ducts. In such an emergency, the Jurisdictions shall exercise its best efforts to notify the Grantee as soon as possible of the emergency and the Jurisdiction's need for access.

C) Grantee shall not deduct the value of such use of its Facilities from its franchise fee and/or other fees payable to the Jurisdictions.

D) Grantee shall not be responsible for any damage resulting to the wires or property of a Jurisdiction occurring as a result of Jurisdictional use of Grantee's Facilities. The Jurisdiction shall indemnify Grantee for any damages to Grantee's Facilities arising out of or resulting, directly or indirectly, from the Jurisdiction's exercise of its rights under Section 17.8.

17.9 Street Vacation.

If any Street or portion thereof used by Grantee is vacated by a Jurisdiction during the term of this Franchise, unless the Jurisdiction specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to

the Jurisdiction, remove its Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the Jurisdiction. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the Jurisdiction, to restore, repair or reconstruct such Street, the Jurisdiction may do such work or cause it to be done, and the cost thereof, as found and declared by Jurisdiction, shall be Grantee's responsibility.

17.10 Common Users.

(A) For the purposes of this Section 17.10, the following definitions shall apply :

"Attachment"

means any wire, optical Fiber or other cable, and any related device, apparatus or auxiliary equipment, used for the purpose of voice, video or Data transmission.

"Conduit Facility"

means any structure, or section thereof, containing one or more ducts, conduits, manholes, handhole or other such facilities in Grantee's System.

"Duct"

means a single enclosed raceway for conductors, optical Fiber, wire or other cable.

"Licensee"

means any Person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by a Jurisdiction to use the Streets.

"Surplus ducts or conduits"

means Conduit Facilities other than those occupied by Grantee or any prior Licensee, one unoccupied duct held by Grantee as an emergency use spare, and other unoccupied ducts that Grantee reasonably expects to use within the next 18 months.

(B) Grantee acknowledges that the Streets have a finite capacity for containing conduits. Therefore, Grantee agrees that, whenever a Jurisdiction determines it is impracticable to permit construction of an underground conduit system by any other Licensee, the Jurisdiction may require Grantee to afford to such Person the right to use Grantee's surplus ducts or conduits in common with the Grantee, pursuant to the terms and conditions of an agreement for use of surplus conduits and ducts being entered into by Grantee and the Licensee.

(C) If Grantee and any Licensee fail or cannot otherwise agree to fair and equitable terms, conditions and regulations, including but not limited to a conduit rental rate, within a reasonable period of time, Grantee and the Licensee shall enter into binding arbitration to determine such terms, conditions and regulations. In such arbitration, the arbitrators shall determine the conduit rental rate at a fair market rate. The binding arbitration shall take place as provided under the terms of Section 25.3.

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

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

- (1) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical Fibers or other space-saving technology sufficient to meet Grantee's space needs;
- (2) Pay revised conduit rent based on the cost of new conduit constructed to meet Grantee's space needs;
- (3) Vacate ducts that are no longer surplus; or,
- (4) Construct and maintain sufficient new conduit to meet Grantee's space needs.

(F) When two (2) or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all Licensees shall bear the increased cost.

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

17.11 Discontinuing Use of Facilities.

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

17.12 Hazardous Substances.

(A) Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's System in the Streets. For purposes of this Section 17.12, "Hazardous Substances" shall have the meaning as defined by ORS 465.200(15) (1999).

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

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

17.13 Undergrounding of Cable.

Grantee is strongly encouraged to locate and construct its present and future Facilities underground. Grantee shall install its Facilities underground wherever all existing utilities and other cable and telecommunications service providers already are underground, where all utilities and other cable and telecommunications service providers are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the Jurisdictions or applicable State law, or in the event that an institutional utility or a public utility decides to underground its facilities on a voluntary basis, unless a Jurisdiction grants an exception. Undergrounding in the City of Portland shall generally follow the directives of the City Council following the *Undergrounding of Cable Report* accepted March 29, 2000 by the Portland City Council.

17.14 Construction Codes.

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

17.15 Construction and Use of Poles.

(A) In the event Grantee cannot obtain the necessary poles and allied facilities agreements, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's System. All Grantee's poles shall be erected between the curb and the sidewalk unless otherwise designated by the proper Jurisdictional authorities, and each pole shall be set whenever practicable at an extension of a lot line. A Jurisdiction shall have the right to require Grantee to change the location of any pole, conduit, structure or other Facility within the Streets when in the opinion of the Jurisdiction the public convenience requires such change, and the expense thereof shall be paid by Grantee.

(B) The terms of Section 17.15(A) shall not exempt Grantee from compliance with all Charter, resolution and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

17.16 Tree Trimming.

(A) Upon obtaining proper permits from a Jurisdiction, Grantee may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree or vegetation in or overhanging the Streets which interferes with Grantee's System. Tree and vegetation pruning will only be done in accordance with each Jurisdiction's ordinances, rules and regulations and, if the tree or vegetation is located on private property, with the permission of the property owner.

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

17.17 Identification of Facilities

Grantee shall clearly mark all of its Facilities to permit accurate identification of ownership.

17.18 Resolution of Disputes

Continuity of service is a matter of consumer protection, for which the Jurisdictions reserve the right to adopt appropriate and lawful rules and regulations. Should Grantee be involved in any dispute regarding cut cables or other problems associated with the joint use of the Streets by several communications and utility providers, Grantee shall respond within twenty-four (24) hours to any request from the Jurisdictions to participate in discussions to resolve the dispute, and shall work in good faith to accomplish a resolution within the shortest feasible time.

Section 18. TRANSFER OF GRANTEE'S SYSTEM

18.1 Prior Consent of Jurisdictions for Transfers.

(A) Transfer Defined. For purposes of Section 18, "Transfer" shall mean any form of sale, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, in whole or in part, and whether voluntary or involuntary.

(B) Jurisdiction Approval of Transfers.

- (1) Neither this Franchise nor any Substantial Portion of the System owned and operated by Grantee by authority of this Franchise shall be Transferred without the prior consent of the Jurisdiction as expressed by ordinance or resolution. The Jurisdiction's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Within ten (10) days after execution and delivery of any instrument so consented to by a Jurisdiction, Grantee shall file with

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the Jurisdiction an executed counterpart or certified copy thereof. For purposes of this Section, "Substantial Portion" means any property the transfer of which would substantially affect Grantee's operations or which would substantially affect any of Grantee's obligations under this Franchise.

- (2) In determining whether the Jurisdiction will consent to any Transfer, the Jurisdictions may inquire into the technical, legal, and financial qualifications of the prospective transferee, and may require that the prospective transferee respond timely in writing to the Jurisdictions' request for information. Such requests for information by the Jurisdictions may, without limitation, be addressed to the prospective transferee's ownership structure, experience, management qualifications, legal qualifications, character qualifications, financial capability and System financing plan, financial pro formas, operating history, technical capabilities, and technical plans for the System. Grantee shall assist the Jurisdictions in any such inquiry, including facilitating the prospective transferee's responses to the Jurisdictions' information requests.
 - (3) A Jurisdiction may condition any Transfer upon such conditions as are considered appropriate. Such reasonable conditions may include, but are not limited to, conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of the Franchise; a requirement that the prospective transferee reimburse the Jurisdictions' reasonable direct costs in processing the Transfer request; a requirement that the transferee assume responsibility for any non-compliance by Grantee; requirements regarding the reduction or elimination of competition in the delivery of Residential Services in the Jurisdictions; and a requirement that a performance guaranty be furnished by the proposed transferee's parent corporations. No Transfer for which a Jurisdiction's consent by ordinance or resolution is required may occur until the successor, assignee or lessee has complied or agreed to comply with all of the requirements of this Franchise, including, but not limited to, providing certificates of insurance, unless the Jurisdiction waives such compliance by ordinance or resolution.
 - (4) Nothing contained in Section 18.1 shall be deemed to prohibit the mortgage, pledge or assignment of tangible assets of Grantee's System, including but not limited to accounts receivable, inventory or monetary assets, for the purpose of financing the acquisition of equipment or for the acquisition, construction and operation of the System without the Jurisdiction's consent, but any such mortgage, pledge or assignment shall be subject to the Jurisdiction's other rights contained in this Franchise. Grantee may also sell tangible assets of the System in the ordinary conduct of its business without the consent of the Jurisdictions.
- (C) Jurisdiction Approval of Leases. Grantee shall not lease or sublease this Franchise or any of the rights or privileges granted or authorized by this Franchise without the Jurisdiction's consent as expressed by resolution or ordinance.

18.2 Change in Control.

- (A) Grantee shall promptly notify the Jurisdictions of any proposed Transfer or acquisition by any other party resulting in a change of control of Grantee or the Parent

Corporations. Such change in control shall make this Franchise subject to revocation unless and until the Jurisdiction shall have consented thereto by ordinance or resolution.

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

18.3 Bankruptcy or Dissolution.

Grantee shall immediately report to the Jurisdictions, as soon as it becomes known, the initiation of bankruptcy proceedings, or corporate or partnership dissolution involving this Franchise or the ownership, management or operation of the System authorized by this Franchise.

18.4 Consent.

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

18.5 Warranty of Ownership

Grantee represents and warrants that, as of the Effective Date of this Franchise, it has provided a complete and accurate description to the Jurisdiction of Grantee's legal ownership structure, Parent Corporation and Affiliated Entities. Grantee further represents and warrants that it will have full legal and equitable title to the System. Furthermore, as of the effective date of this Franchise Grantee represents and warrants that there is no option or other understanding or agreement that would permit another Person to obtain that title or control of the System, or any part thereof.

Section 19. OTHER RIGHTS RESERVED TO THE JURISDICTIONS

19.1 Purchase of Grantee's System after Forfeiture or Expiration.

(A) Subject to the provisions of federal law, if a Jurisdiction has declared a forfeiture of this Franchise by resolution or ordinance, as provided in Section 24.1 or if the initial term of this Franchise has expired without the franchise being renewed or extended, and if the Jurisdiction has so ordered by ordinance or resolution, Grantee shall continue its operations for a period of two hundred and seventy (270) days after either the effective date of the ordinance or resolution or expiration of the initial term unless the ordinance or resolution in either case orders termination by Grantee of its operations at an earlier time. During this period, Grantee shall not Transfer any portion of its System to any other Person, including parts of the System rented, leased or leased-purchased from others by

Grantee, without the prior consent of the Jurisdictions expressed by ordinance or resolution.

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

(C) Notification and Valuation

- (1) At any time within sixty (60) days after receiving the System Report, the Jurisdiction may notify Grantee that it desires to acquire by purchase all or a portion of Grantee's System for its Fair Value. The notice shall be by passage of an ordinance or resolution stating the Jurisdiction's desire and shall state a date not less than one hundred and eighty (180) days from its date upon which Grantee shall cease its operations and receive payment from the Jurisdictions.
- (2) For purposes of Section 19, the valuation of Grantee's System shall be determined by mutual agreement between the Jurisdiction and Grantee. If the Jurisdiction and Grantee are unable to agree upon the Fair Value within one hundred and twenty (120) days after the Jurisdiction gives notice of intent to purchase under Section 19, then the Jurisdiction and Grantee may agree that such valuation be determined by arbitration, which shall take place as provided under the terms of Section 25.3.

(D) For purposes of Section 19, subject to applicable law, "Fair Value" shall mean:

- (1) In the case of the expiration of the Franchise without renewal, the fair market value, determined on the basis of Grantee's System, or the portion being acquired, as a going concern, but with no value allocated to the Franchise itself. This would be a value for which a willing buyer would purchase the System as an ongoing business, recognizing that the existing Franchise has expired. The fair market value would be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the Jurisdiction may assume.
- (2) In the case of a forfeiture of the Franchise, the equitable price of Grantee's System, or the portion being acquired, reduced by the amount of any liens, encumbrances or other obligations of Grantee which a Jurisdiction may assume, but shall not include any sum for the value of the unexpired portion of this Franchise. In determining the equitable price, matters such as the harm to the community resulting from Grantee's violation of the Franchise may be considered.

(E) Consent to Assignment

- (1) In the event of a Jurisdiction's acquisition of all or portions of Grantee's System, as provided in Section 19, Grantee and its Affiliated Entities shall use all best efforts to obtain consent to assignment, to the extent any existing and future rental, lease, and

lease-purchase arrangements for Grantee's System or any Facilities require any consent to assignment by third parties.

- (2) In the event of a Jurisdiction's acquisition of all or portions of Grantee's System, as provided in Section 19, Grantee or its Affiliated Entities shall not unreasonably withhold any consent to assignment of any rental, lease, and lease-purchase arrangements for Grantee's System or any Facilities.

19.2 Changes in Law or Unenforceability of Franchise Provisions.

(A) The Jurisdictions and Grantee have entered into this Franchise under the federal and state laws and regulations in effect on the effective date of this Franchise. The Jurisdictions reserve the right to request and obtain modifications to this Franchise, under Section 19.2(B), to account for changes in the law or applicable regulations during the term of this Franchise. The Jurisdictions also reserve the right to request and obtain modifications in this Franchise, under Section 19.2(B), if any provision of this Franchise becomes, or is declared, invalid or unenforceable. The purpose of these reservations of right is to ensure that under any changes in law, regulation, or enforceability of the Franchise, the Jurisdictions may continue to maintain the benefits provided under the Franchise prior to such changes, or if that is not possible, to ensure that the Jurisdictions obtain substitute benefits of equal value to the Jurisdictions.

(B) Upon written notice from the Jurisdictions, Grantee shall participate with the Jurisdictions under Section 19.2(A), in a non-binding mediation proceeding under Section 25.2 to mediate, in good faith, modifications to the terms and conditions of this Franchise. The Jurisdictions' written request shall specifically identify the particular reasons under Section 19.2(A) for the modification sought. In the mediation proceeding, the Jurisdictions and Grantee shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the Jurisdictions remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding. If the Jurisdictions and Grantee are unable to successfully conclude the mediation within ninety (90) days from the date of the written notice requesting the mediation proceeding, Grantee agrees to submit the matter, at the Jurisdictions' request, to binding arbitration which shall take place under the terms of Section 25.3.

19.3 Right of Intervention.

The Jurisdictions shall have the right to intervene in any suit or proceeding to which Grantee is a party, if the Jurisdictions' rights under this Franchise may be affected thereby. Grantee shall notify the Jurisdictions within thirty (30) days following Grantee's instituting, or being notified of being a party to, any such suit or proceeding.

Section 20. JURISDICTION REGULATORY AUTHORITY

20.1 Jurisdiction Regulatory Rights.

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

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

20.2 Jurisdiction Regulatory Actions.

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

20.3 Open Access

To ensure a competitive, non-discriminatory Telecommunications environment that ultimately benefits consumers, provides for fair competition, creates jobs, and drives economic growth, unless otherwise required by law, Grantee shall comply with all applicable federal, state and local legal requirements with respect to access to its facilities by Internet access service providers, whether or not such providers are affiliated with Grantee.

20.4 Regulation of Rates and Charges.

All Grantee's Cable Service rates and charges shall be subject to regulation by the Jurisdictions to the full extent authorized by a Jurisdiction's Charter and by applicable federal, state and local laws.

20.5 Rate Discrimination.

All Grantee rates and charges shall be published and non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Except as otherwise required by this Franchise, Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability, income of the residents, or geographic location within Grantee's Franchise Area. Nothing in this Section 20.5 shall be construed to prohibit:

- (A) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;
- (B) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens; or
- (C) Grantee establishing different and nondiscriminatory rates and charges and classes of services for Commercial Subscribers, as well as different, nondiscriminatory monthly rates for classes of Commercial Subscribers.

20.6 Filing of Rates and Charges.

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Jurisdictions a complete schedule of applicable rates and charges for Cable Services provided under this Franchise, in a form satisfactory to the Jurisdictions. Nothing in this Section 20.6(A) shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this Section, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six consecutive months to purchase Cable Services at such rate or charge.

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

20.7 Changes in Rates and Charges.

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

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

20.8 Regulation of Equipment for Hearing Impaired.

To the extent authorized by law, the Jurisdictions reserve the right to require and regulate the installation or rental of equipment which facilitates the reception of the Basic Service Tier by hearing impaired individuals.

20.9 Downgrade and Disconnect Charges.

(A) Downgrade Charges.

(1) Unless otherwise provided by law, Grantee shall not impose any Downgrade Charges, except as otherwise provided herein. As used in this Section, "Downgrade Charge" means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a downgrade or reduction of Cable Services to less expensive Cable Services or tiers.

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

- (a) the Subscriber has been notified, at the time of initiating Cable Services, and periodically thereafter, of Grantee's Downgrade Charges;
- (b) the Downgrade Charge does not exceed Grantee's actual Incremental Direct Cost of performing the downgrade; and

- (c) the downgrade is from a level of Cable Service which the Subscriber has not maintained continuously for six (6) months immediately preceding the date of the downgrade request; or, in the case of a service offered pursuant to a promotion, for the period required under that promotion.

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

Section 21. RECORDS AND REPORTS

21.1 Open Records.

Grantee shall manage all of its operations in accordance with a policy of keeping its Records open and accessible to the Jurisdictions for purposes related to the requirements of this Franchise. The Jurisdictions shall have the right to inspect all Records of Grantee and Affiliated Entities at a location within the Portland metropolitan region at any time during normal business hours and upon reasonable notice. Grantee shall not deny the Jurisdictions access to Grantee's Records on the basis that Grantee's Records are under the control of an Affiliated Entity or a third party, rather than Grantee. In the case of Affiliated Entities not under common control with Grantee, Grantee shall not be subject to the remedies set forth in Section 24.1(A) if such Affiliated Entity does not permit inspection of its Records, and Grantee has;

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

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

21.2 Annual Reports.

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

(A) System structure and operating information:

- (1) System ownership, including all levels of Parent Corporation and related ownership percentages;
- (2) An organizational chart for Grantee, listing officers and member of the board of director, department heads, and supervisors for major activity centers by category;
- (3) Total System mileage and overall homes passed, by individual Jurisdiction;

- (4) The total number of Subscribers as well as, separately, the number of Basic Service Tier Subscribers, Cable Programming Service Tier Subscribers, Pay Service Subscribers (Pay units), Digital Subscribers, Internet access Subscribers, IP or switched telephony Subscribers, and other Subscribers by category, as the Jurisdictions may direct from time to time, by individual Jurisdiction;
- (5) Services provided on the System, including services begun or dropped during the previous Year; and
- (6) A schedule of all Grantee's rates and charges.

(B) Financial statements for Grantee's Portland Area System and, separately, for its System serving only the combined Jurisdictions, prepared in accordance with generally accepted accounting principles. For purposes of this Subsection, "Portland Area System" means the regional System of which the System serving the Franchise Area is a part. The financial statements for Grantee's Portland Area System shall be reviewed or audited by an independent Certified Public Accountant. A responsible corporate officer shall certify that the financial statements for Grantee's System serving the combined Jurisdictions are an accurate reflection of the operations of Grantee or its Affiliated Entities, consistent with any attached notes and disclosures. The Jurisdictions reserve the right to require, if good cause exists as determined by the Jurisdictions, that the financial statements for Grantee's System within the Jurisdictions be reviewed or audited by an independent Certified Public Accountant. Both sets of financial statements shall include income statements, balance sheets, and statements of cash flows, together with notes and disclosures describing allocation methodologies and other information as needed to allow proper interpretation of the statements. If Grantee makes a significant change in its accounting methods in any Year, Grantee shall disclose such change and include a restatement of the financial statements submitted in prior years to the extent that such restatements may be required by generally accepted accounting principles. The financial statements and attached notes shall be in sufficient detail to include:

- (1) Gross Revenues by category, including but not limited to Basic and Cable Programming Service Tiers, Pay Services, Internet access, advertising, installation, and other miscellaneous revenues;
- (2) Operating expenses by category. Deferred or non-cash expenses shall be separately identified;
- (3) Other expenses, such as depreciation and amortization, interest expenses, and income taxes paid and accrued, as applicable;
- (4) Capital expenditures by category;
- (5) Any incurrences or repayment of debt, and remaining outstanding debt by lender or type, including interest rates and future payment terms;
- (6) Any contributions from, distributions to or other material transactions with Affiliated Entities, in any form; and
- (7) Detailed information regarding the amounts paid, and Grantee's method of accounting for, Jurisdictions' franchise fees and amounts paid under Section 9.1,

including a description of the computation of such fees and payments, and a reconciliation of Gross Revenues to the computational bases used.

- (C) A statement of Gross Revenues for Grantee's System serving the combined Jurisdictions, consistent with the financial statements provided under Section 21.2(B), audited or reviewed by an independent Certified Public Accountant;
- (D) Annual audited financial statements for the Guarantor;
- (E) Parent Corporation(s) Annual corporate reports, including audited financial statements;
- (F) Forecasts of Subscriber numbers and Gross Revenues by category through June 30th of the next Year;
- (G) Planned construction or Upgrade activity of Grantee's System within the Jurisdictions for the current Year and the projected costs of such activity; and
- (H) An Institutional Capital Expenditure Report, describing Grantee's direct and in-kind expenditures, and the status of any line-of-credit account related to in-kind expenditures, pursuant to Sections 9.1(C), (D) and (E).

21.3 General Reports.

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

21.4 Format.

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

21.5 Reports of Regulatory Violations.

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

21.6 Public Records.

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

(B) Grantee may identify information, such as trade secrets, submitted to the Jurisdictions as confidential. Grantee shall prominently mark each page for which it claims confidentiality as "Confidential" prior to submitting such information to the Jurisdictions. The Jurisdictions shall treat any information so marked as confidential, until the

Jurisdictions receive any request for disclosure of such information. Within five (5) working days of receiving any such request, the Jurisdictions shall provide Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the Jurisdictions, before the Jurisdictions may disclose any of the requested confidential information. The Jurisdictions shall retain the final discretion to determine whether to release the requested confidential information, in accordance with applicable laws. If the Jurisdictions determine the information should be released, the Jurisdictions shall promptly notify Grantee, and do so at least five (5) working days prior to the information being released.

Section 22. EQUAL EMPLOYMENT OPPORTUNITY/ AFFIRMATIVE ACTION/ MINORITYBUSINESS ENTERPRISES

22.1 Equal Employment Opportunity.

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

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

22.2 Affirmative Action.

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

22.3 Minority and Female Business Enterprises.

Grantee shall make determined and good faith efforts to use minority and female business enterprises in its contracted expenditures, including, without limitation, contracts for the acquisition of goods, services, materials, supplies, and equipment used in the construction, maintenance, and operation of its System.

Section 23. RIGHTS OF INDIVIDUALS

23.1 Discriminatory Practices.

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

23.2 Unauthorized Monitoring or Cable Tapping.

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

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

23.3 Privacy.

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

(B) Grantee shall maintain constant vigilance with regard to possible abuses of the right of privacy of or by any Subscriber, Affiliate, or any other Person resulting from the utilization of Grantee's Broadband Services. Grantee shall not use the Broadband capabilities of its System under Grantee's control for unauthorized Subscriber surveillance or collection of personally identifiable Data (such as Cookies, URL tracking, publishing or releasing IP Addresses) of any kind without prior Subscriber consent. Grantee may otherwise use the capabilities of the System to 1) perform System maintenance, protect System integrity, and verify technical performance; 2) identify theft of services; and 3) as is necessary for billing purposes or to comply with a court order.

(C) Before placing in any building, structure or facility of any Subscriber any equipment capable of two-way communications, it must: (1) notify the Subscriber that it is doing so; (2) notify the Subscriber how the equipment will be used; and (3) advise the Subscriber how the Subscriber can prevent information that is not critical to the receipt of the services for which the Subscriber is paying from being accessed by others, or (except for information Grantee is authorized to collect pursuant to Section 23.3) by Grantee. For purposes of this Subsection, tenants who occupy premises shall be deemed to be Subscribers, regardless of who actually pays for the service.

(D) Grantee shall not require written consent of any Subscriber as a condition of receiving Services.

23.4 Permission of Property Owner or Tenant.

Grantee shall not install or attach any of its Facilities to any residence or other property without first securing the permission of the owner or tenant of any property involved, except where there is an existing utility easement reserved by plat or other conveyance or unless such installation or attachment is otherwise authorized by law. Nothing herein, however, shall excuse Grantee from obtaining permission from anyone who has the right to approve or disapprove the attachment. If such permission or easement is later revoked, unless Grantee is otherwise entitled to maintain its Facilities, whether by the original or a subsequent owner or tenant, Grantee, on the owner's request, shall promptly remove any of its Facilities and promptly restore the property to its original condition. Grantee shall perform all such installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation or the removal.

23.5 Sale of Subscriber Lists and Personalized Data.

(A) Grantee shall not sell, or otherwise make available, lists of the names and addresses of Subscribers, or any list which identifies the viewing habits by the name of any Subscriber, or any Personalized Information pertaining to a Subscriber's use of any Services by the name of any Subscriber, without the written, expressed consent of the Subscriber to which the Personalized Information pertains, except as otherwise permitted by federal law. For purposes of Section 23.5, "Personalized Information" 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 Services.

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

Section 24. FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

24.1 Remedies for Franchise Violations.

(A) In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess, the Jurisdictions reserve the right at their discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise.

- (1) Impose reasonable penalties, up to one thousand dollars (\$1,000) per day, incident or other measure of violation. It is the intent of the Jurisdictions to determine Penalties as a reasonable estimate of the damages suffered by the Jurisdictions, whether actual or potential. In any event where Grantee fails, neglects or refuses to comply with this Franchise, or any of its terms or provisions, the damages suffered by the Jurisdictions as a result may include, without limitation, increased costs of administration and other

damages difficult to measure. Therefore, Penalties assessed under this Franchise shall be considered liquidated damages.

- (2) To the extent authorized by law, require Grantee to reduce its rates and charges by such amount or amounts as is reasonable in light of the violation;
- (3) To the extent authorized by law, require Grantee to make payments or grant refunds to its Subscribers or Subscriber Classes in such amounts, and on such bases as are reasonable relative to damages sustained by Subscribers, for violations relating to Subscriber service. At Grantee's option, such payments or refunds may be made in the form of a credit against Subscriber service bills. For purposes of this Subsection, "Subscriber Class" means any group of actual or potential Subscribers identified by Grantee on the basis of specified characteristics for the purpose of providing, marketing or establishing any combination or package of Cable Services, rates or charges, or for the purpose of providing or directing customer services or marketing in any form;
- (4) To the extent authorized by law, require Grantee to correct or cure the violation prior to any rate increase becoming effective, or otherwise delay consideration of any rate request until the violation is corrected or cured;
- (4) Reduce the duration of the term of this Franchise for the affected Jurisdiction 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 for the affected Jurisdictions.

(B) Remedies for Delays. In addition to the remedies set forth in Section 24.1(A), the Jurisdictions may, at their sole discretion, apply any one or more of the following remedies in connection with material delays in System construction including, but not limited to, delays in construction of any part of the Institutional Network; and delays in timely completion and Activation of any Upstream or Downstream Capacity for public, educational or government use; and delays in completion and Activation of the Broadband capabilities of the System:

- (1) Find Grantee in material violation of this Franchise;
- (2) Reduce the duration of the term of this Franchise of the affected Jurisdiction on a month-to-month basis for each month of delay exceeding six (6) months provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years;
- (3) Declare a forfeiture of any construction bond required under Section 16.4 for any delay exceeding one (1) year; or
- (4) Terminate this Franchise for the affected Jurisdiction for any delay exceeding eighteen (18) months.

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

(D) A Jurisdiction also has the right to shorten the term of this Franchise or revoke this Franchise for the affected Jurisdiction in the manner described in Sections 24.1(A)(5) and (6) upon the occurrence of any of the following acts or events:

- (1) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the Jurisdiction;
- (2) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the System; or
- (3) Grantee becomes insolvent or is adjudged to be bankrupt, or otherwise initiates corporate or partnership dissolution.

(E) Receivership. This Franchise will automatically terminate by force of law one hundred and twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the Grantee's business, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that one hundred and twenty (120) day period, if:

- (1) Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by the Jurisdictions; and
- (2) Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the Jurisdictions, duly approved by the Jurisdictions and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

(F) In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a Grantee, the Jurisdictions may revoke the Franchise, following a public hearing, by serving notice upon Grantee and the successful bidder at the sale, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless: (1) the Jurisdictions have approved the transfer of the Franchise to the successful bidder; and (2) the successful bidder has covenanted and agreed with the Jurisdictions to assume and be bound by the terms and conditions of the Franchise and applicable law.

(G) In the event that the Jurisdictions make a preliminary determination that Grantee has violated this Franchise, the Jurisdictions shall commence a contested case proceeding under the rules adopted by the Jurisdictions. The Jurisdictions' final determination, following a contested case proceeding, may be appealed to a Jurisdiction's governing body. The Jurisdiction's governing body shall consider the appeal based on the record established in the contested case proceeding, under rules established by the Jurisdictions.

24.2 Notice and Opportunity to Cure.

(A) The Jurisdictions shall give Grantee thirty (30) days prior written notice of the intent to exercise any of their rights under Subsections 24.1(A) through (C) and (D)(1)-(2), identifying the reasons for such action.

(B) If Grantee removes or otherwise cures the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and Grantee initiates good faith efforts satisfactory to the Jurisdictions within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the Jurisdictions shall not exercise their rights under Subsections 24.1(A) through (C) and (D)(1)-(2),

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if Grantee does not undertake and continue efforts satisfactory to the Jurisdictions to remedy the stated reason, then the Jurisdictions may exercise any or all of the remedies available under Subsections 24.1(A) through (C) and (D)(1)-(2), or such other rights as the Jurisdictions may possess.

24.3 Minor Variances.

The Jurisdictions may, upon request of Grantee or 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.

24.4 Expiration.

(A) Upon the expiration of this Franchise, subject to any restrictions imposed by 47 U.S.C. § 546 and other applicable federal, state or local laws, a Jurisdiction shall have the right, at its election, to:

- (1) Renew or extend Grantee's Franchise;
- (2) Invite additional proposals and award this Franchise to another Person;
- (3) Terminate the Franchise without further action;
- (4) Exercise its rights under Section 19; or
- (5) Take such further action as the Jurisdiction deems appropriate.

(B) Until such time as the Jurisdiction exercises its rights under Section 24.4, Grantee's rights and responsibilities within the Jurisdiction shall be controlled by the terms of this Franchise.

24.5 Removal of Plant and Equipment.

If a Jurisdiction has by ordinance or resolution declared a forfeiture of this Franchise as provided in Section 24.1, or if this Franchise has expired without being renewed or extended, or in the event of the Jurisdiction's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in Section 24.4 and Section 19, or as otherwise provided by ordinance or resolution, Grantee shall remove its Facilities from the Streets and restore the Streets to such condition as the Jurisdiction may require. In the event of a failure by Grantee to properly perform such work, then the Jurisdiction may perform the work and collect the cost thereof from

Grantee. The cost thereof shall be a lien upon the Grantee's System and a set-off against any sums owed Grantee by the Jurisdiction.

Section 25. MISCELLANEOUS PROVISIONS

25.1 Compliance with Laws.

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

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

25.2 Mediation

The Jurisdictions and Grantee agree that should any dispute arise between the parties concerning any aspect of this Franchise which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute shall be submitted to mediated negotiation prior to any party commencing litigation. In such event, or where required by this Franchise, the Jurisdiction and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. In the mediation proceeding, the Jurisdiction and Grantee shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the Jurisdiction and Grantee remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding. If the Jurisdiction and Grantee are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written notice has been received by the other party, either party may request arbitration, as set forth in Section 25.3, or may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

25.3 Arbitration.

(A) Any dispute between the parties hereto, including but not limited to disputes or controversies arising from or related to interpretation of this Franchise, may be arbitrated provided that either (1) the parties consent in writing to the arbitration; or (2) where this Franchise requires a party to submit to arbitration, it shall do so. Such arbitration will be final and binding, and the parties shall have no right to appeal from the arbitrator's decision.

(B) A Jurisdiction may initiate arbitration by resolution, while Grantee may choose to initiate arbitration by sending written notice to the Jurisdiction.

(C) After arbitration has been initiated, the Jurisdiction and Grantee may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within twenty (20) days after the arbitration has been initiated, the

arbitrator shall be selected by the presiding civil judge of the Multnomah County Circuit Court.

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

- (1) If the Jurisdiction initiates arbitration, the Jurisdiction shall select one arbitrator and Grantee by written notice shall select one arbitrator within fifteen (15) days after passage of the resolution. If Grantee initiates arbitration, it shall identify its selected arbitrator in its written notice, and the Jurisdiction shall select one arbitrator, within fifteen (15) days after receiving the notice.
- (2) The two selected arbitrators shall select a third arbitrator within fifteen (15) days after the appointment of the second arbitrator. If the two (2) arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Multnomah County Circuit Court.

(E) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than one hundred and twenty (120) days after the appointment of the arbitrator (or the third arbitrator, if three (3) arbitrators are used), unless extended by mutual agreement of the Jurisdiction and Grantee. The arbitrator(s) shall make a written report to the Jurisdiction and Grantee on the final determination within sixty (60) days after completion of the hearing. If the arbitration is conducted by three (3) arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination.

(F) The arbitrators shall have such powers as are set forth in ORS 36.335 through ORS 36.340 (1999).

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

25.4 Continuity of Service.

It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Grantee are honored. In the event that Grantee elects to Upgrade, modify or sell its System, Grantee shall make a good faith effort to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances during the term of this Franchise. In the event of purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment by the Jurisdictions under Section 19, including subsequent assignment, sale, lease or other transfer to any other Person, Grantee shall operate the System for such reasonable periods as are necessary to maintain continuity of Cable Service to all Subscribers.

25.5 Severability.

(A) If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or

regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in Section 19.2, or herein.

(B) This Franchise, as to the provisions regarding Cable Service and any facilities related thereto, is issued pursuant to the Jurisdictions' authority under 47 U.S.C. § 521 *et seq.* and the Jurisdictions' authority under state law, its Charters and Codes. The provisions regarding non-cable services and any facilities related thereto represent an exercise of the Jurisdictions' authority under state law, and the Jurisdictions' Charters and Codes. A single franchise is being issued by mutual agreement as the most convenient means of providing Grantee the authorization and establishing the conditions under which Grantee may use the rights of way to construct a System designed to provide both cable and non-cable services.

(C) If any material provision of this franchise related to the use of the rights of way to provide non-cable services, other than Telecommunications Services, including but not limited to, the franchise fee provisions, is not fully enforceable according to its terms as to non-cable services, the following shall occur:

- (1) The Jurisdictions shall afford Grantee ninety (90) days from the date the provisions are first declared unenforceable by a court or agency of competent jurisdiction (the "Termination Date") to obtain a separate authorization from the Jurisdictions to use or occupy the rights of way to provide non-cable services and to construct, install and maintain facilities related thereto as part of its System.
- (2) Grantee shall promptly seek an authorization to use or occupy the rights of way to provide non-cable services and to construct, install and maintain the facilities related thereto as part of its System.
- (3) Grantee shall promptly cease providing non-cable services via facilities in the rights of way should it fail to obtain an authorization from the Jurisdictions to use or occupy the rights of way to provide non-cable services and to construct, install and maintain the facilities related thereto as part of its System within thirty (30) days after the Termination Date.
- (4) The authorization in this Franchise to use or occupy the rights of way to provide non-cable services and to construct, install and maintain the facilities related thereto as part of its System shall be deemed revoked automatically, without the need for further action by the Jurisdictions thirty (30) days after the Termination Date, and references in this Franchise to "Services" will be read to be limited to "Cable Services."

25.6 No Recourse against Jurisdictions.

Grantee's recourse against the Jurisdictions or their officials, boards, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief.

25.7 Nonenforcement by the Jurisdictions.

Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the Jurisdictions to enforce prompt compliance,

nor do the Jurisdictions waive or limit any of their rights under this Franchise by reason of such failure or neglect.

25.8 Action by Agencies or Courts.

Grantee shall promptly notify the Jurisdictions in the event that any agency of the federal government or the State of Oregon or any court with competent jurisdiction requires Grantee to act inconsistently with any provisions of this Franchise.

25.9 Choice of Forum.

Any litigation between the Jurisdictions and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Circuit Court of Oregon, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division.

25.10 Notice.

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

If to the Jurisdictions:

Office of Cable Communications and Franchise Management
Mt. Hood Cable Regulatory Commission
1120 SW 5th Ave., Ste. 704
Portland, Oregon 97204
FAX No. (503) 823-5370

With a copy to:

MHCRC Staff Attorney
Room 430, City Hall
1221 SW 4th Avenue
Portland, Oregon 97204
FAX No. (503) 823-3089

If to Grantee:

John J. Jones, Esq.
RCN Telecom Services of Oregon, Inc.
105 Carnegie Center
Princeton, New Jersey 08540
Telephone: (609) 734-3700

With a copy to:

Frank Cirone
RCN Telecom Services of Oregon, Inc.
1400 Fashion Island Blvd, Ste 100
San Mateo, CA 94404

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

25.11 Reasonability of Actions.

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

25.12 Force Majeure.

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

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

25.13 Other Authority and Written Modification.

Except as otherwise expressly provided in this Franchise, this Franchise contains the entire agreement between the Jurisdictions and Grantee. Any other form of authority, whether written or oral in nature, existing previously between the Jurisdictions and Grantee shall be superseded. This Franchise may not be altered or modified orally but only by an instrument in writing executed by duly authorized representatives of the Jurisdictions and Grantee. For the Jurisdictions, such authority may only be granted by ordinance or resolution enacted by the Jurisdictions.

Section 26. GUARANTY.

26.1 Executed Guaranty.

On or before thirty (30) days after this Franchise becomes effective or is executed by the Jurisdictions as duly authorized by each Jurisdiction's governing body, the Guarantor shall file with the Clerk a written guaranty, duly executed by the Guarantor. The written guaranty shall be in the form provided in Exhibit A to this Franchise. By executing the written guaranty in the form attached hereto as Exhibit A, the Guarantor shall guarantee Grantee's performance of all of the terms and conditions of this Franchise and agree to perform those obligations on Grantee's behalf, if so ordered by the Jurisdictions in the event Grantee for any reason fails to perform them.

26.2 Failure to File Guaranty.

Any failure on the part of the Guarantor to file such written guaranty within such time shall be deemed an abandonment and rejection of the rights and privileges otherwise conferred upon Grantee by this Franchise, and the rights granted to Grantee shall thereupon be null and void without the need for any further action by the Jurisdiction.

Section 27. EXECUTION

27.1 Execution or Acceptance of Franchise.

On or before thirty (30) days after this Franchise becomes effective or is executed by the Jurisdictions, as duly authorized by each Jurisdiction's governing body, Grantee shall file with the Clerk a fully executed acceptance or original of this Franchise, as signed by a properly authorized officer of Grantee.

27.2 Failure to Accept or to File Executed Franchise.

Any failure by Grantee to comply with the requirements of Section 27.1 within the thirty (30) day period shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and the rights conferred upon Grantee shall thereupon be null and void, without the need for any further action by the Jurisdiction.

JURISDICTIONS:

GUARANTOR: RCN Telecom Services, Inc. and RCN Corporation

BY:

PRINTED NAME:

TITLE:

State of)
) ss.

County of)

This Franchise was acknowledged before me on the _____ day of _____, 2000, by _____ as _____, as a duly authorized officer of _____.

Notary Public for

My Commission Expires:

GRANTEE: RCN Telecom Services of Oregon, Inc.

BY:

PRINTED NAME:

TITLE:

State of)
) ss.

County of _____)

This Franchise was acknowledged before me on the ____ day of _____, 2000, by _____ as _____, as a duly authorized officer of RCN Telecom Services of Oregon, Inc.

Notary Public for

My Commission Expires

[Filing Draft]

EXHIBIT A
GUARANTY

THIS AGREEMENT is made this ____ day of _____, 2000, between the Guarantor, the Jurisdictions, and the Grantee. For the purpose of this Agreement, the terms Guarantor, Jurisdictions and Grantee have the meanings given in this Agreement, below.

WITNESSETH

WHEREAS, the Oregon cities of Fairview, Gresham, Portland, Troutdale and Wood Village, together with Multnomah County, (the Jurisdictions), have negotiated a franchise with RCN Telecom Services of Oregon, Inc., (the Grantee), to construct, operate and maintain a System (the "System"); and,

WHEREAS, RCN Telecom Services, Inc., a Pennsylvania corporation and RCN Corporation, a Delaware corporation (the Guarantor), are parent companies of the Grantee and have a substantial interest in the System and the conduct of the Grantee in complying with the Franchise (as defined below), which Franchise is hereby incorporated by reference to this Agreement; and

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

WHEREAS, the Guarantor has agreed to provide the guaranty required by the Franchise in order to induce the Jurisdictions to enter into the Franchise;

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

1. The Guarantor hereby unconditionally guarantees the punctual performance of any and all obligations of Grantee contained in the Franchise. In the event Grantee for any reason fails to perform those obligations, the Guarantor agrees to perform or cause to be performed those obligations on Grantee's behalf. The Guarantor's liability under this Agreement shall mature immediately, without notice or demand by the Jurisdictions, and become due upon the occurrence of any failure of performance by the Grantee.
2. This guaranty is an absolute, continuing, and unlimited guaranty of performance of the Franchise by the Grantee. The Jurisdictions shall not be obliged to proceed first against the Grantee or any other person, firm or corporation.
3. The Guarantor consents that, without notice to the Guarantor, and without the necessity for any additional endorsement, consent, or guaranty by the Guarantor, the obligations of the Grantee may, from time to time, be amended, modified, compromised or released by the Jurisdictions, all without impairing or affecting in any way the liability of the Guarantor hereunder.
4. The Guarantor waives notice of acceptance of this guaranty, and further waives protest, presentment, demand for performance or notice of default to the Guarantor. The Guarantor agrees that it is the Guarantor's responsibility to be informed of the condition of the Grantee and the status of the Grantee's performance of its obligations, and the

Jurisdictions have no duty to advise the Guarantor of any information known to it in that regard. This waiver, however, shall not be deemed a waiver of any requirement of the Franchise as to notice to the Grantee.

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

6. Any litigation between the Jurisdictions and the Guarantor arising under or regarding this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon, Portland division. The terms and provisions of this Agreement shall be applied and interpreted according to the laws, statutes and judicial decisions of the State of Oregon.

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

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

9. Any notices given pursuant to this Agreement shall be in writing and delivered personally to the following addressees or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Guarantor and the Grantee at 105 Carnegie Center, Princeton, New Jersey 08540 and to the Jurisdictions at: Office of Cable Communications and Franchise Management, 1120 S.W. Fifth Avenue, Suite 704, Portland, Oregon 97204.

IN WITNESS WHEREOF, the Grantee, the Jurisdictions, and Guarantor have entered into this Agreement on the ____ day of _____, 2000.

DEFINITIONS

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

Grantee: RCN Telecom Services of Oregon, Inc.,

Franchise: Franchise Ordinance No. ____, passed and adopted _____
2000.

Guarantor: RCN Telecom Services, Inc., a Pennsylvania corporation and RCN Corporation, a Delaware corporation.

GUARANTOR:

RCN TELECOM SERVICES, INC. AND RCN CORPORATION

Exhibit A – Guaranty

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By:

Title: Executive Vice President

State of New Jersey)

) ss.

County of Mercer)

This Agreement was acknowledged before me on the 26 day of Sept., ²⁰⁰⁰~~199~~, by John J. Jones
as E.V.P., as a duly authorized officer of RCN Telecom
Services, Inc. and RCN Corporation

Notary Public for: _____

Dorcas A. Tatar

My Commission Expires:

DORCAS A. TATAR
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/20/2005

GRANTEE: RCN TELECOM SERVICES OF OREGON, INC

By:

Title: Executive Vice President

State of New Jersey)

) ss.

County of Mercer)

This Agreement was acknowledged before me on the 26 day of Sept., ²⁰⁰⁰~~199~~, by John J. Jones
as E.V.P., as a duly authorized officer of RCN Telecom Services of
Oregon, Inc

Notary Public for: _____

Dorcas A. Tatar

My Commission Expires:

DORCAS A. TATAR
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/20/2005

SIGNATURE LINES FOR THE JURISDICTIONS TO FOLLOW:

Exhibit A - Guaranty

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

BY: Beverly Stein, Chair

TITLE:

State of Oregon)

) ss.

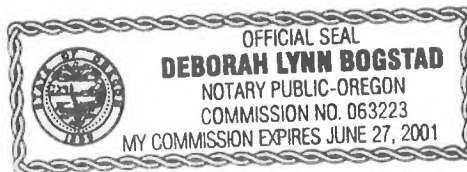
County of Multnomah)

This Agreement was acknowledged before me on the 6th day of October 2000 by Beverly Stein
as a duly authorized representative of Multnomah County Chair (JURISDICTION).

Deborah Lynn Bogstad

Notary Public for Oregon

My Commission Expires 6/27/01



RCN Resolution Exhibit B

David A. Hankin
Vice President
Regulatory & Government Affairs
RCN Corporation
1400 Fashion Island Blvd # 100
San Mateo CA 94404

July 18, 2000

David C. Olson, Director
Office of Cable Communications and Franchise Management
Mt. Hood Cable Regulatory Commission
1120 SW Fifth Ave, Rm 704
Portland, OR 97204

Dear Mr. Olson:

This will confirm the mutual understandings and commitments with respect to the administration of certain matters arising from or in connection with the pending Franchise agreement with RCN Telecom Services of Oregon, Inc., ("RCN"), for Broadband, Cable, Institutional, and Telecommunications Services, as recommended by the Mt. Hood Cable Regulatory Commission ("MHCRC") on July 17, 2000, for passage or adoption by Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale, and Wood Village, Oregon (the "Jurisdictions"). RCN acknowledges and agrees that this letter, when counter-signed by you, shall constitute a binding commitment between and among RCN and the Jurisdictions (collectively, the "Parties"), upon the effective date of such Franchise and throughout its term, unless modified in writing, as agreed to by duly authorized representatives of the Parties. RCN also acknowledges and agrees that this letter shall become a binding commitment under the temporary revocable Permit issued by the City of Portland on July 19, 2000 ("Permit") upon the effective date of such Permit and throughout its term, unless modified in writing by the duly authorized representatives of the City of Portland and RCN. We also acknowledge and agree that this letter, and the mutual understandings and commitments reflected in it, shall be of no force and effect in any Jurisdiction that does not adopt the Franchise in substantially similar form to the Franchise recommended by the MHCRC on July 17, 2000. Finally, RCN agrees that it is the express intention of the Parties that this letter is supplemental and accompanies the Franchise, and that it will survive and accompany approval of the Franchise by the Jurisdictions, regardless of the terms of Franchise Section 25.13.

1. Payment of franchise fees on revenues from Internet Services

So long as the decision of the 9th Circuit Court of Appeals in AT&T v. Portland et al. (9th Cir., No. 99-35609, June 22, 2000) is final and binding on the Parties, the Jurisdictions accept that Gross Revenues derived from the transmission of Internet

David C. Olson
July 18, 2000
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services (including Access Charges) derived by RCN from the operation of RCN's System shall be deemed Gross Telecommunications Revenues. Thus, so long as the decision of the 9th Circuit Court of Appeals in AT&T v. Portland et al. (9th Cir., No. 99-35609, June 22, 2000) is final and binding on the Parties, such Internet services revenue amounts shall be included in Gross revenues when determining franchise fees due and payable in accordance with Section 15 of the Franchise, but excluded when determining amounts due in accordance with Section 9 of the Franchise.

2. Bundling

If RCN or any Affiliated Entity, during the term of the Franchise, bundles, ties, or combines the sale of some or all of its services, whether authorized or not by the Franchise, and if it is necessary to separately determine Gross Revenues attributable to particular services in order to determine fees owed to the Jurisdictions, including fees under any of the following Franchise Sections:

- (1) Section 15.1 (A) providing for a franchise fee equal to five percent (5%) of RCN's Annual Gross Revenues;
- (2) Section 9.1 providing for Annual Payments of three percent (3%) of Gross Revenues (excluding Gross Telecommunications Revenues) for PEG Access Capital Funding; and,
- (3) Section 10 defining "Gross Telecommunications Revenues" excludable from Section 9.1;

the following proportional methodology shall be applied: The combined, bundled revenues derived from a Subscriber shall be allocated to each of the bundled, tied or combined services in the proportions that the standard published rate for each of the services, as realistically offered by RCN or an Affiliated Entity to, and paid by, Subscribers who receive only the individual service, bears to the sum of such rates for all of the bundled, tied or combined services; except that RCN may use an alternative methodology if the results of such alternative allocation are reasonably equivalent to the results which would be derived from the proportional methodology specified in this provision. RCN shall bear any burden of proof regarding whether the actual methodology used is reasonably equivalent to the proportional methodology. For purposes of this paragraph, "reasonably equivalent" shall mean the revenue associated with any particular service, resulting from the alternative allocation is within five percent (5%) of the amount resulting from the proportional methodology. If a particular service is not realistically offered on a standalone basis and, thus, it may be impracticable to apply the methodology for a particular service, the standard published rate of a competitor offering a comparable standalone service may be used in the allocation, subject to the approval of the Jurisdictions. Furthermore, for purposes of this paragraph, "realistically offered" shall mean at least five percent (5%) of Subscribers for a particular service receive only that service and pay the standard published rate for that service.

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July 18, 2000
Page 3 of 4

3. Initial Cost of Franchise Administration and Construction

In order to provide for compensation covering the extraordinary regulatory burdens imposed by new System construction in an overbuild environment, RCN agrees to pay the Jurisdictions a minimum annual fee of Fifty Thousand Dollars, (\$50,000), payable quarterly in installments of Twelve Thousand Five Hundred Dollars (\$12,500). Accordingly, through the duration of this Franchise, RCN shall pay, as franchise fees in accordance with Section 15 of the Franchise, the greater of either: (1) the minimum annual fee; or, (2) an amount equal to five percent (5%) of RCN's Gross Revenues, subject to the paragraph immediately below.

Beginning with the first quarter after four consecutive quarters in which the quarterly installment of the minimum annual fee does not exceed five percent (5%) of Gross Revenues, franchise fees will only be assessed based on RCN's gross revenues, and the minimum payment required by the paragraph immediately above shall no longer be applicable.

Currently, federal law regarding Cable Services limits the authority of the Jurisdictions to collecting, over the term of the Franchise, a maximum permissible franchise fee of five percent (5%) of gross revenues derived from the operation of the System to provide Cable Services. 47 U.S.C. § 542(b). To the extent the services provided by RCN under the Franchise are Cable Services only, RCN may, beginning with the first quarter after four consecutive quarters in which the franchise fee owed for the quarter exceeds the quarterly installment of the minimum annual fee, reduce quarterly franchise fee payments under Subsection 15.1(A) of the Franchise by up to six and one-quarter percent (6.25%) of the total payments of minimum annual fees in excess of five percent (5%) of Gross Revenues for the period during which minimum fees exceeded five percent (5%) of Gross Revenues until such reductions equal such excess amount. The Jurisdictions shall never be required to refund monies to RCN under this provision. Should it be determined that, during the period RCN was making minimum payments, any service on which a franchise fee was owed was not a Cable Service, then this paragraph shall not be applicable, and no reductions in franchise fees, beyond any reductions made up to the time of determination, shall be made.

The Jurisdictions are not required to refund monies to RCN should RCN fail to recover amounts by which the minimum annual fee exceeded 5% of Gross Revenues under the paragraph immediately above. RCN agrees that any interest owed on such minimum annual fees or any overpayment otherwise subject to 47 U.S.C. §542 need not be returned to it, but may be treated as an additional capital contribution for PEG use of the System.

David C. Olson
July 18, 2000
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I am providing two signed originals of this letter to you. Please execute both, and return one of the fully executed originals to me for my records.

Sincerely,



David Hankin
Vice President- Regulatory & Government Affairs
RCN Telecom Services of Oregon, Inc.

Acknowledged



David C. Olson
Date: 7-18-2000

Approved as to form



Benjamin Walters, Deputy City Attorney
MHCRC Legal Counsel