

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 08-105

Approving Cable Franchise Agreement with Cascade Access, LLC

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 27, 2000, by Resolution 00-016, the Board authorized the MHCRC to develop and negotiate documents with potential providers, including proposed franchise agreements for competitive cable, services other than cable, and broadband communications services in Multnomah County.
- c. 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.
- d. In the fall of 2007, the MHCRC was contacted by Cascade Access (CA) (dba Reliance Connects) to discuss a franchise agreement. The MHCRC has developed such a franchise agreement with Cascade Access, LLC, and recommends that the County approve the attached franchise with Cascade Access, LLC to provide competitive cable service to residents in the Corbett area of unincorporated Multnomah County.

The Multnomah County Board of Commissioners Resolves:

1. The attached Franchise Agreement between Cascade Access, LLC and Multnomah County is approved.
2. The Chair of the Multnomah County Board of Commissioners is authorized to execute the attached Franchise Agreement on behalf of Multnomah County.

ADOPTED this 17th day of July 2008

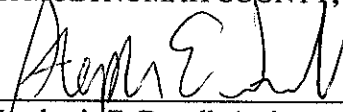


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Stephanie E. Duvall, Assistant County Attorney

SUBMITTED BY:
Commissioner Lonnie Roberts

MULTNOMAH COUNTY / CASCADE ACCESS, LLC FRANCHISE

July 17, 2008

Section 1. NATURE AND TERM OF GRANT

1.1 Grant of Franchise.

(A) Multnomah County does hereby grant to Cascade Access, LLC who is qualified to do business in Oregon, and to its successors and assigns, a franchise to construct, operate and maintain a Cable System to provide Cable Services and Institutional Services in the Streets of Corbett as outlined in the map attached as Exhibit A.

(B) Throughout this Franchise, Multnomah County, Oregon, shall be referred to as the "County" and Cascade Access, LLC shall be referred to as the "Grantee".

1.2 Term of Franchise. This Franchise, and all rights, privileges, obligations and restrictions pertaining hereto, shall expire on December 31, 2018, unless terminated sooner as provided in this Franchise.

1.3 Effective Date. The Effective Date of this Franchise shall be on the later of either July 18, 2008, or 7 days after the passage date of this Franchise by the County, unless the Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 22.1, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original of this Franchise, as stamped by the County Clerk.

1.4 Franchise Not Exclusive.

(A) This Franchise is not exclusive. The County expressly reserves the right to grant franchises, licenses, permits or other similar rights to other Persons, as well as the right in its own name, to use the Streets for similar or different purposes allowed Grantee hereunder.

(B) Competing Cable Systems.

(1) The parties acknowledge that there is an incumbent cable operator already authorized to provide cable services within the Corbett area. The incumbent cable operator is required to provide capacity on its cable system for PEG Access Channels, to provide PEG Access Capital funding, to provide I-Net capacity and support and has existing assignments for the PEG Access Channels. The parties acknowledge that this Agreement reflects their best, good faith efforts to reflect the PEG Access and I-Net obligations set forth in the incumbent cable operator's franchise with the County. The parties agree that the obligations set forth in Sections 6, 7 and 8 are intended to require Grantee to provide PEG Access Channels, I-Net capacity and PEG Access Capital funding that is substantially equivalent to that required by the incumbent franchised cable operator.

(2) If, after the effective date of this Franchise, there are changes as to franchise requirements for the incumbent franchised cable operator relating to PEG Access

Channels, PEG Access Capital funding and I-Net capacity, the parties agree that the corresponding obligations in this Franchise will be modified to substantially reflect the franchise obligations of the incumbent franchised cable operator. The parties agree that they will attempt in good faith to negotiate these modifications. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation in accordance with Section 21.3 or by arbitration in accordance with Section 21.2.

(C) Additional Provisions.

- (1) Grantee agrees and acknowledges that, solely for the purposes of Section 1.4(B), the provisions of any other franchise issued or administered by the County 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.
- (2) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the County or by any other Person.

1.5 Charter and General Ordinances. This Franchise is subject to the Charter of Multnomah County and general ordinance provisions passed pursuant thereto, affecting matters of general County concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, fees to be paid or the manner of construction.

1.6 Cable Services by Affiliates. Any Affiliate of the Grantee directly involved in the offering or delivery of Cable Services in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, shall comply with the obligations of this Franchise. However, the County and Grantee acknowledge that Cascade Utilities ("CU"), an Affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Streets which will be utilized by Grantee to provide Cable Services. So long as CU does not provide Cable Services to Subscribers in the County, CU will not be subject to the terms and conditions contained in this Franchise. CU's installation and maintenance of facilities in the Streets shall otherwise be subject to applicable laws and permit requirements. To the extent Grantee uses any third-parties (whether or not affiliated with the Grantee) to fulfill its obligations under this Franchise, Grantee will insure such parties comply with the terms and conditions of this Franchise. To the extent Grantee constructs and installs Facilities in the Streets, such installations and Facilities will be subject to the terms and conditions contained in this Franchise.

1.7 County Does Not Regulate Telecommunications. The County's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of Grantee's telecommunications network to the extent the telecommunications network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending Grantee's existing telecommunications network for the provision of non-cable services.

Section 2. INTERGOVERNMENTAL AGREEMENT/ CABLE REGULATORY COMMISSION

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

Section 3. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.10 "Cable Programming Service Tier" is any video Cable Services, other than Basic Service Tier or Pay Services.

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

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

3.13 "Cable System" means a system of plant, Facilities, equipment, and closed Signal transmission paths, including, without limitation, Fiber, Fiber Distribution Hubs, Fiber Distribution Infrastructure, 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 used to distribute Cable Services and Institutional Services and of producing, receiving, amplifying, storing, processing or distributing Signals, whether owned, rented, leased, leased-purchased or otherwise controlled by or within the responsibility of the Grantee.

3.14 "Capacity" means the capability of the Cable System to carry Signals.

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

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

3.17 "County" means Multnomah County, Oregon, an Oregon home rule county, and all of the territory within its corporate boundaries, as such may change from time to time.

3.18 "County Commission" means the Multnomah County Commission.

3.19 "Designated Access Provider" means the entity or entities designated by the County under Section 6.1 to provide Access in the Franchise Area, and whose duties may include the management of certain Access Facilities and Resources.

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

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

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

3.23 "FCC" means the Federal Communications Commission.

3.24 "Fiber" means a transmission medium of optical fiber cable capable of carrying Cable Services by means of lightwave impulses.

3.25 "Fiber Distribution Hub" or "FDH" means the cabinet/site that houses the Passive Optical Network (PON) splitter assembly that aggregates the distribution fibers found in the public right of way from that point to the subscribers.

3.26 "Fiber Distribution Infrastructure" means those fiber optic cables and associated access equipment placed within the public right of way that are used to distribute signals the final 6,000 feet to the customers, excluding the optical subscriber drops placed on the subscribers private property.

3.27 "Franchise" means this franchise agreement, as fully executed by the County and the Grantee.

3.28 "Franchise Area" means the area of the County within which the Grantee is authorized to provide Cable Services, as set forth in Section 4, and as may be modified from time to time.

3.29 "Gross Revenues" means all amounts, in whatever form and from all sources, earned either by the Grantee from the operation of Grantee's Cable System within the County, or by any Affiliated Entity only to the extent such amounts are earned from the operation of the Cable System to provide Cable Services within the Franchise Area. "Gross Revenues" shall include, without limitation, amounts for the Basic Service Tier, Cable Programming Service Tiers, Pay Services, audio services, Subscriber installations and transactions, Leased Access, advertising, equipment rentals and all other revenues

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

3.30 "Hazardous Substances" has the meaning given by ORS 465.200(16) (2007).

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

3.32 "Initial Service Area" means the portion of the Franchise Area as outlined in Exhibit A.

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

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

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

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

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

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

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

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

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

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

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

3.44 "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 performance, enforcement or administration of this Franchise.

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

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

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

3.48 "Service Date" means the date that Grantee first offers, or plans to offer, Cable Services on a commercial basis to one or more Subscribers in the Franchise Area. Grantee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall be incorporated into and be a part of this Franchise.

3.49 "Section" or "Subsection" means a provision of this Franchise, unless specified as part of another document.

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

3.51 "Standard Installation" means an installation of a drop of no more than 335 feet from a Dwelling Unit requesting Cable Service to the nearest point from which the FTTP Network is designed to serve the site.

3.52 "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.

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

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

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

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

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

Section 4. FRANCHISE AREA

4.1 Service Area. Subject to the provisions of this Franchise, Grantee is authorized to provide Cable Services within the unincorporated portion of Multnomah County outlined in Exhibit A. Grantee shall make Cable Service available to significant numbers of Dwelling Units in the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall make Cable Service available to all Dwelling Units in the Initial Service Area within three (3) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by a Jurisdiction; (C) for periods of delay resulting from Grantee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other

providers; (E) in areas, developments or buildings where Grantee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Grantee; and (F) in developments or buildings where Grantee is unable to provide Cable Service for technical reasons or that require non-standard facilities that are not available on a commercially reasonable basis; and (G) in areas where the Dwelling Unit density does not meet the density requirements set forth in Sub-section 4.2

4.2 Density Requirement: Grantee shall make Cable Services available to Dwelling Units in all areas of the Service Area where the average density is equal to or greater than 20 Dwelling Units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network. After the time stated for providing Cable Service as set forth in Subsection 4.5, should an area within the Initial Service Area meet the density requirements through new construction, Grantee shall provide Cable Service to such area within ninety (90) days of receiving a request for service.

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

4.4 Standard and Non-Standard Installations: In Initial and Additional Service Areas, Grantee shall be required to connect, at a standard installation charge, all residential Dwelling Units that qualify as a Standard Installation under this Franchise. Grantee shall have no obligation to provide Cable Services to Dwelling Units which require an installation in excess of a Standard Installation, unless the Subscriber requesting such connection agrees to pay Grantee's actual costs incurred for the portion of the residential installation that exceeds a Standard Installation or actual costs incurred to connect any non-residential Dwelling Unit Subscriber.

4.5 Service Date. Grantee shall notify the County, within three (3) months from the Effective Date of this Franchise, of a Service Date as provided in Section 3.48.

4.6 Redlining Prohibited. Grantee shall not deny Cable Services to any group of subscribers or potential residential subscribers based upon the income level of residents of the local area in which such group resides, nor shall Grantee base decisions about construction or maintenance of its Cable System or Facilities based upon the income level of residents of the local area in which such group resides

Section 5. PROGRAMMING AND CHANNEL CAPACITY

5.1 Channel Capacity.

(A) Grantee shall provide a minimum Downstream Channel capacity of 870 Standard Video Channels to all Residential Subscribers.

5.2 Broad Programming Categories.

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

- (1) Arts, culture and performing arts;

- (2) Foreign languages;
- (3) Programming addressed to diverse ethnic and minority interests in the County;
- (4) National, state and local government affairs; and
- (5) PEG Access Programming.

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

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

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

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

Section 6. PEG ACCESS

6.1 Designated PEG Access Providers.

(A) The County may designate up to three (3) Non-Commercial PEG Access providers, including itself, to control and manage the use of any or all Access Facilities and Resources provided by the Grantee under this Franchise. To the extent of such designation by the County, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities and Resources.

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

6.2 Access Channel Capacity on the Residential Network.

(A) Initial Access Channels. Grantee shall provide eight Downstream Channels for distribution of Access Programming to all Residential Subscribers, with such Channel assignments as are set forth in Section 6.3(A).

(B) Additional Access Channels. Grantee shall Activate up to a total of 18 Channels, inclusive of the Access Channels under Section 6.2(A), upon request by the County for PEG Access use in order to meet a community need identified by a Designated Access Provider. These Channels shall have the

capacity to carry entertainment quality and motion equivalent Channels, but may be reconfigured, at the County's direction, to carry Channels which require less capacity.

6.3 Access Channel Assignments and Programming Information

(A) PEG Channel Assignments. Grantee shall provide the following Channel assignments for PEG Access:

- (1) Channel 11 - public access
- (2) Channel 21 - public access
- (3) Channel 22 - public access
- (4) Channel 23 - public access
- (5) Channel 27 - educational access
- (6) Channel 28 - educational access
- (7) Channel 29 - government access
- (8) Channel 30 - government access

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

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

(D) Access Programming Information in Programming Guides.

- (1) Grantee shall include the PEG Access Channels and Programming information in any program guides provided to its Cable Services Subscribers, including, but not limited to on-screen, print and on-line program guides which include channel and program listings of any local Broadcast Channels. Grantee shall bear all capital, implementation and operating costs to include the PEG Access Channels and Programming information in the programming guides.
- (2) The Designated Access Providers shall provide to the Grantee, or its designee, the Access Channel and Programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.

6.4 Access Channel Interconnect

(A) Access Channel Origination Point. The County has designated MetroEast Community Media, located at 829 NE Eighth Street, Gresham, Oregon, or its successors or assignees, as the Designated Access Provider, which serves as the PEG Access Channels point of origination. However, Grantee and the County acknowledge that the PEG Access Channels origination point is not physically located within Grantee's Cable Services Franchise Area.

(B) Interconnect Capacity. Grantee shall provide Activated Interconnection of the Cable System to other contiguous franchised cable services operators' systems in order to enable the carriage and routing of Access Channels and Programming. The Access Channel Interconnect shall enable the Designated Access Providers to use their Channel origination points as central collection, switching and dissemination points for PEG Access Programming, including the control of the Interconnection of such Programming with other cable communication systems.

(C) The County acknowledges that the Access Channel Interconnection requires cooperation from other cable services operators as to engineering, design, technical and operational issues. Therefore, the County shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable services operators necessary to establish the Activated Interconnects, and Grantee's Interconnection obligations under Section 6 shall be subject to such cooperation being obtained.

(D) Grantee shall implement and continue in effect all Access Channel Interconnections in a manner that permits the transmission of Access Channel signals on the Cable System which meet technical standards for transmission of local broadcast signals.

(E) Changes in Access Channel Origination Points. If the County designates new Access Channel origination points within the Franchise Area or if Grantee's Franchise Area changes so that the PEG Access Channels point of origination under Section 6.4(A) is within the Franchise Area, Grantee shall provide an Activated Interconnect for the PEG Access Channel signals at the Designated Access Provider's site.

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

6.6 Charges. All of the Channels, Cable System Capacity, capabilities, equipment, labor and other elements needed for the Grantee to provide PEG Access as required under this Section shall be provided without charge to the County or to any Designated Access Provider, except as specifically provided in this Section 6.

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

6.8 Technical Quality.

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

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

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

Section 7. PEG INSTITUTIONAL NETWORK

7.1 Institutional Network ("I-Net")

(A) Grantee acknowledges that the County has acquired I-Net capacity, facilities, interconnects, services and resources from a variety of franchised cable services providers to design, construct and operate an Institutional Network and to facilitate PEG Institutions' uses of the I-Net. The parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services provided under other cable services franchises.

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

(C) The County and Grantee may mutually agree on I-Net capacity, Interconnect, facilities and/or services to be provided by Grantee to meet identified I-Net needs of PEG Institutions. Grantee may deduct the agreed upon Incremental, direct costs of providing such I-Net capacity, facilities and/or services from I-Net funds provided under Section 8.1(A).

7.2 Interconnections. Upon request by the County based on an identified community need, Grantee shall provide an Activated Interconnect, within 120 days of such request, for the carriage and routing of I-Net Signals to and from any I-Net facilities provided by Grantee and I-Net facilities provided by other franchised cable service providers, including cable service providers serving jurisdictions contiguous with the Franchise Area. If the County authorizes such Interconnection, Grantee may credit the Incremental, direct cost of such Interconnection against payments made under Section 8.1(A).

Section 8. PEG ACCESS CAPITAL FUNDING

8.1 3% Gross Revenue Annual Setaside.

(A) Grantee shall pay to the County three percent (3%) of Gross Revenues Annually to support PEG Access and I-Net Capital Costs.

(B) The County intends to use one percent (1%) of funds paid under Section 8.1 to provide support for Designated Access Provider Capital Costs; one percent (1%) for grants to PEG Institutions for Capital projects related to use of the Cable System; and one percent (1%) to fund PEG Institutions' Capital requirements for use of the I-Net.

8.2 Payments. Following the effective date of this Franchise, Grantee shall make quarterly payments to the County under Section 8.1 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.

8.3 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 8 shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the County, subject to the requirements of Federal law. Grantee agrees that although the sum of franchise fees and the payments set forth in Section 8 may total more than five percent of Grantee's Gross Revenues in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any franchise fee payments under this Franchise.

8.4 Audit Rights.

(A) The Grantee and its agents and representatives may arrange for and conduct audits, upon no less than thirty (30) days prior written notice and during normal business hours, for payments made under Section 8 to ensure that the PEG Access Capital funding has been utilized for PEG Access and Institutional Network Capital Costs in accordance with this Franchise. Grantee shall provide written notice to the County of the auditors' conclusions. The County shall have thirty (30) days to provide a written response. If the parties are unable to agree upon the auditors' conclusions, either party may submit the issue to arbitration under Section 21.2.

Section 9. SERVICE, CONSTRUCTION, AND INTERCONNECTION

9.1 Fiber Distribution Hub (FDH) Service Radius. For purposes of Section 9, "FDH Service Radius" means an area within 6,000 feet from an Activated FDH, capable of providing Residential Cable Services to Residential Subscribers, providing the associated fiber distribution infrastructure is in place.

9.2 Universal Service. Subject to Section 4, following the Service Date, Grantee shall provide Cable Services under non-discriminatory rates and reasonable terms and conditions to all Subscribers in the Cable Services Franchise Area who reside in Dwelling Units within an activated FDH Service Radius. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within an activated FDH Service Radius within the Cable Services Franchise Area. Grantee shall provide information to the County clearly identifying an FDH Service Radius immediately upon the Activation of the Remote Terminal which serves the area.

9.3 Service Availability. Except as otherwise provided in this Franchise, where Grantee chooses to activate a FDH Service Radius located within the Franchise Area, Grantee shall provide Cable Services at its standard installation rates within seven (7) days of a request by any Person within an activated FDH Service Radius. A request for Cable Services shall be deemed made on the date of

signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

9.4 Monthly Service and Installation of Schools. Upon request, Grantee shall provide without charge the Basic Service Tier, an expanded programming service Tier and one standard outlet to any School located within an activated FDH Service Radius.

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

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

Section 10. TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS

10.1 Technical and Safety Standards.

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

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

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

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

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

10.2 Performance Testing.

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

(1) All tests required by the FCC; and

- (2) Any other tests reasonably necessary to determine compliance with this Franchise or in response to subscriber complaints.

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

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

(A) 100% Emergency Standby Power. Grantee shall maintain standby power generating capacity throughout the Cable System that serves Subscribers within the Franchise Area. All standby power systems shall be rated to provide at least two (2) hours duration. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the County upon request.

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

Section 11. CUSTOMER SERVICE AND CONSUMER PROTECTION

11.1 County's Cable Television Consumer Protection Policy. Grantee shall comply with the County's Cable Television Consumer Protection Policy.

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

Section 12. COMPENSATION AND AUDITING

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

12.2 Payments and Quarterly Reports.

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

(B) Quarterly Reports. Each payment shall be accompanied by a written report to the County, verified by Grantee, containing an accurate statement in summarized form, as well as in detail, of

Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in a form satisfactory to the County.

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

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

12.5 Additional Commitments not Franchise Fees. No term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay franchise fees related to Cable Services in accordance with applicable law. Although the total sum of such franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments in this Franchise 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 County, subject to applicable Federal law. Except as otherwise authorized by 47 U.S.C. § 542, and the regulations promulgated thereunder, Grantee shall not pass these additional commitments through to subscribers.

12.6 Acceptance of Payment and Recomputation. No acceptance of any payment pursuant to Section 8 or Section 12 of this Franchise shall be construed as an accord 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 County may have for further or additional sums payable. All amounts paid under Section 8 or Section 12 of this Franchise shall be subject to audit by the County, provided that only payments which occurred during a period of thirty-six (36) months prior to the date the County notifies Grantee of its intent to perform an audit shall be subject to such audit. Grantee agrees to pay the County for:

(A) Interest on any underpayment of an amount due under Section 8 or Section 12 of this Franchise that is disclosed as the result of an audit, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successor and assigns as designated by the County, compounded quarterly from the date on which the payment was due. If such payment is not received within thirty (30) days of notice from the County, then interest shall be compounded daily from the date on which the payment was due until the date the County receives the payment.

(B) A Penalty of five percent (5%) of the underpayment shall be assessed and due within thirty (30) days of written notice from the County, if the County's audit discloses that the Grantee has paid ninety-five percent (95%) or less of the principal amount owing for the period under audit. If such payment is not received within thirty (30) days of written notice from the County, then interest shall be compounded daily from the date on which the payment was due until the date on which the County receives the payment, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successors and assigns as designated by the County.

12.7 Escrow. If the Grantee disputes the County's determination of underpayment under Section 8 or Section 12 of this Franchise, the Grantee shall place the disputed amount in an escrow account at a financial institution with instructions agreed to by the County until final resolution.

12.8 Authority to Audit.

(A) The County and its agents and representatives shall have authority to arrange for and conduct audits under Section 12, within the Portland metropolitan region, upon no less than thirty (30) days prior written notice, and during normal business hours. Within the limitations established by Section 12.8, the County may determine the scope of audit in each instance.

(B) The Grantee agrees to reimburse the County for:

- (1) The reasonable costs of such audit if the audit discloses that the Grantee has paid 95% or less of the fees owing under Sections 8 and 12 for the period at issue; or
- (2) One half of the reasonable costs of such audit if the audit discloses that the Grantee had paid more than 95% but less than 98% of the fees owing under Sections 8 and 12 for the period at issue.
- (3) The Grantee shall reimburse the County within 30 days of receipt of an invoice from the County showing such costs were actually incurred and were directly related to the audit. The County's costs which may be reimbursed shall not exceed \$7,500.00 per audit.

12.9 Liability for Licenses and Taxes. Except as provided in Section 12.5, payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the County, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. The County's right to impose any such license fee, tax or charge shall be subject to any limitations on the County under applicable law.

Section 13. GENERAL INDEMNIFICATION AND INSURANCE

13.1 Indemnification.

(A) General Indemnification. Grantee agrees and covenants to indemnify, defend and hold the County, its officers, agents and employees, harmless from any direct claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any injury 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 County or its officers, agents or employees. The County 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 County which

approval shall not be unreasonably withheld. Grantee shall consult and cooperate with the County while conducting its defense of the County and the County shall fully cooperate with the Grantee.

(B) Indemnification for Relocation. Grantee also hereby agrees to indemnify the County, its officers, agents and employees, for any damages, claims, additional costs or expenses assessed against or payable by the County arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Cable System in a timely manner in accordance with a reasonable relocation schedule furnished to Grantee by the County Engineer unless Grantee's failure arises directly from the County's negligence or willful misconduct.

(C) Indemnification – Hazardous Substances. Grantee agrees to forever indemnify the County, its officers, agents and employees, from and against any claims, costs and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law statute, regulation or order, for the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances, associated with, arising from or due to Grantee's structures or other Facilities in the Streets.

(D) Defense of the Franchise. Grantee agrees and covenants to indemnify, defend and hold the County, its officers, agents and employees, harmless from injury, damage, loss, liability, reasonable 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. Grantee's 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 County: (1) lacked authority under federal or state law, its charters, County codes or ordinances in granting this Franchise; (2) acted in any disparate or discriminatory manner against any incumbent franchisee or permittee in granting this Franchise; (3) granted this Franchise in violation of any contractual rights belonging to any incumbent franchisee or permittee.

13.2 Insurance.

(A) Grantee shall maintain commercial general liability insurance and commercial automobile insurance that protects the Grantee and the County, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from Grantee's operations under this Franchise or in connection therewith, as set forth in subsection 13.2.(B).

(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 & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

Coverage	Limit
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 County reserves 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 the County 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 15.2 without thirty (30) days written notice first being given to the County's cable regulatory office. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of Section 15.2 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 County's cable regulatory office, 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 County Counsel as to the adequacy of the certificate and of the insurance certified under the requirements of Section 15.2. Failure to maintain adequate insurance as required under Section 15.2 shall be cause for immediate revocation of this Franchise by the County.

(G) In the alternative to providing a certificate of insurance to the County certifying liability insurance coverage as required in Section 13.2 (A), Grantee may provide the County with an Annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the County, its officers, agents and employees, as otherwise required under Section 13.2(A). The adequacy of such self-insurance shall be subject to the County Counsel's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 13.2 (C), any failure by the Grantee to maintain adequate self-insurance shall be cause for the County to declare a forfeiture of this Franchise under and subject to Section 20.1(C) of this Franchise.

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

13.3 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the County, with good and sufficient surety approved by the County, in the penal sum of not less than \$100,000, conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of the Franchise, including, if necessary, the time required for removal of all of Grantee's Cable System installed in the Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the County Auditor. The bond shall be reviewed and approved as to form by the County Counsel.

(B) During the term of the Franchise, Grantee shall file with the County Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the County exercise its rights against the performance bond under this Section 13.3 if a bona fide, good faith dispute exists between the County and the Grantee.

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

13.4 Construction Bond. During all times when Grantee is performing any construction work in or under the Streets requiring a permit from the County, Grantee shall post a faithful performance bond, a cash deposit or irrevocable letter of credit, as is required for the County's permit, running to the County, with good and sufficient surety approved by the County, in the sum required by the permit. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of the Franchise. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the County. Upon such approval, the County 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 County as to its adequacy under the requirements of this Section 13.4.

Section 14. GENERAL STREET USE AND CONSTRUCTION

14.1 Construction.

(A) Subject to applicable regulations of the County, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all Facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain the Grantee's responsibility. Grantee shall apply for and obtain all permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities,

within the Streets. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the County to Grantee.

(B) Construction Schedule and Maps.

- (1) Prior to beginning any new construction in the Streets, Grantee shall provide the County Engineer through the permitting process with an initial construction schedule for work in the Streets and the estimated total cost of such work together with its permit application. When construction of Grantee's Cable System in the Streets is completed, Grantee shall provide the County with maps showing the location of its installed Facilities in the Streets, as built. Such "as-built" maps shall be in a form acceptable to the County Engineer.
- (2) One (1) year after the effective date of this Franchise, and annually thereafter in the event of any alterations, Grantee shall provide a map to the County Engineer and the Cable Regulatory Commission, or its successor, showing the location of Grantee's Facilities in the Streets on a scale of three thousand five hundred feet (3,500') per inch or whatever scale the County and Grantee agree upon. Grantee shall also provide such maps in an electronic format acceptable to the County and the Grantee. The level of detail in maps provided by Grantee shall be limited to that which is needed for the County's administration of the Streets in order to protect Grantee's confidential business information and the security of Grantee's Cable System.

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

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

14.2 Locates. Grantee shall comply with the Oregon Utility Notification (ORS 757.542 through 757.562 and ORS 757.993 (2007), and the rules and regulations promulgated thereunder in OAR Chapter 952.)

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

14.4 Restoration of Streets.

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

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration and maintenance of the Street and its surface within the area affected by the excavation. The County 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 County reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the County Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 14.4 shall be done in strict compliance with all rules, regulations and ordinances of the County.

14.5 Maintenance and Workmanship.

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

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

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

14.6 Acquisition of Facilities. Upon Grantee's acquisition of Facilities in any Street, or upon the addition or annexation to the County of any area in which Grantee owns or operates any Facility in any Streets, the Grantee shall, at the County's request, submit to the County a statement describing all Facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such Facilities to the extent the Grantee has possession of such information. At the County's sole option, as expressed by ordinance adopted by the County Commission, 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.

14.7 Reservation of County Street Rights. Nothing in this Franchise shall prevent the County from constructing sewers; grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's Cable System shall be removed or replaced in the manner the County

shall direct. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the County Engineer's written notice to Grantee, the County may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the County due to Grantee's delay.

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

14.9 Common Users.

(A) For the purposes of this Section:

- (1) "Attachment" means any wire, Fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.
- (2) "Conduit" means any structure, or section thereof, containing one or more ducts, conduits, manholes, handholds or other such facilities in the Grantee's Cable System.
- (3) "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.
- (4) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the County to use the Streets.
- (5) "Surplus Ducts or Conduits" are Ducts or Conduit other than those: (i) occupied by the Grantee or any prior Licensee, (ii) unoccupied Ducts or Conduit held by Grantee as an emergency use spare, and (iii) unoccupied Ducts or Conduit that the Grantee reasonably expects to use within the next eighteen (18) months.

(B) Grantee acknowledges that the Streets have a finite capacity for containing Conduits, Ducts and other facilities. Therefore, Grantee agrees that whenever the County Engineer determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority from the County to construct or maintain Conduits or Ducts in the Streets, the County Engineer may require Grantee to afford to such Person the right as a Licensee to use Grantee's Surplus Ducts or Conduits in common with the Grantee, unless safety or engineering concerns cannot reasonably be mitigated or eliminated. This right of use shall be subject to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by the Grantee and the Licensee, and to the safety and reliability of Grantee's Cable System and maintenance requirements. Any agreement

governing the terms and conditions of use of Surplus Ducts or Conduits may, at Grantee's discretion, require use of Grantee's employees or contractors in any work occurring in Grantee's vaults.

(C) If the Grantee and any Licensee fail or cannot otherwise agree to fair and equitable terms, conditions and regulations, including but not limited to a conduit rental rate, within a reasonable period of time, the Grantee and the Licensee shall enter into binding arbitration to determine such terms, conditions and regulations. In such arbitration, the arbitrators shall determine the conduit rental rate at a fair market rate. The binding arbitration shall be conducted in accordance with the Uniform Arbitration Act ORS 36.600 to 36.740 (2007).

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

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

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

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

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

(H) As needed and as specified by the County in an Annual duct capacity plan provided to Grantee, County will be allowed to access and use Grantee's Surplus Ducts or Conduits without use fees, subject to the same process and other terms applicable to Licensees under Section 14.9 and subject to a separate written agreement between the County and Grantee specifying the terms of such access and usage by the County.

14.10 Abandonment of Facilities.

(A) If Grantee intends to permanently abandon a Facility within all or part of a particular portion of the Streets by physically disconnecting it from its operating System, Grantee shall submit to the County Engineer a completed application describing the structures or other Facilities and the date on

which Grantee intends to permanently abandon such Facilities. Grantee may elect to remove the abandoned Facilities or request that the County allow them to remain in place. Grantee's sale of a portion of its System shall not, by itself, be considered abandonment under this Section 14.10.

(B) Removal or Modification. Upon receiving notice from Grantee of the intent to abandon a Facility by permanently disconnecting it from its operating system, the County may consent to having the ownership of the abandoned Facilities in the Streets transfer to the County and Grantee shall have no further obligation therefore. Notwithstanding Grantee's request that any abandoned Facility remain in place, the County Engineer may require Grantee to remove the Facility from the Street or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The County Engineer 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 reasonable schedule set by the County Engineer. The County Engineer shall have unlimited discretion in determining a reasonable schedule for removal or modification of the abandoned Facility, based upon the Engineer's consideration of the total circumstances of the schedule. Until such time as Grantee removes or modifies the Facility as directed by the County Engineer, or until the rights to and responsibility for the Facility are accepted by the County or by another Person having authority to construct and maintain Facilities with the Streets, Grantee shall continue to be responsible for all necessary repairs and relocations of the abandoned Facility, as well as restoration of the Street, in the same manner and degree as if the abandoned Facility were in active use, and Grantee shall retain all liability for the abandoned Facility.

14.11 Hazardous Substances.

(A) Compliance with Applicable Law. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to its Cable System and Facilities in the Streets.

(B) Maintenance, Inspection and Remediation. Grantee shall maintain and inspect its Cable System located in the Streets. If Grantee discovers any Hazardous Substances in the course of Grantee's work on its Facilities in the Streets, Grantee shall provide a written report of the discovery to the County within two (2) business days. Grantee shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by, all applicable local, state and federal laws, any Hazardous Substances in the Streets directly attributable to or caused by Grantee's Facilities or the acts or omissions of Grantee. Nothing in this Franchise transfers or is intended to transfer any liability to the County for removal or remediation of any such Hazardous Substances in the Streets.

(C) Construction, Modification or Removal of Facilities. In the course of construction, modification or removal of any of its Facilities in the Streets, to the extent necessary to safely proceed with such work, Grantee shall remove and remediate Hazardous Substances encountered in the course of its activities in accordance with, and only to the extent required by, all applicable state and federal laws, statutes, regulations and orders. Grantee may use reasonable business efforts to recover its costs for such removal and disposal from all legally responsible third parties.

14.12 Undergrounding of Cable. Grantee is strongly encouraged to locate and construct its present and future cables underground. Grantee shall install its cables or other Facilities underground wherever all existing utilities already are underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable

shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the County or applicable State law, or in the event that an institutional utility or a public utility decides to underground its facilities on a voluntary basis, unless the County grants an exception.

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

14.14 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 the Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's Cable System. All poles of the Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper County authorities, and each pole shall be set whenever practicable at an extension of a lot line. A County shall have the right to require the Grantee to change the location of any pole, conduit, structure or other Facility within the Streets when, in the opinion of the County, the public convenience requires such change, and the expense thereof shall be paid by the Grantee.

(B) The terms of Section 14.14(A) shall not exempt the Grantee from compliance with all Charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

14.15 Tree Trimming.

(A) When Permits Needed. Upon obtaining proper permits from a County, 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 Cable System. Tree and vegetation pruning will only be done in accordance with the County's ordinances, rules and regulations and, if the tree or vegetation is located on private property, with the permission of the property owner.

(B) Blanket Permits. The County 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 County. The County shall have the discretion to cancel the permit if, at any time, the Grantee or its agents fails to use proper arboricultural practices.

Section 15. TRANSFER OF GRANTEE'S CABLE SYSTEM

15.1 Transfer Defined. For purposes of Section 15, "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.

15.2 County Consent. Neither this Franchise nor all or substantially all of Grantee's Cable System located in the Streets by authority of this Franchise shall be Transferred without the prior written consent of the County as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall give written notice to the County of any transfers to entities under such common control within ten (10) days of such transfers. The County's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Cable System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's Cable System, within or outside the County, without the County's consent, but any such mortgage, pledge or assignment with respect to Grantee's Cable System shall be subject to the County's other rights contained in this Franchise.

15.3 Review.

(A) In determining whether the County will consent to any Transfer, the County may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the County in any such inquiry. The County may condition any Transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems appropriate.

(B) No Transfer for which the County's consent by ordinance is required may occur until the successor, assignee, lessee or transferee has complied with the requirements of Section 13 of this Franchise, including, but not limited to, providing certificates of insurance, unless the County Commission waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the County, Grantee shall file with the County Auditor an executed counterpart or certified copy thereof.

15.4 Leases. Grantee shall not lease any portion of its franchised Cable System without the County's prior consent as expressed by ordinance. However, and notwithstanding Section 15.2, Grantee may lease any portion of its Grantee System in the ordinary course of its business without otherwise obtaining the County's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such portion of its Cable System. A lessee of any portion of Grantee's Cable System shall not obtain any rights under this Franchise.

15.5 Sales.

(A) Notwithstanding Section 15.2, Grantee may sell portions of its Cable System in the ordinary course of its business, without otherwise obtaining the County's consent by ordinance, so long as Grantee complies with the following conditions:

- (1) The sale is to the holder of a current existing, cable system franchise, license, permit, or other similar right granted by the County;
- (2) Within fourteen (14) days of the sale being executed and becoming final, Grantee shall provide written notice to the County, describing the portions of the Cable System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the mapping requirements of Section 14.1(B)(2) and providing an executed counterpart or certified copy of the sales documents;
- (3) Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Cable System; and,
- (4) Within fourteen (14) days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the County that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid cable system franchise, license, permit or other similar right granted by the County. The purchaser shall not obtain any of the Grantee's rights under this Franchise.

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

(C) Bankruptcy or Dissolution. Grantee shall immediately report to the County, as soon as it becomes known, the initiation of bankruptcy proceedings, or corporate or partnership dissolution.

(D) Consent. No consent by the County, which is required under this Section, shall be unreasonably denied or delayed.

Section 16. COUNTY REGULATORY AUTHORITY

16.1 County Regulatory Rights.

(A) The County Commission 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 County to promptly enforce compliance with this Franchise.

16.2 County Regulatory Actions. Subject to the conditions set forth in Section 1.6, Grantee shall comply with any and all lawful actions of the County 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. Subject to the conditions set forth in Section 1.6, in the event of any direct conflict between County orders and regulatory actions, and the terms of this Franchise, this Franchise shall prevail.

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

16.4 Rate Discrimination. All Grantee rates and charges shall be published and non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability, income of the residents, or geographic location within the Grantee's Franchise Area. Nothing in Section 16.4 shall be construed to prohibit:

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

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

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

16.5 Filing of Rates and Charges.

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the County a complete schedule of applicable rates and charges for Cable Services provided under this Franchise, in a form satisfactory to the County. Nothing in this Section 16.5(A) shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this Section, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six consecutive months to purchase Cable Services at such rate or charge.

(B) Grantee shall maintain on file with the County 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 County.

16.6 Changes in Rates and Charges.

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

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

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

16.8 Downgrade and Disconnect Charges.

(A) Downgrade Charges.

- (1) Unless otherwise provided by law, Grantee shall not impose any Downgrade Charges, except as otherwise provided in this Franchise. As used in this Section, "Downgrade Charge" means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a change or reduction of Cable Services to less expensive Cable Services or Tiers.
- (2) Unless otherwise provided by law, Grantee may impose Downgrade Charges only if:
 - (a) The Subscriber has been notified, at the time of initiating Cable Services, and periodically thereafter, of Grantee's Downgrade Charges;
 - (b) The Downgrade Charge does not exceed the Grantee's actual Incremental, direct costs of performing the downgrade; and
 - (c) The downgrade is from a level of service which the Subscriber has not maintained continuously for six (6) months immediately preceding the date of the downgrade request.

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

Section 17. RECORDS AND REPORTS

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

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

(A) Cable System structure and operating information:

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

(B) Parent Corporation(s) Annual corporate reports, including audited financial statements.

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

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

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

17.6 Public Records.

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

Section 18. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION/MINORITY BUSINESS ENTERPRISES

18.1 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 County, Grantee shall furnish the County a copy of the Grantee's Annual statistical report filed with the FCC, along with proof of Grantee's Annual certification of compliance. Grantee shall immediately notify the County in the event Grantee is at any time determined not to be in compliance with FCC rules or regulations.

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

18.2 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.

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

Section 19. RIGHTS OF INDIVIDUALS

19.1 Discriminatory Practices. Grantee shall not deny Cable Services, deny access, or otherwise discriminate on the availability, rates, terms or conditions of Cable Services provided to Subscribers, Programmers or any other Persons on the basis of race, color, religion, ancestry, age, national origin,

gender, sexual orientation, familial status, marital status, status with regard to public assistance or physical or mental disability. Grantee shall comply at all times with all applicable federal, state or local laws, rules and regulations relating to non-discrimination.

19.2 Unauthorized Monitoring or Cable Tapping.

(A) Neither the Grantee, nor any of its agents, employees, officials or permittees, or any other Person, agency or entity, shall Tap any cable, line, Signal input device or Subscriber outlet or receiver for any purpose, except as provided in Subsection 19.2(B), and as is necessary for billing purposes.

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

(C) For purposes of this Section, "Tap" means to observe or monitor video, audio, digital or other non-video Signals, or any combination of such Signals carried on the Cable System, where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.

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

19.4 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 in this Section, however, shall excuse the Grantee from obtaining permission from anyone who has the right to approve or disapprove the attachment. If such permission or easement is later revoked, unless Grantee is otherwise entitled to maintain its Facilities, whether by the original or a subsequent owner or tenant, the Grantee, on the owner's request, shall promptly remove any of its Facilities and promptly restore the property to its original condition. Grantee shall perform all such installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation or the removal.

19.5 Sale of Subscriber Lists and Personalized Data.

(A) Grantee shall not sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies the viewing habits by the name of any Subscriber, or any Personalized Data pertaining to a Subscriber's use of any of Grantee's Cable Services by the name of any Subscriber, without the written, expressed consent of the Subscriber to which the Personalized Data pertains, except as otherwise permitted by federal law. For purposes of Section 19, "Personalized Data" means the name and address or other information regarding an individual Subscriber, which is associated with or extracted from data obtained from the Subscriber's use of Grantee's Cable Services.

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

Section 20. FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

20.1 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 County reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise. In determining which remedy or remedies are appropriate, the County shall consider the nature of the violation, the Persons burdened by the violation, the nature of the remedy required in order to prevent further violations, and any other matters the County deems appropriate.

- (1) Impose reasonable penalties, up to \$1,000 per day, incident or other measure of violation;
- (2) To the extent authorized by law, require Grantee to reduce its rates and charges by such amount or amounts as is reasonable in light of the violation;
- (3) To the extent authorized by law, require Grantee to make payments or grant refunds to its Subscribers or Subscriber Classes in such amounts, and on such bases as are reasonable relative to damages sustained by Subscribers, for violations relating to Subscriber service. At Grantee's option, such payments or refunds may be made in the form of a credit against Subscriber service bills. For purposes of this Subsection, "Subscriber Class" means any group of actual or potential Subscribers identified by the Grantee on the basis of specified characteristics for the purpose of providing, marketing or establishing any combination or package of Cable Services, rates or charges, or for the purpose of providing or directing customer services or marketing in any form;
- (4) To the extent authorized by law, require Grantee to correct or cure the violation prior to any rate increase becoming effective, or otherwise delay consideration of any rate request until the violation is corrected or cured;
- (5) Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or
- (6) Revoke this Franchise.

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

(C) The County also has the right to shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 20.1(A)(4) and (5) upon the occurrence of any of the following acts or events:

- (1) Grantee fails to meet the Service Date requirements under Section 4.2 of this Franchise;
- (2) Grantee fails to comply with the requirements of Section 13 of this Franchise, including but not limited to, providing insurance or performance bonds;
- (3) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the County; or
- (4) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the Cable System.

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

- (1) Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by the County; and
- (2) Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the County, duly approved by the County 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.

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

20.2 Notice and Opportunity to Cure.

(A) The County shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 20.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and the Grantee initiates good faith efforts satisfactory to the County within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the County shall not exercise its rights under Section 20.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and continue efforts satisfactory to the County to remedy the stated reason, then the County may exercise any or all of the remedies available under Section 20.1 or such other rights as the County may possess.

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

20.4 Expiration.

(A) Upon the expiration of this Franchise, subject to any restrictions imposed by 47 U.S.C. § 546 (Section 626 of the Cable Communications Policy Act of 1984) and other applicable federal, state or local laws, the County 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; or
- (4) Take such further action as the County deems appropriate.

(B) Until such time as the County exercises its rights under Section 20.4, the Grantee's rights and responsibilities within the County shall be controlled by the terms of this Franchise.

20.5 Removal of Plant and Equipment. If the County has by ordinance declared a forfeiture of this Franchise as provided in Section 20.1, or if this Franchise has expired without being renewed or extended, or in the event of the County's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, the Grantee shall remove its Facilities from the Streets and restore the Streets to such condition as the County may require. In the event of a failure by the Grantee to properly perform such work, then the County may perform the work and collect the cost thereof from the Grantee. The cost thereof shall be a lien upon the system of the Grantee and a set-off against any sums owed Grantee by County.

Section 21. MISCELLANEOUS PROVISIONS

21.1 Compliance with Laws.

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

- (1) In the event that there is a change in law that affects the parties' rights or obligations under this Franchise, then the parties agree to meet and discuss in good faith the appropriate implementation of that change in law.

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

21.2 Arbitration.

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

(B) The County may initiate arbitration by resolution of its County Commission, while Grantee may choose to initiate arbitration by sending written notice to the County. The County's consent to arbitration must be authorized by ordinance adopted by the County Commission.

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

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

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

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

(F) The arbitrators shall have such powers as are described in the Uniform Arbitration Act ORS 36.600 to 36.740 (2007).)

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

21.3 Mediation. The County and Grantee agree that should any dispute arise between the parties concerning any aspect of this Franchise which is not resolved by mutual agreement of the parties, and

unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the County 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. If the County and Grantee are unable to successfully conclude the mediation within 45 days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written notice has been received by the other party, either party may request arbitration, as set forth in Section 21.2, or may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

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

21.5 Severability/Survivability. 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. All provisions concerning indemnity shall survive the termination of this Franchise for any cause.

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

21.7 Nonenforcement by the County. 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 County to enforce prompt compliance, nor does the County waive or limit any of its rights under this Franchise by reason of such failure or neglect.

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

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

21.10 Choice of Law. This Franchise shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

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

If to the County: Multnomah County
 c/o The Mt Hood Cable Regulatory Commission
 1120 SW Fifth Avenue, Room 1305
 Portland, Oregon 97204
 FAX No. (503) 823-5370

With a copy to: County Attorney's Office
 501 SE Hawthorne Blvd. Suite 500
 Portland, OR 97214
 FAX No.(503) 988-3377

If to the Grantee: Cascade Access, LLC
 P.O. Box 189
 287 SW 3rd Avenue
 Estacada, OR 97023
 FAX No. (503)-630-8934

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).

21.12 Reasonability of Actions. In any matter provided for in this Franchise involving discretionary acts by the County or the Grantee, including but not limited to the giving of consent, approval or instructions, the County and the Grantee, as may be appropriate, shall act in a manner that is reasonable under the circumstances.

21.13 Force Majeure.

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

(B) If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the County prompt notice of such Force Majeure,

GRANTEE:

CASCADE ACCESS, LLC

By: _____

(print name)

Title: _____

STATE OF _____)
) ss
COUNTY OF _____)

This Agreement was acknowledged before me this _____ day of _____ 2008, by _____, as a duly authorized officer of Cascade Access, LLC.

_____, Notary Public for _____
My Commission expires: _____

ACCEPTANCE

Mm Dd, Yyyy

Multnomah County Auditor
501 SE Hawthorne, Room 601
Portland, OR 97214

This is to advise Multnomah County, Oregon that Cascade Access, LLC hereby accepts the terms and provisions of the Franchise Agreement, approved by the Multnomah County Board of Commissioners on July 17, 2008 by Resolution No. _____ and in consideration of the benefits received thereunder, Cascade Access, LLC agrees to abide by and perform each and all of the terms and provisions thereof.

(Signature – Title)*

Steve Crosby
General Manager
Cascade Access, LLC
303 SW Zobrist
PO Box 189
Estacada, OR 97023

*When an acceptance is signed by an officer of a firm or corporation, his or her official title must be stated.

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

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

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

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

Section 2. Definitions.

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

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

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

the Jurisdictions.

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

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

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

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

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

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

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

Section 4. Powers Retained by Jurisdictions.

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

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

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

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

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

Authority retained by the Jurisdictions includes:

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

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

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

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

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

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

Section 5. Commission Members.

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

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

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

Section 6. Meetings, Rules of Procedure and Officers.

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

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

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

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

Section 7. Administration and Staffing Services.

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

Section 8. Transfer of Staff and Assets.

A. Transferred Employees.

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

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

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

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

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

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

Section 9. Receiving and Distributing Funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. Duration and Termination.

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

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

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

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

Section 14. General Terms.

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

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

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

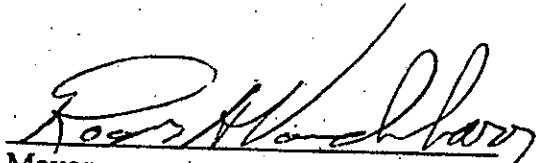
D. Amendments. The terms of this Agreement shall not be amended without the written authorization of the governing bodies of all Jurisdictions.

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

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

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

City of Fairview


Mayor

Attest:


City Recorder

City of Gresham

Jessie McRobert
Mayor

[Signature]
City Manager

Multnomah County

Dorely Stice
County Chair

REVIEWED BY:
Thomas Spensler
County Counsel

City of Portland

[Signature]
Commissioner

APPROVED AS TO FORM:
Benjamin Walters, Deputy
City Attorney

City of Troutdale

Paul M. Rofer
Mayor

Attest:
George Martin
City Recorder

City of Wood Village

[Signature]
Mayor

Attest:
Dorey P. Abbey
City Recorder