

CITY OF SHERWOOD, OREGON

RESOLUTION NO. 95-624

A RESOLUTION CONSENTING TO THE TRANSFER OF CONTROL OF WILLAMETTE CABLE TV INC. FROM COLUMBIA CABLE OF OREGON TO TCI CABLEVISION OF OREGON

WHEREAS, the City of Sherwood is a member of the Metropolitan Area Communications Commission; and

WHEREAS, in 1982, the member jurisdictions of the Metropolitan Area Communications Commission (MACC) entered into a Cable Communication System Franchise Agreement (Franchise Agreement) with Storer Metro Communications, Inc. (Storer) to operate a cable television system which includes service to citizens of the City of Sherwood; and

WHEREAS, in 1986, the members of MACC approved the transfer of the cable television franchise from Storer to Tidel Communications, Inc., (Tidel), and authorized Tidel's assignment of franchise operation to Willamette Cable TV, Inc. (Willamette), a corporation wholly owned at that time by Tidel; and

WHEREAS, in 1988, the members of MACC approved an amendment to the Franchise Agreement, approved a transfer of the franchise from Tidel to Willamette, and further approved a transfer of control of Willamette, whereby Willamette became wholly owned by Columbia Cable of Oregon, a Delaware general partnership (Columbia); and

WHEREAS, the Franchise Agreement and the amendments thereto listed on Attachments 1 and 2 and the additional agreements listed on Attachments 1 and 2 are referred to herein as the "Franchise Agreement;" and

WHEREAS, pursuant to Section 3.5 and Section 3.6 of the Franchise Agreement, Willamette has requested the member jurisdictions' consent to the transfer control of Willamette, whereby Willamette would become wholly owned by TCI of Oregon Inc. (TCIO) and upon consummation of the transaction (the date on which the transaction is consummated being referred to herein as the "Closing Date"), Willamette is expected to change its name to TCI of Tualatin Valley, Inc; and

WHEREAS, Willamette and TCIO have requested the consent of the MACC member jurisdictions to the transfer of control of Willamette by filing a Federal Communications Commission (FCC) Form 394 with MACC and each member jurisdiction; and

WHEREAS, federal law establishes a procedure for local authorities to review requests for transfer of control of the cable television franchise and assess the legal, technical, and financial ability of the transferee to operate the franchise under the terms and conditions of the Franchise Agreement; and

WHEREAS, MACC Staff has reviewed the FCC Form 394 and has requested certain additional information of TCIO and has determined that TCIO has the legal, technical and financial qualifications to operate the cable system according to the terms and conditions of the Franchise Agreement, and by adoption of MACC Resolution 95-8, attached as Exhibit "A" and incorporated herein by this reference, recommended to its member jurisdictions that they consent to the transfer of control of Willamette; and

WHEREAS, the consent of the MACC member jurisdictions shall be conditioned upon the receipt by MACC of a Guarantee from TCIO in the form attached to MACC Resolution 95-8 wherein TCIO will guarantee performance of the franchise obligations of Willamette; and

WHEREAS, as of the date of this resolution, this member jurisdiction is not aware of any breach of the Franchise that would result in a termination of the Franchise, and as of the date of this resolution, Columbia is in compliance with the terms and conditions of the Franchise to the best knowledge of this member jurisdiction; and


WHEREAS, the Franchise Agreement as described on Attachments 1 and 2 expires on February 10, 1999 and to the best knowledge of this MACC member jurisdiction represents the entire understanding of MACC, the member jurisdictions, and Willamette and, furthermore, to the best knowledge of this MACC member jurisdiction, Willamette has made no commitments and owes no obligations to this member jurisdiction other than those specifically stated in the Franchise Agreement as described on Attachments 1 and 2; and

WHEREAS, the City Council deems it to be in the furtherance of the public interest and welfare of its citizens to consent to the transfer of control of Willamette;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERWOOD that:

- A. The City of Sherwood hereby consents to the transfer of control of Willamette Cable TV, Inc. on the Closing Date whereby Willamette would become a corporation wholly owned by TCI Cablevision of Oregon.
- B. This consent is contingent upon the unanimous consent of the MACC member jurisdictions to the transfer and upon MACC's receipt of the Guarantee.
- C. The Mayor/City Manager is authorized to file an executed true and correct copy of this resolution with MACC.

INTRODUCED AND ADOPTED this 10th day of October, 1995.



Mayor, City of Sherwood

ATTEST 

City Manager

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION 95-8

A RESOLUTION RECOMMENDING TO THE MEMBER JURISDICTIONS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THAT THEY CONSENT TO THE TRANSFER OF CONTROL OF WILLAMETTE CABLE TV, INC. FROM COLUMBIA CABLE OF OREGON TO TCI CABLEVISION OF OREGON.

WHEREAS, in 1982, the member jurisdictions of the Metropolitan Area Communications Commission (MACC) entered into a Cable Communication System Franchise Agreement (Franchise Agreement) with Storer Metro Communications, Inc. (Storer); and

WHEREAS, in 1986, the members of MACC approved the transfer of the cable television franchise from Storer to Tidel Communications, Inc., (Tidel), and authorized Tidel's assignment of franchise operation to Willamette Cable TV, Inc. (Willamette), a corporation wholly owned at that time by Tidel; and

WHEREAS, in 1988, the members of MACC approved an amendment to the Franchise Agreement, approved the transfer of the franchise from Tidel to Willamette, and further approved a transfer of control of Willamette, whereby Willamette became wholly owned by Columbia Cable of Oregon, a Delaware general partnership (Columbia); and

WHEREAS, the Franchise Agreement and the amendments thereto listed on *Attachments 1 and 2* and the additional agreements listed on *Attachments 1 and 2* are referred to herein as the "Franchise Agreement."

WHEREAS, pursuant to Section 3.5 and Section 3.6 of the Franchise Agreement, Willamette has requested the member jurisdictions' consent to the transfer of control of Willamette, whereby Willamette would become wholly owned by TCIO and upon consummation of the transaction, Willamette is expected to change its name to TCI of Tualatin Valley, Inc.; and

WHEREAS, Willamette and TCIO have requested the consent of the MACC member jurisdictions to the transfer of control of Willamette by filing a Federal Communications Commission (FCC) Form 394 dated June 23, 1995 with MACC and each member jurisdiction; and

WHEREAS, federal law establishes a procedure for local authorities to review requests for transfer of control of the cable television franchise and assess the legal, technical, and financial ability of the transferee to operate the franchise under the terms and conditions of the Franchise Agreement; and

WHEREAS, MACC Staff has reviewed the FCC Form 394 and has requested certain additional information from TCIO to assess its legal, technical, and financial qualifications; and

WHEREAS, MACC Staff has reviewed the information presented by TCIO and has interviewed officials of TCIO regarding its legal, technical, and financial qualifications; and

WHEREAS, MACC held a televised public hearing on the 2nd day of August, 1995 and at that hearing received testimony from William Tierney of TCIO in support of the transfer request, and MACC further received public testimony in person and via live telephone connection, and MACC continued the public hearing to the 6th day of September, 1995 to receive further testimony for the record; and

WHEREAS, the consent of MACC and the member jurisdictions shall be conditioned upon the receipt by MACC and effectiveness of a Guarantee from TCIO, a copy of which is attached hereto as *Exhibit A*, wherein TCIO agrees, subject to the terms and conditions set forth therein, that from and after the closing date (the "Closing Date") of the Supplemental Agreement dated as of June 20, 1995, TCIO will guarantee the franchise obligations of Willamette; and

WHEREAS, as of the date of this resolution, MACC and the member jurisdictions are not aware of any breach of the Franchise that would result in a termination of the Franchise, and as of the date of this resolution, Columbia is in compliance with the terms and conditions of the Franchise to the best knowledge of MACC and the member jurisdictions; and

WHEREAS, the Franchise Agreement as described on *Attachments 1 and 2* expires on February 10, 1999 and, to the best of MACC's knowledge represents the entire understanding of MACC, the member jurisdictions and Willamette, and furthermore, to the best of MACC's knowledge, Willamette has made no commitments and owes no obligations to MACC or any of the member jurisdictions other than those specifically stated in the Franchise Agreement as described on *Attachments 1 and 2*; and

WHEREAS, MACC has considered all testimony offered by the public as well as by representatives of TCIO;

NOW, THEREFORE, BE IT RESOLVED BY MACC that:

- A. MACC, based upon the evidence presented and its own research, is of the opinion that Willamette, were it to become a corporation wholly owned by TCIO, would possess the legal, technical, and financial qualifications to operate the cable television system under the terms and conditions of the Franchise Agreement.
- B. MACC, based upon the testimony of William Tierney and the information provided by TCIO, including the pledges made in the Guarantee by TCIO, is of the opinion that TCIO is fully aware of the terms and conditions of the Franchise Agreement, and has agreed that Willamette will continue to operate the system in compliance with those terms and conditions.
- C. MACC recommends to the member jurisdictions that they concur with its findings and consent to the transfer of control of Willamette from Columbia to TCIO.
- D. The member jurisdictions' consent to the transfer of control of Willamette on the Closing Date shall become effective upon MACC's formal determination that all member jurisdictions have so consented, and upon MACC's receipt and effectiveness of the signed and notarized Guarantee.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION this 6th day of September, 1995.

Larry Hatch, Chair

Encl: Guarantee with attachments

EXHIBIT A

GUARANTEE

On this 7th day of September, 1995, TCI Cablevision of Oregon, Inc. (TCIO), a wholly owned subsidiary of TCI West, Inc., through its authorized representative David M. Reynolds, does hereby submit this sworn and notarized Guarantee for the benefit of the member jurisdictions of the Metropolitan Area Communications Commission (MACC) listed on Attachment 3 hereto (the "Member Jurisdictions").

Willamette Cable TV, Inc. (Willamette) operates and maintains cable television systems in the Member Jurisdictions pursuant to the Cable Communications System Franchise Agreement dated January 26, 1982, as amended in the Franchise Agreement, the amendments thereto listed on Attachments 1 and 2 and the additional agreements listed on Attachments 1 and 2 being collectively referred to herein as the "Franchise Agreement"). From and after the closing date (the "Closing Date") of the Supplemental Agreement dated as of June 20, 1995 (the "Supplemental Agreement") by and among Columbia Associates, L.P., Columbia International, Inc., Columbia Cable of Oregon, Willamette, Liberty of Greenwich, Inc., TCI West, Inc., TCI/CI Merger Sub Corp., and TCI/CA Merger Sub Corp. TCIO will be the sole shareholder of Willamette.

MACC has adopted Resolution 95-8 pursuant to which MACC recommended to the member jurisdictions that they approve the transfer of control of Willamette to TCIO (the "Transfer"). Attached hereto as Attachment 4 is the form of resolution (the "Model Resolution") which MACC recommended that the member jurisdictions adopt to evidence their approval of the Transfer.

TCIO has agreed, that, if the transactions contemplated by the Supplemental Agreement are consummated, and if all of the member jurisdictions approve the Transfer pursuant to a form of resolution or ordinance substantially in the form of the Model Resolution, TCIO will guarantee to the extent and subject to the conditions set forth herein, certain obligations of Willamette under the Franchise Agreement. Notwithstanding the date of delivery of this Guarantee to MACC and the Member Jurisdictions, this Guarantee shall be of no force or effect unless and until the following conditions (the "Conditions") have been met: (1) the Closing Date shall have occurred, and; (2) all of the Member Jurisdictions shall have approved the Transfer pursuant to a form of resolution or ordinance substantially in the form of the Model Resolution, as evidenced by written notice from TCIO to MACC that both conditions have been met. This Guarantee shall become void without further action on the part of any party if the Closing Date does not occur on or before December 31, 1995.

Effective as of the date on which both conditions have been met TCIO, by and through the below signed and sworn representative, hereby agrees that it will guarantee the due and punctual performance by Willamette of all the terms, conditions, and provisions of the Franchise Agreement applicable to it (the "Franchise Obligations"), subject to any and all defenses available to Willamette under the Franchise Agreement, at law, in equity or otherwise, and only to the extent such obligations accrue and relate to the period from and after the Closing Date. The Franchise Obligations include, without limitation, all obligations of Willamette with respect to continued funding and operation of the Public Communications Network (PCN), continued funding of the cable access program, and continued funding of the security funds, deposits, and insurance as prescribed by the Franchise Agreement.

TCIO's agreement, effective as of the date on which both conditions have been met to guarantee the Franchise Obligations to the extent such obligations accrue and relate to the period from and after the Closing Date is subject to the condition that TCIO shall be treated by MACC and the member jurisdictions of MACC in all respects as if it were the franchisee and a signatory to the Franchise Agreement.

Without limiting the foregoing, in the event of any breach of or default under the Franchise Agreement by Willamette after the Closing Date, TCIO's obligations under this Guarantee are conditioned on TCIO being given notice of such breach or default and an opportunity to cure such breach or default in accordance with the terms of the Franchise Agreement as if TCIO were the franchisee thereunder.

Once this Guarantee becomes effective it shall unless terminated, substituted, or cancelled as hereinafter provided, remain in full force and effect for the term of the Franchise Agreement and the following additional provisions shall apply: 1) upon substitution of another guarantor reasonably satisfactory to the Member Jurisdictions, this Guarantee shall be terminated, substituted, or cancelled upon thirty (30) days prior written notice from TCIO to MACC and Willamette; 2) any such substitution or termination shall not release TCIO under such substituted or terminated guarantee from any liability incurred or accrued prior to the effective date of such substitution or termination, and; 3) no claim, suit, or action under this Guarantee shall be brought against TCIO unless asserted or commenced no later than six (6) months after the effective date of the termination or cancellation of this Guarantee.

