

City of Sherwood, Oregon
Resolution No. 88-400

A RESOLUTION (1) CONSENTING TO THE TRANSFER OF THE CABLE TELEVISION FRANCHISE HELD BY TIDEL COMMUNICATIONS, INC., TO WILLAMETTE CABLE TV, INC.; (2) CONSENTING TO A CHANGE IN CONTROL OF WILLAMETTE CABLE TV, INC.; (3) AUTHORIZING AMENDMENT OF THE CABLE COMMUNICATIONS SYSTEM FRANCHISE AGREEMENT; (4) AUTHORIZING THE METROPOLITAN AREA COMMUNICATIONS COMMISSION TO ENTER A MEMORANDUM OF UNDERSTANDING WITH WILLAMETTE CABLE TV, INC.; AND, (5) AUTHORIZING THE AMENDMENT OF THE INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE METROPOLITAN AREA COMMUNICATIONS COMMISSION AND ITS MEMBER JURISDICTIONS.

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

WHEREAS, the members of MACC entered into a Cable Communications System Franchise Agreement (Franchise Agreement) with Storer Metro Communications, Inc. (Storer); and

WHEREAS, 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 the franchise operation to Willamette Cable TV, Inc. (Willamette); and

WHEREAS, pursuant to Section 3.5 and Section 3.6 of the Franchise Agreement, Tidel has requested that the cable television franchise be transferred to Willamette and that there be a change in the control of Willamette, Willamette to become a corporation wholly owned by Columbia cable of Oregon (Columbia); and

WHEREAS, MACC considered the request, determined Columbia 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 No. 88-02 (MACC Resolution), attached and incorporated herein, recommended to its member jurisdictions that they consent to the transfer of the franchise and to the change in ownership of Willamette and that, in conjunction therewith, the member jurisdictions authorize amendments to the Franchise Agreement, authorize MACC to enter a Memorandum of Understanding with Willamette and authorize the amendment of the Intergovernmental Cooperation Agreement establishing MACC; and

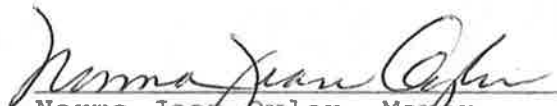
WHEREAS, the City Council deems it to be in the furtherance of the public interest and welfare of its citizens to consent to the transfer of the franchise, to consent to the change in ownership of Willamette, to authorize the recommended amendments to the Franchise Agreement, to authorize MACC to enter the Memorandum of Understanding with Willamette, and to authorize the recommended amendment of the Intergovernmental Cooperation Agreement establishing MACC;


NOW, THEREFORE, BE IT RESOLVED by the City Council as follows:

- A. The City Council hereby consents to the transfer of the cable television franchise now held by Tidel to Willamette, and the change in control of Willamette whereby Willamette would become a corporation wholly owned by Columbia.
- B. This consent is contingent upon the unanimous consent of the MACC jurisdictions to the transfer.
- C. This consent is contingent upon Columbia's filing of the following documents with MACC as set forth in paragraph F of the MACC Resolution:
 1. Formal acceptance of the Franchise Agreement, indicating Columbia's agreement that Willamette will be bound by all the terms and conditions thereof.
 2. Formal acceptance of the proposed amendments to the Franchise Agreement, indicating Columbia's agreement that Willamette will be bound by all the terms and conditions thereof as with all other terms and conditions of the Franchise Agreement.
 3. Formal acceptance of the Memorandum of Understanding between MACC and Willamette indicating Columbia's agreement that Willamette will be bound by all the terms and conditions thereof.
 4. A certificate of insurance pursuant to Section 9.5 of the Franchise Agreement.
 5. Evidence that a security fund of \$100,000 has been deposited in a bank account maintained by MACC, pursuant to Section 9.2 of the Franchise Agreement, as amended by the amendments to the Franchise Agreement.
 6. Proof of the posting of a \$250,000 faithful performance bond, pursuant to Section 9.3 of the Franchise Agreement, as amended by the amendments to the Franchise Agreement.

7. Evidence that Columbia's financing for the purchase of the cable system and franchise is essentially the same as that presented to MACC, its staff, consultants and legal counsel, and evidence that such financing is secure and complete.
8. Payment by Columbia to MACC of \$22,500 as Columbia's contribution to the costs of the franchise transfer.
- D. This consent is also contingent upon MACC's determination that all issues with Tidel have been resolved satisfactorily.
- E. The City Council hereby consents to and authorizes the amendments to the Franchise Agreement, Exhibit 2 to the MACC Resolution.
- F. The City Council hereby consents to and authorizes MACC to enter the Memorandum of Understanding with Willamette, Exhibit 3 to the MACC Resolution.
- G. The City Council hereby consents to and authorizes the amendment of the Intergovernmental Cooperation Agreement establishing MACC as set forth in Exhibit 4 to the MACC Resolution.
- H. The Mayor is authorized to file an executed true and correct copy of this resolution with MACC.

Introduced and adopted this 23rd day of March, 1988.


 Norma Jean Oyler, Mayor
 City of Sherwood, Oregon


 Polly Blankenbaker, Recorder

	<u>AYE</u>	<u>NAY</u>
OYLER	<u>absent</u>	
CHAVEZ	<u>✓</u>	<u>—</u>
BIRCHILL	<u>✓</u>	<u>—</u>
STEWART	<u>✓</u>	<u>—</u>
HITCHCOCK	<u>—</u>	<u>✓</u>

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION NO. 88-02

A RESOLUTION RECOMMENDING TO THE MEMBER JURISDICTIONS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THAT THEY (1) CONSENT TO THE TRANSFER OF THE CABLE TELEVISION FRANCHISE HELD BY TIDEL COMMUNICATIONS, INC. TO WILLAMETTE CABLE TV, INC.; (2) CONSENT TO THE CHANGE IN CONTROL OF WILLAMETTE CABLE TV, INC.; (3) AUTHORIZE AMENDMENT OF THE CABLE COMMUNICATIONS SYSTEM FRANCHISE AGREEMENT; (4) AUTHORIZE THE METROPOLITAN AREA COMMUNICATIONS COMMISSION TO ENTER A MEMORANDUM OF UNDERSTANDING WITH WILLAMETTE CABLE TV, INC.; AND, (5) THAT THEY AUTHORIZE THE AMENDMENT OF THE INTERGOVERNMENTAL COOPERATION AGREEMENT ESTABLISHING THE METROPOLITAN AREA COMMUNICATIONS COMMISSION.

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

WHEREAS, 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 the franchise operation to Willamette Cable TV, Inc. (Willamette), a corporation wholly owned by Tidel; and

WHEREAS, pursuant to Section 3.5 and Section 3.6 of the Franchise Agreement, Tidel has requested the member jurisdictions' consent to the transfer of the television cable franchise to Willamette and to a change in control of Willamette whereby Willamette would become wholly owned by Columbia Cable of Oregon, a Delaware general partnership (Columbia); and

WHEREAS, MACC agreed to consider the request and determined that, because Willamette would be wholly owned by Columbia, MACC would need to ascertain if Columbia has the legal, technical and financial ability to operate the franchise under the terms and conditions of the Cable Communications System Franchise Agreement, as amended, (Franchise Agreement) between MACC's member jurisdictions and Tidel; and

WHEREAS, MACC requested certain information of Columbia to assess Columbia's legal, technical and financial qualifications and Columbia's response is attached to the original of this resolution as Exhibit 1, and includes Columbia's certification that all the information provided by Columbia is current and valid; and

WHEREAS, MACC reviewed the information presented by Columbia, and heard the testimony of Calvin D. Brussard and Scott N. Ledbetter,

officials of Columbia, regarding Columbia's legal, technical and financial qualifications, and received and reviewed the report of Michael Katz of KFA Services, MACC's financial consultant, in support of Columbia's financial qualifications; and

WHEREAS, MACC held a public hearing on the 24th day of February, 1988, and at that meeting approved a report to the member jurisdictions outlining the key issues of the proposed transfer; and

WHEREAS, pursuant to negotiations, MACC and Columbia have agreed that MACC will present to its member jurisdictions proposed Franchise Agreement amendments, attached as Exhibit 3, and a Memorandum of Understanding, attached as Exhibit 3, requesting the member jurisdictions' approval and authorization for MACC to enter the same in conjunction with the transfer of the franchise and the change in control of Willamette; and

WHEREAS, MACC has determined that certain amendments of the member jurisdictions' Intergovernmental Cooperation Agreement are timely and integral to the proposed transfer of the franchise and should be presented to the member jurisdictions for their approval; and

WHEREAS, Columbia requested and MACC agreed that MACC resolve all outstanding issues with Tidel prior to the transfer of the franchise to Willamette and the change in control of Willamette;

NOW, THEREFORE, BE IT RESOLVED by MACC as follows:

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 Columbia, 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 Calvin D. Brussard, Scott N. Ledbetter and Michael Katz, and the information provided by Columbia, is of the opinion that Columbia is fully aware of the terms and conditions of the Franchise Agreement and has agreed that Willamette will operate the system in compliance with those terms and conditions.

C. MACC is of the opinion that Columbia is fully aware of the terms and conditions of the proposed amendments to the Franchise Agreement and the Memorandum of Understanding that Willamette is required to enter in conjunction with the transfer of the franchise, and that Columbia is willing and able to meet the terms and conditions of those amendments and the Memorandum of Understanding.

D. MACC recommends to the member jurisdictions that they concur with its findings and consent to the transfer of the franchise held by Tidel to Willamette and to the change in control of Willamette from Tidel to Columbia, such recommendation contingent upon Columbia's acceptance and satisfactory performance of the conditions set out in paragraph F, below. MACC's recommendation is also contingent upon satisfactory resolution of outstanding issues with Tidel, including the condition and maintenance of access and local origination equipment, payment of franchise fees and provision of local access pursuant to the Franchise Agreement.

E. MACC recommends to the member jurisdictions that they accept and authorize MACC to enter the amendments to the Franchise Agreement and the Memorandum of Understanding attached to this Resolution as Exhibit 2 and Exhibit 3, respectively, such acceptance and authorization contingent upon Columbia's acceptance and satisfactory performance of the conditions set out in paragraph F, below.

F. As conditions precedent to the transfer of the franchise and change in control of Willamette, Columbia will file with MACC the following documents, in form and substance satisfactory to MACC:

1. Formal acceptance of the Franchise Agreement, indicating Columbia's agreement that Willamette will be bound by all the terms and conditions thereof.

2. Formal acceptance of the proposed amendments to the Franchise Agreement, Exhibit 2, indicating Columbia's agreement that Willamette will be bound by all the terms and conditions thereof as with all other terms and conditions of the Franchise Agreement.

3. Formal acceptance of the Memorandum of Understanding between MACC and Willamette, Exhibit 3, indicating Columbia's agreement that Willamette will be bound by all the terms and conditions thereof.

4. A certificate of insurance pursuant to Section 9.5 of the Franchise Agreement.

5. Evidence that a security fund of \$100,000 has been deposited in a bank account maintained by MACC, pursuant to Section 9.2 of the Franchise Agreement, as amended by the amendments to the Franchise Agreement, Exhibit 2.

6. Proof of the posting of a \$250,000 faithful performance bond, pursuant to Section 9.3 of the Franchise Agreement, as amended by the amendments to the Franchise Agreement, Exhibit 2.

7. Evidence that Columbia's financing for the purchase of the cable system and franchise is essentially the same as that presented to MACC, its staff, consultants and legal counsel, and evidence that such financing is secure and complete.

8. Payment by Columbia to MACC of \$22,500 as Columbia's contribution to the costs of the franchise transfer.

G. Columbia shall file the documents specified in F(1) through F(8), above, in final form, prior to the transfer of the franchise from Tidel to Willamette and prior to the change in control of Willamette. Columbia's failure to file all specified documents by this deadline shall render the consent of the jurisdictions null, void and of no effect.

H. The member jurisdictions' consent to the transfer of the franchise and to the change in control of Willamette shall become effective upon MACC's formal determination (1) that all member jurisdictions have so consented and have authorized MACC to execute the amendments to the Franchise Agreement and the Memorandum of Understanding, and (2) that Columbia has submitted all required documents in form and substance satisfactory to MACC.

I. MACC recommends to the member jurisdictions that they approve and authorize the amendments to the Intergovernmental Cooperation Agreement, attached as Exhibit 4.

Adopted by the Board of Commissioners of the Metropolitan Area Communications Commission this 24th day of February, 1988.



RICHARD DEVLIN
MACC Chair

AGREEMENT TO AMEND THE CABLE COMMUNICATIONS
SYSTEM FRANCHISE AGREEMENT

This Franchise Amendment Agreement is entered into this _____ day of _____, 1988.

WHEREAS, the Oregon cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Sherwood, Tigard, Tualatin and Wilsonville, together with Washington County, Oregon (member jurisdictions), entered into a Cable Communications System Franchise Agreement (Franchise Agreement) with Storer Metro Communications, Inc. (Storer), granting Storer a nonexclusive, revocable, 15-year franchise to construct, operate and maintain a cable communications system within the collective jurisdictional boundaries of the member jurisdictions; and

WHEREAS, the Franchise Agreement was amended by Storer and the member jurisdictions; and

WHEREAS, on November 19, 1986, the Metropolitan Area Communications Commission (MACC), with the consent of each of its member jurisdictions, approved the transfer of the cable television franchise and the Franchise Agreement from Storer to Tidel Communications, Inc. (Tidel), and authorized Tidel's assignment of the franchise operation to Willamette Cable TV, Inc. (Willamette), a corporation wholly owned by Tidel; and

WHEREAS, the member jurisdictions have consented to the transfer of the cable television franchise and the Franchise Agreement to Willamette and have consented to a change in control of Willamette, Willamette becoming a corporation wholly owned by Columbia Cable of Oregon (Columbia); and

WHEREAS, the member jurisdictions' consent to and MACC's approval of the transfer of the franchise and to the change in control of Willamette were conditioned upon, among other things, Columbia's agreement that, once Columbia was in control of Willamette, Willamette would approve and execute certain amendments to the Franchise Agreement; and

WHEREAS, the member jurisdictions and Willamette have agreed upon the amendments to be made to the Franchise Agreement;

NOW, THEREFORE, MACC (the Commission), with the consent of its member jurisdictions (Grantors) agree with Willamette (Grantee) that the Cable Communications System Franchise Agreement shall be amended as follows (deleted language in brackets; new language underlined):

SECTION I. ACCESS AND LOCAL ORIGINATION SUPPORT AND REORGANIZATION.

Section 8.3(b) of the Franchise Agreement is deleted in its entirety and a new Section 8.3(b) is added as follows:

8.3(b) Commission Operation and Grantee Support of Access and Local Origination Programming. The Grantee has requested that the Commission provide certain services to the Grantee, i.e., the operation of all access and local origination programming. The Commission has agreed to operate such programming, either directly or by contract, commencing July 1, 1988, in reliance upon the Grantee's promise of support, as follows:

(1) Grantee will provide funding for access and local origination programming for the life of this Franchise Agreement. The amount and timing of such payments shall be as follows:

(i) From July 1, 1988, to June 30, 1992, \$340,000 per year, payment to be made in equal installments on the first of each calendar quarter beginning July 1, 1988.

(ii) In July of 1991, an evaluation committee shall be formed to determine whether the Grantee's contribution for access and local origination programming should increase or decrease as of July 1, 1992, provided that, unless the parties agree otherwise, the funding level shall not increase or decrease more than \$50,000 in any one year. The evaluation committee shall also consider the level of the Grantee's support under subsections 8.3(b)(4) and 8.3(b)(7) and shall retain or adjust that level of support in accordance with the evaluation criteria established pursuant to subsection 8.3(b)(1)(iii). The evaluation committee is to be composed of three members chosen by the Commission, three members chosen by the Grantee, and a seventh member chosen by the other six members. In the event that the other six members cannot agree on the selection of a seventh member, the Commission and the Grantee shall each present the names of two nominees to the Presiding Judge of the Washington County Circuit Court. The Presiding Judge shall select the seventh member of the evaluation committee from among the four nominees. The Presiding Judge's selection shall be based on his or her determination as to the nominee most likely to be knowledgeable and objective in performing the evaluation committee duties.

(iii) The evaluation criteria to be used by the evaluation committee shall be the criteria as established and agreed to by the Commission and the Grantee's parent company, Columbia Cable of Oregon, prior to the adoption of these amendments.

(iv) The decision of the evaluation committee regarding the Grantee's funding support for access and local origination programming from July 1, 1993, for the duration of this Franchise Agreement shall be binding on all parties and there shall be no challenge or appeal -- administrative, judicial, by arbitration, or otherwise.

(2) The Grantee or its parent company, Columbia Cable of Oregon, shall pay to the Commission \$49,000 at the time of the change in control of Willamette Cable TV, Inc., whereby Willamette will become a corporation wholly owned by Columbia Cable of Oregon. The \$49,000 payment will represent the difference between the Grantee's cost of operation of the access and local origination programming for the period April, 1988 through June, 1988 (\$36,000), and the funding level that has been negotiated by the parties for that same period (\$85,000).

(3) The Grantee will loan \$100,000 to the Commission at the time of the change in control of Willamette Cable TV, Inc., whereby Willamette will become a corporation wholly owned by Columbia Cable of Oregon. This loan will be without interest and shall be repaid over a period of five years, as follows:

<u>Payment Year</u>	<u>Amount Due</u>	<u>Payment Due Each Calendar Quarter, Commencing October 1, 1988</u>
Year #1	\$10,000.00	\$ 2,500.00
Year #2	20,000.00	5,000.00
Year #3	20,000.00	5,000.00
Year #4	25,000.00	6,250.00
Year #5	25,000.00	6,250.00

The Commission shall make the above-described loan repayments to the Grantee within five business days following Commission's receipt of the Grantee's quarterly payments as set out in Section 8.3(b)(1).

(4) Facilities.

(i) Tigard studio facilities. Grantee shall provide the Tigard studio facilities to the Commission rent free for four years, possession commencing July 1, 1988. The premises will be turned over to the Commission in clean and good operating condition. The Commission shall pay all utilities, building maintenance, and shall provide liability insurance for the premises and property insurance for equipment and contents. The Commission shall be responsible for the maintenance of the facility, including landscaping and grounds.

In the event that the facilities become unavailable for any reason, the Grantee shall provide to the Commission equivalent facilities at the Grantee's cost.

(ii) Local Origination/Master Center. The Commission shall be entitled to use of the local origination/master center studio and offices for four years, possession commencing June 1, 1988. Grantee shall turn over the premises to the Commission in clean and good operating condition. The Commission will provide liability insurance and property insurance on the equipment and contents in the local origination portion of the building. The Commission shall pay its appropriate share of the utilities, and shall share equally the cost of the maintenance of the heating/air conditioning system and the cost of the maintenance of landscaping and grounds.

(iii) The Commission may remodel either of the facilities as needed, at the Commission's cost. Fixtures will remain with the buildings and shall become the property of the Grantee. The Commission will remain the owner of and shall be entitled to remove equipment that does not become affixed to the property.

(5) Television Production and Studio Equipment. Grantee shall transfer to the Commission all of its title and interest in all television production and access and local origination studio equipment and production equipment (mini-mobile), excepting only that equipment to be designated by the parties prior to the execution of these amendments to the Franchise Agreement. The Commission will take possession and will receive title to such equipment between June 1, 1988 and July 1, 1988. The equipment, with spares, will be provided by the Grantee to the Commission in good repair and with all operation and service manuals. The Commission shall assume maintenance responsibility for all equipment.

(6) Production Vans. The Grantee shall transfer to the Commission all right and title to both of the Willamette production vans. The vans and related equipment will have been recently serviced, in good repair, and will be provided with all maintenance and service manuals. The transfer shall be no later than the 15th day of June, 1988. The Commission shall become responsible for maintenance and operation of the vans upon the transfer of title.

(7) Promotional Services. The Grantee shall provide, at no cost to the Commission, ten 30-second advertising availabilities per month for a period of four years. Some of these availabilities shall be prime time.

The Grantee shall allow the Commission to include one bill stuffer of the Commission's choice per year. The Commission shall be responsible for the cost of printing its bill stuffers.

A new Section 8.3(c) of the Franchise Agreement is added as follows:

8.3(c) Grantee's Assurance to Support and Defend the Commission's Operation of Access and Local Origination Programming.

(1) The Grantee understands that the Commission would not have agreed to the Grantee's request that the Commission assume the responsibility for the operation of access and local origination programming without the Grantee's assurance that the Franchise Agreement provision regarding the Grantee's support therefor, subsection 8.3(b), is enforceable under federal and state law and will not be construed to constitute a franchise fee or tax payment for any purpose.

(2) The Grantee will not assert that the payments set out in subsection 8.3(b) are not enforceable under federal or state law or that they constitute a franchise fee or a tax payment.

(3) The Grantee agrees to defend and hold harmless the Commission and the Grantors against any challenge to the legality of the payments set forth in subsection 8.3(b) or any effort to characterize those payments as a franchise fee or as a tax.

(4) If any provision of subsection 8.3(b) is deemed unenforceable under federal or state law or is deemed to be a franchise fee or tax payment, these Franchise Agreement amendments, to the extent that they transfer responsibility for access and local origination programming to the Commission and establish Grantee's support therefor, will be of no force or effect and the Franchise Agreement provisions that they replace will automatically take effect and will control. In such an event, the Commission shall retransfer to the Grantee the premises and property set forth in subsection 8.3.(b) and the Grantee shall accept responsibility for and shall resume operation of access and local original programming as though these Franchise Agreement amendments had not been executed.

SECTION II. INTERACTIVE RESIDENTIAL SERVICES.

Section 5.4 of the Franchise Agreement is amended as follows:

5.4 Capacity and Capability for Interactive Residential Services. Grantee agrees to and shall provide, in the initial system configuration, the capacity and capability for interactive residential services including, but not limited to, security alarm

(including intrusion and fire alarm) monitoring, home shopping, energy management, home banking, teletext, information access and retrieval, subscriber polling, video games and one-way or interactive education. All customer equipment necessary for such services, such as addressable interactive converters, home terminals and home detectors, shall be provided to subscribers by Grantee in accordance with established and uniform rate schedules. Return modules will be placed, installed, tested and made operational in all residential network amplifiers and trunk extenders [by September 1, 1987] at such time as the threshold established by Section 6.4(a) of the Franchise Agreement is reached.

SECTION III. FRANCHISE FEE REDISTRIBUTION

A. Section 8.2(h) of the Franchise Agreement is amended to read as follows:

8.2 Commission Regulation. The Commission, acting on behalf of the Grantors, shall have responsibility for regulation in the following areas:

(h) Disbursing and utilizing franchise revenues paid to the Grantors through the Commission [in accordance with Commission Resolution 81-4];

B. Section 9.1(a) of the Franchise Agreement is amended to read as follows:

9.1 Compensation

(a) Franchise Fee. As compensation for the franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantors for the construction, operation and maintenance of a Cable Communications System within the franchise area and to defray the costs of franchise regulation, the Grantee shall pay to Grantors through the Commission an amount equal to five percent (5%) of the Grantee's gross annual revenues. [Two percent (2%) or, put another way, forty percent (40%) of the total franchise fee, will be retained by the Commission for its purposes, including support of community programming and development of the system. The remaining three percent (3%) gross annual revenues (sixty percent (60%) of the total franchise fee) will be distributed by the Commission to the individual Grantors as per the terms section 6.C of the Intergovernmental Cooperation Agreement and Resolution 81-4, effective February 11, 1981, a copy of which is attached hereto as Exhibit C. The Grantee agrees to and shall cooperate with the

Commission and Grantors in filing a waiver request, if required, with the FCC, which would give FCC approval of such payment of five percent (5%) of gross annual revenues by the Grantee.] In the event any law or valid rule or regulation limits franchise fees below the five percent (5%) of gross annual revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to a maximum of five percent (5%) of Grantee's gross annual revenues.

SECTION IV. RELIEF OF GRANTEE'S OBLIGATIONS.

A new Section 9.1(e) is added as follows:

9.1(e) The Grantee agrees that it will not request or demand modification or reduction of any of its obligations, financial or otherwise, under this Franchise Agreement, when such request would be based upon the inability of the Grantee or its principals or agents to otherwise meet debt service obligations or other financial commitments, including any inability to make a return to equity holders on their investment.

SECTION V. SECURITY FUND AND PERFORMANCE BOND

Section 9.2 is amended to read as follows:

9.2 Security Fund.

(a) Within thirty (30) days after the effective date of this franchise transfer, the Grantee shall deposit into a bank account, established by the Commission and maintained through the term of this franchise, the sum of One Hundred Thousand Dollars (\$100,000), as security for the faithful performance by it of all the provisions of and its obligations arising under this franchise, and compliance with all orders, permits and directions of any agency of a Grantor having jurisdiction over its acts and defaults under this contract, and for the payment of any claims, liens and taxes due the Commission or a Grantor, or penalties imposed by the Commission, which arise by reason of the construction, operation or maintenance of the system or pursuant to the terms of this agreement. The Grantee shall be entitled to withdraw for its own uses the interest earned on this deposit.

(b)(1) Within [thirty (30)] ten (10) days after notice to it that any amount has been withdrawn by the Commission from the security fund pursuant to [subdivision] subsection (a) of this section, the Grantee shall deposit a sum of money sufficient to restore such security fund to the original amount in the account at the time of withdrawal.

(2) Within ten (10) days after notice to it that any amount has been withdrawn by the Commission or any third party from any security fund, including principal and interest, posted pursuant to subsection (a) of this section by any prior grantee, the Grantee shall deposit a sum of money sufficient to restore such security fund to the amount in the account at the time of withdrawal. Provided that, if there is a withdrawal from a security fund posted by a prior grantee, and such withdrawal is the result of a third party's claim and such claim is unrelated to the Grantee and its performance under this Franchise Agreement, the Grantee's obligation to replenish the fund shall be limited to \$160,000.

(c) If the Grantee fails, after ten (10) days notice to pay a Grantor any fees, taxes or other amounts due and unpaid; or, fails to pay to a Grantor or the Commission, within such ten (10) days, any damages, costs or expenses which a Grantor or the Commission shall be compelled to pay by reason of any act or default of the Grantee in connection with this franchise; or fails, after thirty (30) days notice of such failure by a Grantor to comply with any provision of the franchise or meet any other obligation specified in subsection (a) of this section which the Commission reasonably determines can be remedied by an expenditure of the security, Commission may immediately withdraw the amount thereof, with interest and any penalties, from the security fund for payment to a Grantor[.], to the Commission or to any third party as deemed appropriate by the Commission. Upon such withdrawal, the Commission shall notify the Grantee of the amount and date thereof.

(d) [The]All security funds deposited pursuant to this section shall become the property of the Commission in the event that the franchise is cancelled by reason of the default of the Grantee or revoked for cause. Default shall occur upon the Grantee's failure to perform pursuant to the Franchise Agreement, and shall include, but not be limited to, a breach or anticipatory breach of the Agreement by the Grantee, insolvency of the Grantee, bankruptcy (voluntary or involuntary) of the Grantee, any assignment for the benefit of the creditors of the Grantee, or the appointment of a receiver for the Grantee. The Grantee, however, shall be entitled to the return of such security fund, as posted by the Grantee, or portion thereof, as remains on deposit at the expiration of the term of the franchise, or upon termination of the franchise at an earlier date, provided that there is then no outstanding default on the part of the Grantee.

(e) The rights reserved to Grantors and the Commission with respect to the security fund are in addition to all other rights of the Grantors and the Commission whether reserved by this contract or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right Grantors or the Commission may have.

(f) The Grantee agrees that it will not use and that it waives any rights it may have to attempt provisional remedies, including, but not limited to, restraining orders and preliminary injunctions, to challenge or stay the Commission's removal of funds from any security deposit pursuant to this Section 9.2. In the event that the Grantee challenges the Commission's removal of security funds by other than provisional remedies, or resists the Commission's efforts to require the Grantee to replenish the fund pursuant to subsection 9.2(b)(1) or 9.2(b)(2), the Grantee shall have the burden of proving by clear and convincing evidence that the Commission, in removing the funds or in demanding their replenishment, has acted in an arbitrary and capricious manner and in bad faith.

Section 9.3 is amended to read as follows:

9.3 Faithful Performance Bond. Upon the [effective date] transfer of the franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Commission, acting on behalf of Grantors, in the penal sum of [Five Hundred Thousand Dollars (\$500,000)] Two Hundred Fifty Thousand Dollars (\$250,000), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise. Such bond shall be maintained by the Grantee throughout the term of this franchise[,]. [provided that upon completion of all construction provided for in Section 4.2 of this agreement, the amount of the original bond may be reduced subject to approval by the Commission, to One Hundred Thousand Dollars (\$100,000).] Written evidence of payment of required premiums shall be filed and maintained with the Commission.

SECTION VI. RIGHT TO PURCHASE THE SYSTEM.

Section 10.1(a) of the Franchise Agreement is amended to read as follows:

10.1 Right to Purchase the System.

(a) In the event Grantors or any of them have declared a forfeiture or otherwise revoked this franchise agreement as provided in Sections 12.1 or 12.2 herein, or in the event of expiration of the initial term of this franchise agreement without the franchise being renewed or extended as provided in Section 12.3, the Grantee shall continue its operations under the terms and conditions of this franchise agreement and as required by Section 12.4 herein, following the date of forfeiture or recocation or expiration of the initial term, if such continuation of operations is ordered by the Commission or Grantors pending the purchase of the whole or part of the system by Grantors or any of them. The Commission or Grantor(s) may subsequently order in

writing termination by Grantee of its operations at a specific time. Within 30 days of the order by Commission or Grantors to continue operations, Grantee shall tender to the Commission an inventory of its system used in its operations under this franchise agreement showing the original book costs thereof, the amount of depreciation accruals previously attributed thereto in ratemaking proceedings, and the undepreciated net book value thereof. After receiving the inventory, Grantors or any of them may notify the Grantee that they desire to acquire by purchase all or a portion of the system used by the Grantee in its operation for its fair value. Such notice shall be by resolution or other appropriate writing of the Grantors desiring to purchase and shall state a date upon which Grantee shall create its operations and receive payment as described below.

The valuation for purpose of this subsection 10.1(a) shall be determined by mutual agreement between Grantor(s) and the Grantee. If such mutual agreement is not reached, then Grantor(s) may demand that such valuation be determined by an arbitration committee, as provided in Section 10.1(c), below.

For [all] purposes of revocation or forfeiture under this subsection (10.1.(a)), fair valuation of all or part of the system shall be based upon the fair value of the plant and equipment, including real property, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor(s) may assume, but shall not be determined by partners investment or expectation of profits or going concern value and shall not include any sum for the value of the unexpired portion of this franchise agreement or for records. For any other purpose under this section, fair market valuation of all or part of this system shall be determined as described in subsection 10.1(b).

During any period of continued operation under this section, the Grantee shall not sell, assign, transfer, or lease to any other persons, firm or corporation, any portion of the system used by it in its operations including parts of the system rented, leased or lease-purchased from others by the Grantee, without the prior written consent of the Grantor(s).

The Grantee shall provide, in all existing and future rental, lease, and lease-purchase arrangements of all or parts of the system from any subsidiary, parent or other affiliate of the Grantee, for the Grantor(s) acquisition of all or parts of the system on the same terms and conditions as are provided in this section. The Grantee shall provide in all other rental, lease and lease-purchase arrangements of all or parts of the system for the Grantor(s) succession to, taking over of, and continuation of such rental, lease and lease-purchase arrangements on the same terms and conditions as are applicable to the Grantee under the rental, lease and lease-purchase arrangements.

SECTION VII. SEVERABILITY

Section 14.2 of the Franchise Agreement is amended to read as follows:

14.2 Severability. Subject to the provisions of Section 14.6 below, if any section, subsection, sentence, clause, phrase or word of the franchise agreement is held to be invalid or unconstitutional by any court of competent jurisdiction or pre-empted by federal or state regulations or law, such section, subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

In the event that suit or action is brought by a party not a party to this Franchise Agreement, challenging the validity or constitutionality of any word, phrase, clause, sentence, subsection, section or other provision of this Franchise Agreement, as amended, the Grantee agrees to assume the cost and obligation of defending said suit or action on behalf of itself, the Commission, and the Member Jurisdictions, to the extent any are named or implicated as respondents or defendants in such suit or action. The Grantee will indemnify and hold harmless the Commission and the Member Jurisdictions against any adverse decree or judgment rendered in such suit or action.

SECTION VIII. ARBITRATION.

A new Section 14.13 is added to the Franchise Agreement to read as follows:

14.13 Any controversy or claim arising out of or relating to this Franchise Agreement, or to the breach thereof, shall be settled by arbitration in accordance with the Rule of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof. All arbitration hearings shall take place in Washington County, Oregon. The arbitration decision shall be final and binding on the parties.

IN WITNESS WHEREOF, the parties have executed this Franchise Amendment Agreement the day and year first above written.

METROPOLITAN AREA COMMUNICATIONS
COMMISSION

WILLAMETTE CABLE TV, INC.

By: _____

By: _____

(Print Name)

(Print Name)

Title: _____

Title: _____

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by the Metropolitan Area Communications Commission (MACC) on behalf of its member jurisdictions, and Willamette Cable TV, Inc. (Willamette) on this _____ day of _____, 1988.

W I T N E S S E T H:

WHEREAS, MACC recommended to its member jurisdictions that they consent to the transfer of the cable television franchise held by Tidel Communications, Inc. (Tidel) to Willamette and to a change in control of Willamette, Willamette becoming a corporation wholly owned by Columbia Cable of Oregon (Columbia); and

WHEREAS, MACC's recommendation of and the membership jurisdictions' consent to that transfer and change in control were conditioned upon Columbia's agreement that Willamette would enter a Memorandum of Understanding requiring Willamette to accept certain obligations and meet certain requirements; and

WHEREAS, Willamette agrees that the following specification of requirements and obligations is not an express or implied waiver of any term or condition of the Cable Communications System Franchise Agreement, as amended, (Franchise Agreement);

NOW, THEREFORE, in consideration of the mutual promises contained in this Memorandum of Understanding and the accompanying cable television franchise transfer and change in control of Willamette, MACC and Willamette agree as follows:

1. New Subdivision Construction Deadlines (Open Trench).
Despite and notwithstanding any prior waivers or extensions granted to Tidel or Willamette, Willamette agrees to abide by Franchise Agreement Section 4.5(2)(A) requiring the cable operator to build, activate, proof and sell cable in new subdivisions within 60 days of the date when 50 percent of the subdivision's potential dwelling units have been issued building permits, or 25 percent of the subdivision's potential dwelling units have contracted for cable television service.

The MACC staff will develop criteria defining extraordinary situations in which Willamette may request an extension of the 60-day timeline.

2. Interactive Services.

(a) Willamette agrees to provide to MACC a warehouse inventory of return amplifiers by April 1, 1988.

(b) Willamette agrees to warehouse return modules for any new cable plant that is built and for any replacement amplifiers that are installed.

(c) Willamette agrees to provide to MACC by July 31 of each year, including 1988, the following:

(i) A report on the current warehouse inventory of return amplifiers.

(ii) A report, as required by Franchise Agreement Section 6.4(b), on Willamette's efforts to develop interactive services and their financial viability.

3. Interconnect. Willamette agrees to make two additional interconnect channels available within 120 days after receipt of a formal written request from MACC, bringing the total number of available interconnect channels to four. Once available, these channels may be used by MACC for any purpose.

4. Access Channel Realignment/Co-Channel Interference. Currently all the access channels in the VHF band experience co-channel interference. MACC is interested in having one or more of these channels moved to different locations in the VHF band or in having the co-channeling problem corrected. In addition, MACC desires to place the Interconnect channel on Channel 11 as with all other systems in the area (CAN).

Willamette agrees to study this problem in an attempt to correct co-channeling interference. Willamette also agrees to study alignment to determine if Willamette can realign channels in the lower tier. Willamette will attempt to move Channel 21 (CAN) to Channel 11. Willamette will present its plan for resolution of these matters to MACC no later than June 30, 1988.

5. Emergency Alert Capability. MACC's staff agrees to specify the location of the telephone(s) and to develop a plan for the use of emergency alert capability with the assistance of local emergency management agencies. Willamette agrees to provide a plan outlining telephone use and operation, including a date by which the system will be operational. MACC staff and Willamette agree to have their draft plans to MACC no later than June 1, 1988.

6. Reporting of Revenue. Willamette agrees to work with MACC staff to develop revenue reporting methods adequate (a) for MACC to properly disburse franchise payments to member jurisdictions and (b) for audits of PCN and other revenues. Willamette agrees to adopt the improved reporting procedures as of the date of the execution of this Memorandum of Understanding.

7. WOR Programming Services. Willamette agrees to provide a written report to MACC on the copyright costs of adding WOR and other new "distance signal" channels. The report will be presented to MACC no later than June 1, 1988.

8. Housing Defintions and Standards. Willamette agrees to work with the MACC staff to produce a draft of proposed changes for presentation to the MACC Franchise Agreement Administration Committee no later than June 1, 1988. Issues to be addressed include:

(a) Mobile Home Parks. Categorization of mobile home parks;

(b) Zero Lot Line Housing. The development of definitions and standards relating to zero lot line housing (townhomes);

(c) MDU/Bulk Rates. Clarification regarding cost share methods and service options;

(d) Density Issues - Construction. Clarification of the language defining density standards.

9. Public Communication Network Obligations. Notwithstanding Section 6.9(3) of the Franchise Agreement, Willamette agrees to continue operation of the Public Communications Network until MACC review in 1990, and will consider continued operation after 1990 in the event such operation appears to be profitable.

Pursuant to Section 12.5 of the Franchise Agreement, MACC agrees to hold a hearing no later than September 30, 1988, regarding a one (1) year franchise extension for Willamette in consideration for Willamette's support of the Public Communications Network.

10. PCN Drops to Public Institutions. Willamette agrees to complete all PCN drops in Lake Oswego identified but not completed prior to the change in control of Willamette.

11. Company Philosophy. Willamette agrees to remain aware of and concerned with its public image and the overall attitude that it conveys to the community.

12. General Maintenance and Physical Appearance. Willamette agrees to perform general maintenance and physical upkeep of its plant and equipment as necessary to ensure satisfactory appearance, e.g., repair of damaged pedestals, unburied cable, etc., as discovered by Willamette or upon notification by MACC or the public.

13. PCN Video Rates and PCN Data Rates. Willamette agrees to abide by any new PCN video rates or new PCN data rates agreed to by Willamette or Tidel prior to the change in control of Willamette.

14. Universal Service Marketing. Willamette agrees to take all reasonable measures necessary to fully market the Universal Service.

15. Business Communications Network. Willamette agrees to explore new possibilities for the marketing and use of the Business Communications Network.

16. Mix of Programming Services. Willamette agrees to make its best effort to maintain the current mix of services as set out in the Franchise Agreement.

17. Customer Service Standards. Willamette agrees to meet all customer service standards, including service complaint response thresholds, as set out in the Franchise Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding the day and year first above written.

METROPOLITAN AREA COMMUNICATIONS
COMMISSION

WILLAMETTE CABLE TV, INC.

By: _____

By: _____

(Print Name)

(Print Name)

Title: _____

Title: _____

AMENDMENTS TO THE "INTERGOVERNMENTAL COOPERATION AGREEMENT - METROPOLITAN AREA COMMUNICATIONS" AUTHORIZING MACC TO OPERATE ACCESS AND LOCAL ORIGINATION PROGRAMMING AND AUTHORIZING REIMBURSEMENT TO MACC OF CERTAIN EXPENSES.

WHEREAS, pursuant to an "Intergovernmental Cooperation Agreement - Metropolitan Area Communications Commission" (Agreement), the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Sherwood, Tigard, Tualatin and Wilsonville, all municipal corporations of the State of Oregon, and Washington County, a county formed under the laws of the State of Oregon, created a joint commission, known as the Metropolitan Area Communications Commission (MACC) to carry out the specific purposes set forth in the Agreement; and

WHEREAS, Section 9.E. of the Agreement requires that its terms shall not be amended without the written authorization of the governing bodies of all the member jurisdictions; and

WHEREAS, the governing bodies of the member jurisdictions have unanimously authorized amendment of the Agreement (1) to include within MACC's responsibilities the operation of access and local origination programming and to (2) authorize reimbursement to MACC of certain expenses,

NOW, THEREFORE, the Intergovernmental Cooperation Agreement - Metropolitan Area Communications Commission is amended as follows:

SECTION 1. Operation of Access and Local Origination Programming.

Section 3 of the Agreement is amended to add a second paragraph reading as follows:

In addition to the powers set forth above, and in accordance with terms and conditions of the Cable Communications Franchise Agreement, as amended, the Commission shall be responsible for the operation of access and local origination programming. The Commission may contract with service providers as it deems necessary to meet this responsibility.

SECTION 2. A new Section 6.D. is added to the Agreement as follows:

D. The Commission is authorized to enter contracts as it deems appropriate for the review of the Grantee's revenue reports, on an annual basis or otherwise. In the event that such a review results in increased franchise fee payments, the first deduction

from such payments shall be for the reimbursement of the Commission for the expenses incurred in contracting for the review. The remainder of any such increase in the franchise fee payment shall be distributed pursuant to the formula adopted by Section 6.C. of the Intergovernmental Agreement.

ADOPTED by the Board of Commissions of the Metropolitan Areaunications Commission this _____ day of _____, 1988.

RICHARD DEVLIN
MACC Chair