



COPY

**Resolution No. 2000-857**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A FRANCHISE AGREEMENT FOR CABLE TELEVISION AND INSTITUTIONAL NETWORK SERVICE WITH AT&T dba TCI OF TUALATIN VALLEY**

**WHEREAS** the City Council, at their January 12, 1999 regular council meeting, determined that it was in the best interest of the City to withdraw from the Metropolitan Area Communications Commission (MACC); and

**WHEREAS** staff complied with Council's direction to send notification to MACC of the City's intent to withdraw; and

**WHEREAS** staff has been in negotiations with AT&T dba TCI of Tualatin Valley and has completed a franchise agreement for cable television and institutional network (I-Net) services, said franchise agreement shown as Exhibit A to this document; and

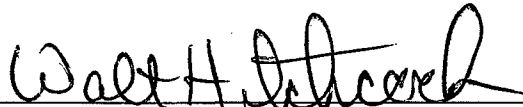
**WHEREAS** throughout the negotiations affecting the transfer of franchised services from MACC to AT&T, MACC has continued to provide service for Sherwood as stated in Sherwood Ordinances No. 99-1075 and No. 99-1080.

**NOW THEREFORE BE IT RESOLVED AS FOLLOWS:**

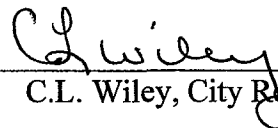
**Section 1. Authorization.** The City Manager is hereby authorized to enter into a franchise agreement with AT&T dba TCI of Tualatin Valley for cable television and I-Net service.

**Section 2. Payment for Service.** The City staff is directed to settle all accounts with MACC for the service they provided during this transition.

**Duly passed by the City Council this 22nd day of February 2000.**

  
Walt Hitchcock, Mayor

ATTEST:

  
C.L. Wiley, City Recorder

**CABLE SERVICES  
FRANCHISE AGREEMENT**

**BETWEEN THE**

**CITY OF SHERWOOD, OREGON**

**AND**

**TCI OF TUALATIN VALLEY, INC.**

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## CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT

This Cable Television System Franchise Agreement (hereafter Agreement) is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2000, by and between the City of Sherwood, Oregon (hereafter Grantor) and TCI of Tualatin Valley, Inc. (hereafter Grantee), whose parent company is TCI Cablevision of Oregon, Inc., a registered corporation in the State of Oregon.

### SECTION 1. DEFINITIONS

For the purposes of this Agreement and all attachments included hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 **Access** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video, Cable Service, and signals as permitted under applicable law, including, but not limited to:
  - (A) **Public Access** which means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users;
  - (B) **Educational Access** which means Access where schools and educational institutions are the primary users of programming and service;
  - (C) **Governmental Access** which means Access where governmental institutions are the primary users of programming and service; and
  - (D) **PEG Access** which means Public Access, Educational Access, and Governmental Access, collectively.
- 1.2 **Access Center** means a facility or facilities where Public, Educational, or Governmental use signals are managed and delivered to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- 1.3 **Access Channel** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- 1.4 **Affiliate** when used in connection with Grantee means any corporation, Person

or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

- 1.5 **Basic Service** means any service tier which includes the retransmission of local television broadcast signals and Public, Educational and Governmental Access Channels, or such service tier as may be further defined by federal law.
- 1.6 **Cable Acts** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.
- 1.7 **Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- 1.8 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.9 **Cable System** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; 3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.10 **Channel** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering video signal whether in an analog or digital format. This definition does not restrict the use of any channel to the transmission of analog video signals.
- 1.11 **Designated Access Provider** means the entity or entities designated by the Grantor to manage or co-manage Public, Educational or Governmental use

Channels and facilities. The Grantor may be a Designated Access Provider.

- 1.12 **Downstream** means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
- 1.13 **FCC** means the Federal Communications Commission.
- 1.14 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.
- 1.15 **Franchise Area** means the area within the jurisdictional boundaries of the Grantor including any subsequently annexed areas.
- 1.16 **Grantor** means the City of Sherwood,OR.
- 1.17 **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 to provide Cable Services within the Franchise area, or by any Affiliate only to the extent such amounts are earned from the operation of Grantee's Cable System to provide Cable Services within the Franchise area. "Gross Revenues" shall include, without limitation, amounts for Basic Service, tiers of service and premium 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 that 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 not be net of: (1) any operating expense; (2) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute gross Revenues of both the Grantee and the Affiliate, 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 Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" shall include amounts earned by Affiliates only to the extent that Grantee could have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales or taxes imposed by law on Subscribers that

the Grantee is obligated to collect or any fees collected pursuant to Section 9.7 of this Agreement. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.

- 1.18 **Headend** means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.
- 1.19 **Institutional Network** or I-Net means that part of the Cable System's facilities or capacity designed principally for non-commercial use by non-residential Subscribers including communications to, from and among government agencies, Schools, libraries and other public agencies; nothing in this definition, however, prevents an Institutional Network from being used to send communications to or receive communications from Subscribers or the general public, or prevents any authorized user from providing access to an Institutional Network to the public, by remote terminals or otherwise, including by way of example and not limitation, through connections between an Institutional Network and the Subscriber Network.
- 1.20 **Interconnection** means the provision by Grantee of technical, engineering, physical, and all other necessary components to maintain a physical linking of Grantee's Cable System and Cable Service or any designated Channel or signal pathway thereof with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this Agreement.
- 1.21 **Leased Access Channel** means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public in conformance with federal law.
- 1.22 **Origination Point** means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.
- 1.23 **Person** means any individual, natural Person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.
- 1.24 **Public Rights of Way** include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the City's right, title, interest, or authority to grant a franchise to occupy and use such streets and easements for telecommunications facilities. "Public rights of way" shall also include any easement granted to or owned by the City and acquired, established, dedicated, or devoted for public utility purposes.

- 1.25 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools, and colleges and universities.
- 1.26 **Street** means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and other public ways.
- 1.27 **Subscriber** means any Person who elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.
- (A) **Commercial Subscriber** means any Subscriber other than a Residential Subscriber.
- (B) **Residential Subscriber** means any Person who contracts individually for Cable Service to a residence, whether that residence is a single family unit or located in a multiple dwelling unit.
- 1.28 **Upstream** means the carrying of a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

## **SECTION 2 – GRANT OF FRANCHISE**

### **2.1 GRANT**

- A. Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Streets and Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Agreement.
- B. This Agreement is intended to convey limited rights and interests only as to those Streets and Public Rights of Way in which the Grantor has an actual interest. It is not a warranty of title or interest in any right-of-way, it does not provide the Grantee any interest in any particular location within the right-of-way, and it does not confer rights other than as expressly provided in the grant hereof.

This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Streets covered by this Agreement, including without limitation, the right to perform work on its

roadways, rights-of-way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

- C. This Agreement is subject to the general lawful police power of Grantor affecting matters of local government concern and not merely existing contractual rights of Grantee. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor.
- D. This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions, including additional compensation conditions for use of the rights-of-way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.
- E. Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

## **2.2 USE OF PUBLIC STREETS AND WAYS**

Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets, including rights-of-way and public utility easements within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate agencies of Grantors prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement.

## **2.3 DURATION**

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the effective date of this Agreement through January 31, 2015, unless extended or terminated sooner as hereinafter provided.

## **2.4 EFFECTIVE DATE**

The effective date of this Agreement shall be \_\_\_\_\_ unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by \_\_\_\_\_, 2000. In either event, this Agreement shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Agreement shall be of no force or effect.

## **2.5 FRANCHISE NONEXCLUSIVE**

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Agreement, and for such additional Franchises for Cable Systems or other providers of video services such as Open Video Systems (OVS) as Grantor deems appropriate, upon substantially equivalent terms and conditions to those contained herein as Grantor deems appropriate.

## **2.6 GRANT OF OTHER FRANCHISES**

A. In the event the Grantor enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Grantor's public ways for the purpose of constructing or operating a Cable System, or providing Cable Service or other video services such as Open Video Systems (OVS) to any part of the Service Area in which the Grantee is actually providing Cable Service under the terms and conditions of this Agreement, or is required to extend Cable Service to under the provisions of Section 13.2 of this Agreement, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

B. If Grantor grants a Franchise to a third party for service to an area that Grantee is not actually serving or required to extend service to, and which has material provisions that are not reasonably comparable to those contained herein, Grantor shall offer Grantee a Franchise to serve the same area under terms and conditions that are reasonably comparable to those set forth in the Franchise Agreement entered into with the third party.

## **2.7 POLICE POWERS**

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

## **2.8 RELATIONS TO OTHER PROVISIONS OF LAW**

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law; provided, however, nothing herein shall grant the Grantor the right to unilaterally amend or modify the terms and conditions in this Agreement. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Franchise Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern; however, nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provision of applicable law. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

## **2.9 EFFECT OF ACCEPTANCE**

By accepting the Agreement the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

## **SECTION 3 - FRANCHISE FEE AND FINANCIAL CONTROLS**

### **3.1 FRANCHISE FEES**

As compensation for the benefits and privileges granted under this Agreement, and in consideration of permission to use Grantor's Streets, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues including the Franchise fee itself, derived from the operation of the Cable System to provide Cable Service in the Franchise Area. Accrual of such Franchise fees shall commence as of the effective date of this Agreement. The Franchise fees are in addition to all other fees,



assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

In the event any law or valid rule or regulation applicable to this franchise limits franchise fees below the five percent (5%) of gross 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 the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

### **3.2 PAYMENTS**

Grantee's Franchise fee payments to Grantor shall be computed quarterly. Each quarterly payment shall be due and made available to Grantor no later than forty-five (45) days after the last day of the preceding quarter.

### **3.3 ACCEPTANCE OF PAYMENT AND RECOMPUTATION**

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **3.4 QUARTERLY FRANCHISE FEE REPORTS**

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

### **3.5 ANNUAL FRANCHISE FEE REPORTS**

Grantee shall, no later than one-hundred twenty (120) days after the end of each calendar year, furnish to Grantor a statement (Audited Gross Receipts Report) stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.

### **3.6 AUDITS/REVIEWS**

On an annual basis, no more frequently than every twelve (12) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit or review of Grantee's records for the previous year which are reasonably related to the administration or enforcement of this Agreement and in accordance with generally accepted accounting principles. The Grantor may hire an independent certified public accountant to audit or review the Grantee's financial records, in which case the Grantee

shall provide all necessary records to the certified public accountant. All such records shall be made available in the local offices of the Grantee. If the audit or review shows that Franchise fees have been underpaid by three percent (3%) or more, Grantee shall reimburse to Grantor the total cost of the audit or review within 30 days of the Grantor's written demand for same.

Records for audit/review purposes shall include without limitation:

- A. Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to and/or included in the determination of franchise fees, revenues or expenses related thereto.
- B. Source documents that completely explain any and all calculations related to any allocation of any amounts involving franchise fees, revenues, or expenses related thereto.
- C. Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, and/or support and/or correlate to any accounts involving the payment of franchise fees and the revenues or expenses related thereto.

### **3.7 INTEREST ON LATE PAYMENTS**

In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

### **3.8 ALTERNATIVE REMEDIES**

If any section, subsection, paragraph, term, or provision of this Franchise Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the section, subsection, paragraph, term, or provision directly involved in the controversy in which such holding shall have been rendered, and shall not in any way affect the validity of any other section, subsection, paragraph, term, or provision hereof. Under such a circumstance the parties agree to meet and confer with the Grantor to consider amendments to the Franchise Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days either party may (1) seek appropriate legal remedies to amend the Agreement, or (2) shorten the Agreement to 36 months, at which point either party may invoke the renewal procedures under 47 U.S.C. Subsection 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

### **3.9 ADDITIONAL COMMITMENTS NOT FRANCHISE FEES**

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees to Grantor. Although the total sum of Franchise fee payments and additional capital commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional capital commitments herein are not Franchise fees as defined under any federal law, to the extent not inconsistent with applicable federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

### **3.10 COSTS OF PUBLICATION**

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor or applicable law.

### **3.11 TAX LIABILITY**

Payment of the Franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

### **3.12 PAYMENT ON TERMINATION**

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

## **SECTION 4 - ADMINISTRATION AND REGULATION**

### **4.1 AUTHORITY**

Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

## **4.2 RATES AND CHARGES**

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

## **4.3 RATE DISCRIMINATION**

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all Subscribers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Franchise Area.

Grantee shall provide equivalent Cable Service to all Residential Subscribers at similar rates and to Commercial Subscribers as authorized by applicable laws. Nothing herein shall be construed to prohibit:

- A. The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns.
- B. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens.
- C. Grantee from establishing different and nondiscriminatory rates and charges for commercial customers, as well as different nondiscriminatory monthly rates for commercial customers as allowable by federal law and regulations; or
- D. Grantee from establishing different and nondiscriminatory rates and charges for Residential Subscribers as allowable by federal law and regulations.

## **4.4 FILING OF RATES AND CHARGES**

Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns, and rates for multiple dwelling units, provided that Grantee shall make reasonable efforts to notify Grantor in writing in advance of such promotions.

Grantee shall provide upon request from Grantor a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee.

#### **4.5 TIME LIMITS STRICTLY CONSTRUED**

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

#### **4.6 PERFORMANCE EVALUATION SESSIONS**

- A. Grantor may hold regular performance evaluation sessions annually on the anniversary dates of the effective date of this Agreement or hold special evaluation sessions at any time during the term of this Agreement.
- B. Grantor shall conduct all such evaluation sessions. Evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- C. Evaluation sessions shall deal with the Grantee's performance of the terms and conditions of the Agreement and compliance with state and federal laws and regulations.
- D. Upon request, as part of the annual performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Franchisee, which include a description of the portions of the Franchise Area that are cabled and have all Cable Services available, including those areas where the system, including the I-Net, has been upgraded. Such report shall also include the number of miles and location of overhead and underground cable plant, and the number of miles (overhead and underground) and location of an I-Net (if applicable). If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
- E. During evaluations under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation.

- F. Section 4.6 shall sunset and be of no further force and effect to the extent Grantee is subject to effective competition as such term is defined in 47 C.F.R. 76.905.

## **SECTION 5 - FINANCIAL AND INSURANCE REQUIREMENTS**

### **5.1 INSURANCE REQUIREMENTS**

- A. General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.
- B. Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:
- 1) Commercial General Liability: Two million dollar (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits a two million five hundred thousand (\$2,500,000) aggregate limit, and one million dollars (\$1,000,000) broadcasters liability.
  - 2) Automobile Liability: Two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
  - 3) Employer's Liability: Two million dollar (\$2,000,000) limit.

### **5.2 DEDUCTIBLES AND SELF-INSURED RETENTIONS**

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

- A. Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A".
- B. Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and

approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantors' ordinances and laws.

### **5.3 INDEMNIFICATION**

- A. **Scope of Indemnity.** Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 2.9 of this Agreement. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:
- 1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;
  - 2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels by Grantor and/or Designated Access Provider;
  - 3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and
  - 4) Arising from any third party suit, action or litigation, whether brought by a

competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.

- B. **Duty to Give Notice and Tender Defense.** The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

#### **5.4 LETTER OF CREDIT**

- A. No later than the effective date of this Agreement, Grantee shall establish and provide to Grantor, as security for the faithful performance by Grantee of all provisions of this Agreement, a Letter of Credit in the amount of ten thousand dollars (\$10,000). The Letter of Credit shall be filed in a form acceptable to the Grantor and issued by a financial institution acceptable to the Grantor, provided the Grantor, in its sole discretion, may direct that the Letter of Credit be issued by a local financial institution.
- B. The Letter of Credit shall be maintained at ten thousand dollars (\$10,000) throughout the term of this Agreement.
- C. The Letter of Credit may be assessed by Grantor for various purposes including, but not limited to, the following:
- 1) Failure of Grantee to pay Grantor sums due under the terms of this Agreement.
  - 2) Reimbursement of costs borne by Grantor to correct violations of this Agreement not corrected by Grantee.
  - 3) Fines assessed against Grantee due to violations of the requirements of



this Agreement.

- D. If Grantee fails within thirty (30) days after the date of written notice to pay to Grantor any franchise fees, assessment or taxes lawfully due which Grantor determines can be remedied by a draw upon the Letter of Credit, Grantor may thereafter withdraw the amount thereof from the Letter of Credit. Upon such withdrawal, Grantor shall notify Grantee of the amount and date thereof. Within seven (7) days following receipt by Grantee of written notice from Grantor that any amount has been withdrawn from the Letter of Credit, Grantee shall restore such Letter of Credit to the amount required under this Agreement. Failure by Grantee to so restore the Letter of Credit shall be considered a material violation of this Agreement.
- E. The Letter of Credit deposited pursuant to this Section shall become the property of Grantor in the event that this Agreement is lawfully terminated or revoked for cause by reason of the violation by Grantee, and Grantee has exhausted all of its remedies relating thereto. Grantee, however, shall be entitled to the return of the Letter of Credit deposited in accordance with this Section, or any portion thereof remaining upon normal expiration of this Agreement.
- F. The rights reserved to Grantor with respect to the Letter of Credit are in addition to all other rights of Grantor whether reserved by this Agreement or authorized by law or equity, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall constitute a waiver of any other right Grantor may have.
- G. A single Letter of Credit for the amount required herein shall satisfy the requirements of Grantor.

## **5.5 PERFORMANCE BOND**

Concurrent with the effective date of this Agreement, Grantee shall post a performance bond in the amount of one hundred thousand dollars (\$100,000).

Upon the successful completion of the system upgrade (as described herein) the amount of the performance bond shall be reduced to twenty five thousand dollars (\$25,000).

## **SECTION 6 – CUSTOMER SERVICE**

The Grantee shall be subject to FCC Regulations Part 76.309, as amended from time to time, regarding compliance with customer service standards, customer notice requirements and customer billing. This provision shall sunset and shall be of no further force and effect to the extent the Grantee is subject to effective competition as such term is defined in 47 C.F.R. 76.905.

## **6.1 SUBSCRIBER PRIVACY**

Grantee will comply with privacy rights of Subscribers in accordance with federal, state and local law.

## **6.2 Emergency Alert Capability**

In accordance with, and at the time required by, the provisions of the FCC Regulations Part 11, Subpart 11.51, as such provisions may from time to time be amended, Grantee shall provide the emergency alert capability in accordance with Federal Law, and in compliance with the FCC approved Oregon State Emergency Alert System (EAS) plan, and the Local Area EAS plans that apply to Washington County, Oregon. Grantee will cooperate with the Grantor and local emergency officials to develop policies and procedures for the use of the emergency broadcast capability within the Franchise Agreement service area.

## **SECTION 7 – REPORTS AND RECORDS**

### **7.1 OPEN RECORDS**

- A. Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliated entities that are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliated entity or a third party. Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within ten (10) business days of the transmittal of such request. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.
- B. Grantee shall at all times maintain and allow Grantor, with reasonable notice, access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the Grantor and the Grantee. Grantor's review of the plans, records, and as-built maps, provided for herein, shall occur at the Grantee's local office.

- C. The ability for Grantor to obtain records and information from Grantee is critical to the administration of this Agreement and the requirements herein. Therefore, Grantee's failure to comply with the requirements of this Section may result in fines as prescribed in Section 15.

## **7.2 CONFIDENTIALITY**

Subject to the limits of the Oregon Public Records Law, Grantor agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If Grantor believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person.

## **7.3 COPIES OF FEDERAL AND STATE DOCUMENTS**

Upon a request from Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such list or documents to Grantor no later than thirty (30) days after the receipt of such requests. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

## **7.4 COMPLAINT FILE AND REPORTS**

- A. Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the operation and performance of the Cable System, within the franchise

area, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those files shall remain open to Grantor during normal business hours.

- 1) Grantee shall provide an executive summary report quarterly (within thirty (30) days of the end of the preceding quarter) to Grantor, which shall include the following information:
  - a) Nature and type of customer complaints.
  - b) Number, duration, general location and customer impact of unplanned service interruptions.
  - c) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.
  - d) Subscriber counts, by service tiers, and EBU (Equivalent Basic Unit) counts.
  - e) Total disconnections and major reasons for those disconnections
  - f) Average response times and total number of service calls.
  - g) Video programming changes (additions/deletions).
  - h) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.
- 2) Grantee shall provide Grantor with an executive summary report (within thirty (30) days of the end of the preceding quarter as described below in a., b., c. and d.) that shall include the following:
  - a) Phone activity report, on a monthly basis;
  - b) New areas constructed and available for Cable Service, including multiple dwelling units, on a quarterly basis;
  - c) Subscriber reports to Grantor indicating the total number of Subscribers by service categories, on a quarterly basis; and
  - d) The Grantor may require the reports for b) and c) to be submitted on a monthly basis if Grantor reasonably believes that Grantee may not be in compliance with the standards covered by these reports.
- 3) Grantor shall also have the right to request such information as

appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Section 6.1. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

- 4) Section 7.4 shall sunset and be of no further force and effect to the extent Grantee is subject to effective competition as such term is defined in 47 C.F.R. 76.905.

## **7.5 INSPECTION OF FACILITIES**

Grantor may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement at any time upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice.

## **7.6 FALSE STATEMENTS**

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a material violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise.

## **7.7 REPORT EXPENSE**

All reports and records required under this or any other Section shall be furnished, without cost, to Grantor.

## **SECTION 8 - PROGRAMMING**

### **8.1 BROAD PROGRAMMING CATEGORIES**

- A. Grantee's cable television system shall provide the widest diversity of programming possible. Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available:
  - 1) Educational programming.
  - 2) Sports.
  - 3) General entertainment (including movies).
  - 4) Children/family-oriented.
  - 5) Arts, culture and performing arts.

- 6) Foreign language.
- 7) Science/documentary.
- 8) Weather information.
- 9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
- 10) National, state, and local government affairs.

B. Grantee shall not delete any broad category of programming within its control.

## **8.2 PARENTAL CONTROL DEVICE**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters 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.

## **8.3 LEASED ACCESS CHANNELS**

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

## **8.4 CONTINUITY OF SERVICE**

- A. It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.
- B. In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

## **8.5 SERVICE FOR THE DISABLED**

Grantee shall comply with the Americans With Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations.

## **SECTION 9 - PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS (PEG)**

### **9.1 GENERAL DEFINITIONS**

With respect to purposes of this section, the following definitions will apply with respect to Public, Educational, and Governmental (PEG) use of the Cable System.

- A. "Access Channel" means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service. Each Access Channel shall be six (6) MHz and must be capable of transmitting a standard analog video signal. The capacity can be used to transmit non-commercial signals in any format, and can be used to transmit: audio only, video, or other information (including, by way of example and not limitation, secondary audio, text, digital information, high-definition signals, and compressed signals.) A non-standard NTSC use shall be subject to the Grantee's prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other Channels. Such uses must be in furtherance of PEG uses. Additionally, there shall not be commercial use or lease of such PEG capacity without the express written permission of the Grantee.
- B. "Digital Access Channel", as used in this Section, means a Channel carrying PEG continuous full-motion video programming in a digital format. Digital Access Channels shall have the same compression ratio and transmission quality as is used to carry any of the commercial Channels that deliver programming to the Grantor in a similar format for delivery to each Subscriber.
- C. "Designated Access Provider" means the entity or entities designated by the Grantor to manage or co-manage Public, Educational or Governmental use Channels and facilities. The Grantor may be a Designated Access Provider.
- D. "Origination Point" means a location other than an Access Center, where Public, Educational, and Governmental use programming is delivered to the Grantee for Upstream transmission.

### **9.2 MANAGEMENT AND CONTROL OF ACCESS CHANNELS**

- A. Grantor may authorize Designated Access Provider to control and manage the use of any and all Access Facilities provided by Grantee under this Agreement, including, without limitation, the operation of Access Channels. To the extent of such designation by Grantor, as between the Designated Access Provider and Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities. The Grantor or its designee may formulate rules for the operation of the PEG Access channel, consistent with this Agreement; such rules shall not be

designed to control the content of Public Access programming. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider.

- B. Grantee shall cooperate with the Grantor and Designated Access Provider in the use of the Cable System and Access facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with the Designated Access Provider as may be necessary to facilitate and coordinate the provision of PEG Access, provided that such operating agreements shall not be inconsistent with the terms of this Agreement and shall be subject to approval by the Grantor.
- C. Except as provided in this Agreement, the Grantor shall allocate Access resources only to the Designated Access Provider. The Grantee shall cooperate with the Grantor in such allocations, in such manner as the Grantor shall direct.
- D. Subject to written authorization from the Grantor, the Grantee shall have the right to use temporarily any Channel, or portion thereof, which is allocated under this Section for public, educational, or governmental uses pursuant to Section 611(d) of the Cable Act.

### **9.3 CHANNEL CAPACITY AND USE**

- A. Upon the effective date of this Agreement, all Access Channels provided for herein are administered by the Grantor or designee.
- B. Upon completion of the upgrade the Grantee shall provide one (1) Access Channel for distribution of Public, Educational, and Governmental Access programming on the residential Cable System.
- C. Upon completion of the upgrade, Grantor may require Grantee to activate one (1) additional Access Channel for a maximum of two (2) Access Channels.
- D. Upon completion of the upgrade, the Grantee shall provide connection of all PEG Access Channels required by this Agreement to and from the Grantee's Headend and the Designated Access Provider's Headend. Grantee agrees to provide reconnection for Designated Access Provider's Headend if it is relocated within twelve (12) months of the effective date of this Agreement, at no charge to Grantor or to Designated Access Provider.
- E. As required in Section 9.3 C., Grantee shall be required to provide a maximum of two (2) Access Channels. However, if all video programming is delivered in a digital format and the Grantor requests that PEG Channels be digitized, then, in lieu of the Access Channels provided for in Section 9.3 B. and C., there shall be a maximum of four (4) PEG continuous, full-motion



video programming Digital Channels ("Digital Access Channels") not subject to the trigger criteria set forth in Section 9.7. The Grantor shall determine the number of Digital Access Channels to be activated, not to exceed four (4). Finally, if all PEG video programming is delivered in digital format, the bandwidth available for PEG use shall not exceed twice the amount of bandwidth that is necessary to transmit the four (4) PEG Digital Access Channels, except that the amount of capacity available beyond the amount required to transmit the four (4) Digital Access Channels shall not be less than twelve (12) MHz in any case.

#### **9.4 RELOCATION OF ACCESS CHANNELS**

Grantee shall provide Grantor with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred twenty (120) days notice, prior to the time Public, Educational, and Governmental(PEG) Access Channel designations are changed. Grantee shall consult with Grantor prior to making a final determination regarding any changes in PEG Access Channel designations/assignments. Any new Channel designations for the PEG Access Channels provided pursuant to this Agreement shall be in full compliance with FCC signal quality and proof of performance standards.

#### **9.5 ORIGATION POINTS**

A. At a date to be mutually determined by the Grantor and Grantee, Grantee shall provide, without charge, adequate capacity to facilitate the transmission of character generated, pre-recorded, and live cablecasts from Origination points within the Cable Service area to enable the distribution of PEG Access programming on the Residential Cable System on Access Channels. Permanent Origination Points shall be determined by mutual agreement by Grantor and Grantee.

B. Upon completion of the Upgrade, or by mutual agreement by Grantor and Grantee, upon six (6) weeks written notice in advance of the scheduled cablecast, and provided that an active drop is available at the desired location, Grantee shall provide Origination Points on a short-term basis for the live cablecast of Access Programming. The incremental, out-of-pocket costs to Grantee shall be paid for by Grantor or Designated Access Provider. Grantee shall not be required to facilitate more than two such Origination Points in any twenty-four (24) hour period.

C. There shall be no charge to the Grantor, nor to any other person for the use of the upstream capacity from the program origination locations described in this section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

## **9.6 ACCESS INTERCONNECTIONS**

- A. The Grantee shall maintain for the duration of this Agreement any and all existing Interconnections of Access Channels with contiguous cable systems.
  - 1) Grantee shall be capable of interconnection of PEG Access Channels in the Cable System and Cable Systems in Franchise Areas that are geographically adjacent to Grantor, provided that Grantor has secured the written permission for such Interconnection from the regulatory authority for the adjacent Franchise Area. The cost of such Interconnections shall be Grantee's so long as Grantee or Grantee's affiliate owns the adjacent Cable System. If the adjacent Cable System is not owned by Grantee, the cost for interconnection shall be equally shared by the two Cable Systems.
- B. All Interconnections shall have the capability of transmitting and receiving PEG programming. All Interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this agreement on all interconnected Channels, consistent with Section 9.11. Installation of all interconnect capacity shall be completed at the Grantee's expense, except as otherwise provided herein.
- C. The Grantor, or its Designated Access Provider, shall have the right to control and schedule the operation of all interconnected Access Channels and capacity. In addition, the Grantor, or its Designated Access Provider, shall have the right to use, at its sole discretion and at no cost, any Access Channels and capacity provided under this agreement for non-commercial purposes, in furtherance of PEG use. However, the requirement to interconnect PEG programming with adjacent Cable Systems of willing franchise authorities shall not result in an increase in the number of PEG Channels beyond the number of Access Channels provided for in Sections 9.3 and 9.7 of this Agreement.
- D. The Grantee shall take all necessary steps to ensure that technically adequate signal quality in compliance with FCC requirements are initially and continuously provided for all Access Interconnections and Origination Points.

## **9.7 CAPITAL SUPPORT FOR ACCESS COSTS**

Grantee shall pay to the Grantor as capital support for Access Facilities, an amount specified by the Grantor up to a maximum of \$1.00 per month per Residential Subscriber. The Grantor may use PEG capital support for any capital costs involved in PEG Access, including but not limited to the capital costs of the I-Net to the extent that the I-Net is provided by the Grantee. The Grantor shall give Grantee at least sixty (60) days advance written notice of Grantee's obligation to begin payment of the capital support, including the monthly amount per Subscriber to be paid.

Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter from when the capital support takes effect. The Grantor shall have discretion to allocate the capital support in accordance with applicable law.

Residential Subscribers with courtesy accounts provided by the Grantee without charge or bulk MDU accounts, will not be counted in the calculation of capital support pursuant to this section.

The Grantor may adjust the amount of the capital support on an annual basis (up to the maximum amount specified in this subsection), provided that Grantee is given sixty (60) days advance written notice.

### **9.8 EXPANSION OF ACCESS CHANNELS**

Following completion of the upgrade, Grantee shall, if directed by the Grantor, provide additional, activated Downstream Channel capacity for PEG Access, to a maximum total of two (2) Access Channels as described in Section 9.3. The Grantor shall give Grantee at least ninety (90) days prior notice of required additional Access Channels.

### **9.9 ACCESS SUPPORT NOT FRANCHISE FEES**

The Grantor recognizes Franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Agreement and the Grantee has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

### **9.10 ACCESS CHANNELS ON LOWEST AVAILABLE TIER**

All Access Channels provided to Subscribers under this Agreement shall be included by the Grantee, without limitation, as a part of Basic Cable Service offered by the Grantee on its Cable System.

### **9.11 CHANGE IN TECHNOLOGY**

In the event the Grantee makes any change in the Cable System and related equipment and Facilities or in the Grantee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access services or programming, the Grantee shall, at its own expense, take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of the Grantor's or Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

## **9.12 TECHNICAL QUALITY**

The Grantee shall maintain all Upstream and Downstream Access services, Channels and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. The Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including modulators, associated cable and equipment in use upon the effective date of this Agreement, necessary to carry a quality signal to and from the Grantor's or Designated Access Provider's facilities.

## **9.13 PROMOTIONAL SERVICES**

- A. The Grantee shall provide, at no cost to the Grantor, ten 30-second PEG Access advertising avails per month on various Subscriber Cable Services carried by the Grantee on the Cable System, scheduled at Grantee's discretion. Grantee shall be provided an opportunity to review and approve the content of the PEG advertising.
- B. The Grantee shall allow the Grantor to include two bill stuffers per year. The Grantor or Designated Access Provider shall be responsible for the cost of printing its bill stuffers, the costs of inserting the information into Grantee's bills, and for any incremental postage costs. Bill stuffers must conform to Grantee's mailing requirements. Grantee shall be provided an opportunity to review and approve all PEG bill stuffers.

## **9.14 CHANNEL IDENTIFICATION**

If requested by the Grantor or Designated Access Provider, at Grantor or Designated Access Provider costs, the Grantee will identify the PEG Channels and FM signal and identify the programming carried on the PEG Channels and FM signal in its printed and electronic programming guides, in the same manner in which it identifies the Channels and programming on Channels and audio services under its control. It is the responsibility of the Designated Access Provider to provide appropriate entities with program schedules in a timely manner, and, if the Designated Access Provider fails to do so for a particular Channel, the Grantee may simply identify the general type of programming carried on the Channel. Grantee will bill the Grantor or Designated Access Provider for the costs of these listings.

## **SECTION 10 – GENERAL STREET USE AND CONSTRUCTION**

### **10.1 CONSTRUCTION**

- A. Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, 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 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, prior to issuance, all applicable fees of the requisite construction permits.

- B. Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Agreement and all applicable Grantor Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.
- C. Grantor shall have the right to inspect all construction or installation work performed within the franchise area as it shall find necessary to ensure compliance with the terms of this agreement and other pertinent provisions of law.

## **10.2 LOCATION OF FACILITIES**

Within forty-eight (48) hours after notification of any proposed Street excavation, Grantee shall, at Grantee's expense:

- A. Mark on the surface all of its underground facilities within the area of the proposed excavation;
- B. Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or
- C. Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

## **10.3 RELOCATION**

Grantor shall have the right to require Grantee to change the location of any part 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 Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Streets, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

## **10.4 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 refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to Grantor.
- B. If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable regulations of the Grantor. Grantor may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove or repair any work done by Grantee that, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to Grantor.

## **10.5 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 Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, Grantor's authority.
- B. Grantee shall provide and use any equipment necessary to control and carry Grantee's cable television signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

## **10.6 RESERVATION OF GRANTOR STREET RIGHTS**

Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Street; 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 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, Grantee's Cable System shall be removed or replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all

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

#### **10.7 USE OF CONDUITS BY GRANTOR**

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Streets and other public places without charge to Grantor, to the extent space therein or thereon is reasonably available, and pursuant to all applicable Ordinances and Codes. For the purposes of this Subsection 10.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor.

#### **10.8 STREET VACATION**

If any Street or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to Grantor, 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 Grantor. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Street, Grantor may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Grantor, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

#### **10.9 DISCONTINUING USE OF FACILITIES**

Whenever Grantee intends to discontinue using any facility within the Streets, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor 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 Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be

responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

#### **10.10 HAZARDOUS SUBSTANCES**

- A. Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.
- B. Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

#### **10.11 UNDERGROUNDING OF CABLE**

##### **A. Wiring.**

- 1) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines services at no additional expense to the Grantor or Subscribers, and to the extent permitted by law. Cable must be installed underground where: (1) all existing utilities are placed underground, (2) statute, ordinance, policy, or other regulation of an individual Grantor or Commission requires utilities to be placed underground, or (3) all new or existing overhead utility lines are placed underground.

Related Cable System equipment such as pedestals must be placed in accordance with applicable Code requirements and underground utility rules as interpreted by each Grantor's appropriate public works official. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.

- 2) The Grantee shall utilize existing poles and conduit wherever possible.
- 3) This Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Grantor or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the



Grantor upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

- 4) Whenever possible, to avoid additional wear and tear on Grantee's Rights of Way, Grantor shall when relocating or upgrading the current cable network install additional conduit or provide additional space for a rebuilt system. Grantee may charge for use of the conduit consistent with all applicable laws.

#### **B. Repair and Restoration of Property.**

- 1) The Grantee shall protect public and private property from damage. If damage occurs the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.
- 2) If public or private property is disturbed or damaged, the Grantee shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way or other Grantor property shall be restored, in a manner and within a timeframe approved by the Grantor's Director of Public Works or other appropriate designated official. If restoration of public right-of-way or other property of the Grantor is not satisfactorily performed within a reasonable time, the Director of Public Works or other appropriate designated official may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. If suit is brought upon Grantee's failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the Grantor, then the Grantee shall pay all of the Grantor's actual costs and expenses resulting from the non-payment, including penalties, interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than seventy-two (72) hours.
- 3) Prior to entering onto private property to construct, operate or repair its Cable System, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

**C. Movement of Cable System For and By Grantor.** The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the Grantor in the case of fire,

disaster, or other emergency, or when a project or activity of the Grantor's makes the removal, replacement, modification or disconnection necessary or less expensive for the Grantor. Except during an emergency, the Grantor shall attempt to provide reasonable notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action. Following notice by the Grantor, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other property of the Grantor, except that the Grantor shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the Grantor's satisfaction, the Grantor may cause such work to be done and bill the cost of the work to the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Grantor.

- D. Movement for Other Franchise Holders.** If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Those persons shall determine how costs associated with the removal or relocation required herein shall be allocated.
- E. Movement for Other Permittees.** At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require a reasonable deposit of the estimated payment in advance.
- F. Tree Trimming.** Subject to acquiring prior written permission of the Grantor, the Grantee shall have the authority to trim trees that overhang a public right-of-way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

## **10.12 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 not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

## **10.13 STANDARDS**

- A. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- B. Grantee shall ensure that individual Cable System drops are properly bonded to the electrical power ground at the home, and are consistent, in all respects, with the requirements of the National Electric Code and the National Electrical Safety Code.

## **SECTION 11 – SYSTEM DESIGN**

### **11.1 SUBSCRIBER NETWORK**

#### **A. Upgrade Design**

- 1) Grantee has determined that an appropriate design plan for System upgrade in the Franchise Area will include the following requirements, which Grantee will provide and construct:
  - (a) The System will use a fiber to the neighborhood node architecture. This will involve deployment of fiber optic cable throughout those portions of the System to be upgraded. The upgraded plant will tie into a hybrid fiber/coaxial Cable System already serving Subscribers.
  - (b) The System shall serve no more than fifteen hundred (1,500) customers per fiber node.
  - (c) All active electronics will be at least 550 MHz capable equipment, or equipment of higher bandwidth.
  - (d) The upgraded Cable System shall be two-way capable and able to support two-way high speed Internet Access via the Cable System.
  - (e) Passive devices will pass a minimum bandwidth of 550 MHz.
  - (f) The upgrade of the Cable System will be conducted in phases. Grantor will authorize Grantee to activate the System as nodes are constructed or upgraded.
  - (g) Upon completion of the upgrade, the Cable System shall be capable of

delivering at least seventy-five (75) analog Channels of video programming services to Subscribers.

- 2) As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed, FCC technical quality standards regardless of the particular manner in which the signal is transmitted. The upgrade shall commence within six (6) months of the effective date of this Agreement and be completed on or before August 1, 2002. The upgraded Cable System will be capable of supporting addressable equipment throughout the System and shall enable the provision of digitally compressed video services. Grantee's upgraded Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

#### **B. System Functionality**

- 1) It is the intent of the parties to provide for a process that provides the Grantor with an opportunity to review the system design plan and construction progress to ensure that the Cable System meets or exceeds the specifications described herein. Grantee agrees that it shall provide Grantor with reasonable notice of its intent to test the performance of the upgraded Cable System so that Grantor can witness such testing.
- 2) At least sixty (60) days before the upgrade of the Cable System begins, or if a design plan for the system upgrade exists at the time the Grantor adopts this Agreement, no later than 15 days following such adoption, Grantee shall provide the Grantor with a proposed timeline for the upgrade and an opportunity to review the system design plan consistent with Grantee's obligations as described in Section 5 and Section 9. The Grantor shall indicate to Grantee, within thirty (30) days of the receipt and review of materials, as to any aspects of the timeline and/or design plan Grantor believes are inconsistent with the requirements set forth herein in Section 5 and Section 9. Grantee shall respond within thirty (30) days to the Grantor to resolve any inconsistencies.
- 3) Construction of fiber to the nodes shall be completed no later than August 1, 2002.
- 4) The upgrade must be completed in its entirety by August 1, 2002.
- 5) Within thirty (30) days of the effective date of this Agreement, and every month thereafter, at the request of the Grantor, Grantee and Grantor will meet to discuss the progress of the upgrade and work cooperatively to speed the construction process and to minimize the impact upon Subscribers (by e.g. discussing any problems in obtaining permits and by

having Grantors provide information to Grantee on population and/or demographic trends and projections."). At each meeting, Grantee will provide a progress report on the upgrade detailing its progress in satisfying the requirements of this Section.

- 6) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Agreement or applicable law.

### **C. Timing of Construction**

Grantee's decisions on constructing plant for service from each hub or node shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of the Franchise Area.

## **11.2 INSTITUTIONAL NETWORK (I-Net)**

"Institutional Network" means a communication network that is constructed, owned or operated by the Grantee and which is generally available only to Subscribers who are not residential Subscribers.

### **A. Upgrade**

- 1) Grantee shall upgrade the existing I-Net within the same time period the Grantee upgrades the Cable System. The upgrade of the I-NET shall be completed on or before August 1, 2002. The I-Net may be used by the Grantor and its agencies, other governments and their agencies, Schools, libraries, public corporations created by the Grantor, and other non-profit community based institutions to the extent that such non-profit institutions provide public services.

- 2) The upgrade will incorporate an optical fiber architecture to achieve the Service and Performance Standards described in Attachment A. The upgraded I-Net will enable full fiber optic connectivity to requesting institutions upon completion of the upgrade.

### **B. Existing I-Net**

The Grantee shall continue to provide and maintain the I-Net existing as of the effective date of this Franchise.

Upon written request of the Grantor, the Grantee agrees to assist the Grantor in the ongoing evaluation of the Institutional Network that interconnects specific public buildings for the transmission and receipt of voice, data, video and other communications between specific points in the discrete network within the

Service Area.

**C. Rates for Service**

Monthly fees for upgraded service and installation costs for use of the I-Net will be negotiated and attached to this agreement at such time that is mutually agreed to by the Grantor and Grantee, however no later than 60-days after completion of the upgrade. The Grantee agrees that the charges for installation and use of the I-Net shall be at comparable rates and on similar terms and conditions as that offered by the Grantee to other municipal users in the State of Oregon for similar services. Service contracts will be negotiated between Grantee and each I-Net user. Such contracts shall comply with all the terms and conditions of this Agreement. Existing I-Net users as of the effective date of this Agreement will be subject to the charges established for the upgraded I-Net.

**D. I-Net Capacity**

The I-Net shall be capable of full bi-directional, video, voice and low- and high-speed data communications (including, but not limited to, closed circuit video applications).

**E. Interconnection of Institutional Network to other Networks**

The upgraded I-Net and the existing I-NET, shall be capable of interconnecting to Institutional networks in cable systems that are geographically adjacent to Grantor, provided that Grantor has secured written permission for such interconnection from the regulatory authority for the adjacent Franchise area. The cost of such interconnection shall be Grantee's so long as Grantee or Grantee's affiliate owns the adjacent cable system. If the adjacent cable system is not owned by Grantee, the cost for interconnection shall be equally shared by the two cable systems. Grantee shall be required to provide (1) connection-per interconnection requirement between Grantee's Cable System and the adjacent cable system. When the adjacent cable system is owned by Grantee or Grantee's Affiliate, the interconnection link shall meet the I-Net Service and Performance Standards. Grantee's financial obligation for equipment required to interconnect the I-Net shall not exceed \$7,500.00.

**F. Network Monitoring, Maintenance and Management**

The I-Net shall be monitored by the Grantee to ensure that the I-Net meets or exceeds the I-Net Service and Performance Standards. Grantee will employ appropriate network management hardware and software to ensure optimum performance of all data services over the I-Net. Grantee will provide status monitoring for the optical transmitters and receivers of the I-Net, as well as all headend equipment, cable modems, and power supplies that may be provided by the Grantee in the future, except for those power supplies at user sites.

Grantee will manage the operation and perform all maintenance and repair to the I-Net. I-Net users will provide, and be responsible for, the operation and maintenance of equipment attached to the terminal ends of the network. Grantee may charge to procure and/or maintain equipment for I-Net users.

**G. Network Segmentation**

Upon completion of the upgrade to the I-Net, the I-Net shall be capable of being segmented such that video, voice, and data communications can be transmitted discretely within a geographic area or jurisdiction mutually agreed upon by Grantee and Grantor. Such segmentation shall enable frequency reuse to facilitate discrete communications, such that the network does not become capacity limited. The I-Net shall also incorporate necessary video/audio and data switching to enable the appropriate routing of signals within and between network segments. If the network segmentation provided for herein requires additional equipment and labor beyond that provided by Grantee, the cost for the equipment and installation shall be shared equally by Grantee and Grantor, however, the cost to the Grantee shall not exceed \$7,500.00 per each request for segmentation

**H. Transition from the Existing I-Net to the Upgraded I-Net and Between Equipment Assignments**

All existing I-Net users shall continue to have their current network capacity available to them on the I-Net until such time as they migrate to the upgraded I-Net. Where it is necessary to migrate users from an existing equipment assignment to a new assignment, Grantee will assist such users in the migration so that there is minimal disruption from the existing to the new operating assignments.

Unless otherwise agreed to in writing with I-Net users, cutover to upgraded sections of the I-Net shall occur between midnight and 5:00 a.m., or on weekends, so I-Net transmissions are not adversely affected. I-Net users shall have at least ten (10) business days advance notification of cutover activities that will affect the operation of their I-Net circuits.

**I. Migration from Analog to Digital Transmission**

As the I-Net incorporates digital transmission methodologies if digital video compression is employed on the subscriber network that may require I-Net users to convert from analog to digital transmission, Grantee agrees to assist users in such conversions. Affected I-Net users shall be given notice of conversion requirements so that I-Net user operations are not adversely affected. Costs associated with such a conversion will be paid by Grantee when the conversion is at Grantee's request, and shall be paid by the I-Net user when the conversion is at the request of the I-Net user.

**J. Network Costs**

I-Net users shall pay the Grantee for costs associated with the upgrade to the I-Net and the costs associated with providing operational support for the users' circuits on the I-Net as part of their monthly services rates. In no case shall the cost for these services exceed the market rate charged for substantially equivalent services provided by other service providers, and pursuant to the rates and conditions for use of the upgraded I-Net using cable modem technology as included in Attachment B. Grantor will periodically review rates for I-Net users to ensure Grantee's compliance with this provision.

The current I-Net user rate card shall not be modified until such time as the I-Net user migrates to the upgraded I-Net network at which time the rates established in Attachment B will apply. I-Net user rates for enhanced services shall be negotiated on a case-by-case basis between I-Net user and Grantee. Rates may be adjusted to reflect competitive market rates for substantially equivalent services as periodically reviewed by Grantor. Grantee and Grantor must mutually agree to such rate adjustments.

**K. Network Alterations**

If the Grantee alters its Cable System after the upgrade described in Section 11, or moves its headend so that the I-Net must be changed, the Grantee must provide any additional equipment and facilities required to prevent any change in the quality of service or additional costs to I-Net users. Grantee must ensure that the changes to the Cable System do not adversely affect the I-Net or use of the I-Net by existing or future users.

Nothing in Section 11.2 shall be deemed by the Grantor or Grantee to subject Grantee's operations, or the I-Net services provided by Grantee under authority of this Franchise, to regulation as a common carrier within the meaning of applicable state or federal law.

Grantor and Grantee shall work together cooperatively to coordinate and market the operations of the I-Net, and shall jointly promote and support the best use of this area-wide communications network.

Attachments A (I-Net Service and Performance Standards) and B (I-Net Rate Schedule) are considered part of this Agreement. In that regard, they are incorporated herein by reference, and are intended to be Franchise standards.

**L. I-Net Failure**

In the event of a failure of the I-Net, whether in whole or in part, Grantee's liability shall be limited to repairing the I-Net and the provisions of Section



15.2 and 15.3 and I-Net Service Penalties and Procedures as outlined in Attachment A (I-Net Performance Standards). Grantee is not responsible for any other monetary damages whether, actual, special or consequential damages, resulting from any failure, in whole or in part, from the operation of the I-Net constructed by the Grantee.

## **SECTION 12 - TEST AND COMPLIANCE PROCEDURES**

Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.

As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements.

## **SECTION 13 – SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION**

### **13.1 EQUIVALENT SERVICE**

It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area, provided that Grantee is authorized to activate the upgraded system node by node.

### **13.2 SERVICE AVAILABILITY**

**A. Service to New Subdivisions.** Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.

Grantee shall provide such service:

- 1) With no line extension charge except as specifically authorized elsewhere in this Agreement.
- 2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred and twenty five (125)

feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor; and at nondiscriminatory monthly rates for Residential Subscribers.

**B. Required Extensions of Service.** Whenever the Grantee shall receive a request for service from at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Customers at no cost to said Customers for Cable System extension, other than the usual connection fees for all Customers within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation, of the Cable System, or as provided under Section 2.6 of this Agreement.

**C. Customer Charges for Extensions of Service.** No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as a Customer's request to locate a cable drop underground, existence of more than one hundred and twenty-five (125) feet of distance from distribution cable to connection of service to Customers, or a density of less than ten (10) residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

**D. Enforcement.** Failure to meet these standards shall subject grantee to enforcement actions on a per Subscriber basis in Section 15.3(A)2.

### **13.3 CONNECTION OF PUBLIC FACILITIES**

Grantee shall, at no cost to Grantor, provide one (1) outlet of Basic and expanded basic programming to Grantors' public use buildings, as designated by the Grantors, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, Grantee agrees to provide, at no cost, one (1) outlet of Basic and expanded basic programming to all such future public buildings if the drop line to such building does not exceed one hundred and twenty five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one hundred twenty five (125) feet, including the cost of such excess labor and materials. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be

accomplished without causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of Grantor.

#### **13.4 NEW DEVELOPMENTS**

The Grantor shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Franchise Area requiring undergrounding of cable facilities. The Grantor agrees to require as a condition of issuing the permits notice of the date of availability of trenches. Such notice must be received by the Grantee at least 10 days prior to availability. The developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering, deployment labor, and cable facilities. Installation from utility easements to individual homes or other structures shall be at the cost of the home/building owner or developer unless otherwise provided.

#### **SECTION 14 - STANDBY POWER**

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, to the node, rated for at least two (2) hours duration. In addition, throughout the term of this Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to Grantor no later than ninety (90) days following the effective date of this Agreement.

#### **SECTION 15 - FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE**

##### **15.1 PROCEDURE FOR REMEDYING FRANCHISE VIOLATIONS**

- A. If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.
- B. The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall, with Grantee's consent, decide whether to accept, reject, or modify the remedial plan presented by the Grantee. Fines shall be assessed only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 15 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Grantee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called

for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation.

- C. Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:
1. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection (E) below, or;
  2. Cure the violation, or;
  3. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (D) below.
- D. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Grantor, who may waive all or part of the fines for such extended cure period in accordance with the criteria set forth in subsection (G). of this section. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (C), the Grantor shall set a hearing to determine what fines, if any, shall be applied.
- E. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (B)(1) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.
- F. In the case of any hearing pursuant to this section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate and Grantee may appeal such decision to a court of competent jurisdiction.

G. The fines set forth in Section 15.2 of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- 1) Whether the violation was unintentional;
- 2) The nature of the harm which resulted;
- 3) Whether there is a history of prior violations of the same or other requirements;
- 4) Whether there is a history of overall compliance, and/or;
- 5) Whether the violation was voluntarily disclosed, admitted or cured.

H. If, after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:

- 1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
- 2) Establish the amount of fine set forth in Section 15.2, taking into consideration the criteria provided for in subsection (G) of this section as appropriate in Grantor's discretion;
- 3) Revoke this Agreement as specified in Section 15.3, and/or;
- 4) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.

## **15.2 FINES**

**A. Failure to Comply.** Failure to comply with provisions of the agreement may result in injury to Grantor. It will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this Agreement are intended as a reasonable forecast of compensation to Grantor for the harm caused by violation of this Agreement, including but not limited to administrative expense, legal fees publication of notices, and holding of a hearing or hearings as provided herein.

- (1) For violating aggregate performance telephone answering standards for a quarterly measurement period:
  - a) Five thousand dollars (\$5,000) for the first such violation;
  - b) Seven thousand five hundred dollars (\$7,500) for the second such

violation, unless the violation has been cured;

- c) Ten thousand dollars (\$10,000) for any and all subsequent violations, unless the violation has been cured.

A cure is defined as meeting the subscriber telephone answering standards for two consecutive quarterly measurement periods.

- (2) For violation of applicable subscriber service standards where violations are not measured in terms of aggregate performance standards: \$20.00 per violation multiplied by the number of affected subscribers, per day;
- (3) For violations of Sections 11.1 and 11.2: Two hundred fifty dollars (\$250.00) per day;
- (4) For all other violations of this agreement, except as otherwise provided herein, (for example, but not limited to, record submissions under Section 7): \$100.00/day for each violation for each day the violation continues.

**B. Collection of Fines.** The collection of fines by the Grantor shall in no respect affect:

- (1) Compensation owed to Subscribers; or
- (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
- (3) Other remedies available to the Grantor.

### **15.3 REVOCATION**

In addition to all other rights and powers retained by the Grantor under this Agreement or otherwise, the Grantor reserves the right to forfeit and terminate this Agreement and all rights and privileges of the Grantee hereunder, in whole or in part, in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to the following:

- 1) Violation of any material provision of this Agreement or any other Agreement between Grantor and Grantee, or any material rule, order, regulation, standard or determination of the Grantor or authorized agent made pursuant to this Agreement or other Agreement;
- 2) Attempt to evade any material provision of this Agreement or to practice any fraud or deceit upon the Grantor or its Subscribers or customers;

- 3) Failure to restore service after forty-eight (48) consecutive hours of interrupted service system-wide, except when approval of such interruption is obtained from the Grantor;
- 4) Material misrepresentation of fact in the application for or negotiation of this Agreement, or;
- 5) If Grantee becomes insolvent, or the subject of a bankruptcy proceeding, or;
- 6) Fails to complete the system upgrade or I-Net upgrade as provided for in Section 11.

The provisions of Section 15.1 (F) shall specifically apply to this Section.

#### **15.4 RELATIONSHIP OF REMEDIES**

**A. Remedies are Non-exclusive.** The remedies provided for in this agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed. By way of example and not limitation, the collection of fines by Grantor shall in no respect affect:

- (1) Compensation owed to subscribers; or
- (2) Grantee's obligation to comply with the provisions of this agreement or applicable law.

**B. No Election of Remedies.** Without limitation, the withdrawal of amounts from the Grantee's Letter of Credit (LOC), or the recovery of amounts under the insurance, indemnity or penalty provisions of this agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for fines or otherwise; or an excuse of faithful performance by Grantee.

#### **15.5 REMOVAL**

**A.** In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

B. If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs or Grantor may recover the costs through the Letter of Credit provided by Grantee.

## **15.6 RECEIVERSHIP AND FORECLOSURE**

A. At the option of Grantor, subject to applicable law, this Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

- 1) The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment, or;
- 2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

B. If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

- 1) Grantor has approved the transfer of the Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and
- 2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

## **15.7 NO RECOURSE AGAINST GRANTOR**

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.



## **15.8 NON-ENFORCEMENT BY GRANTOR**

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

## **SECTION 16 – ABANDONMENT**

### **16.1 EFFECT OF ABANDONMENT**

If the Grantee abandons its System during the Agreement term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until the Agreement is revoked and a new Franchise is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses and damages incurred.

### **16.2 WHAT CONSTITUTES ABANDONMENT**

The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:

- A. The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.5; or
- B. The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

## **SECTION 17 - FRANCHISE RENEWAL AND TRANSFER**

### **17.1 RENEWAL**

- A. The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply

with the provisions of the Cable Act (47USC§546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

- B. In addition to the procedures set forth in the Cable Act, the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

## **17.2 TRANSFER OF OWNERSHIP OR CONTROL**

- A. The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.
- B. The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to cancellation unless and until the Grantor shall have consented thereto.
- C. The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- D. The Grantor shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all requested

information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

- E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, Agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- F. In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.
- G. The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.
- H. Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement.

## **SECTION 18 – SEVERABILITY**

If any section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

## **SECTION 19 - MISCELLANEOUS PROVISIONS**

### **19.1 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED**

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

### **19.2 DISPUTE RESOLUTION**

The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement 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 Grantor 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 parties 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 to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

### **19.3 NOTICES**

Throughout the term of the Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such addresses shall be:

(1) TCI of Tualatin Valley, Inc.  
Attn : Legal Department  
3500 S.W. Bond  
Portland, Oregon 97201

(2) TCI Northwest, Inc.  
Attn : Legal Department  
P.O. Box C8004  
Bothell, WA 98082-8004

All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such address shall be:

City of Sherwood, Attn: City Manager  
20 NW Washington Street  
Sherwood, Oregon 97140

#### **19.4 BINDING EFFECT**

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

#### **19.5 AUTHORITY TO AMEND**

This Agreement may be amended at any time by written agreement between the parties.

#### **19.6 GOVERNING LAW**

This Agreement shall be governed in all respects by the laws of the State of Oregon.

#### **19.7 GUARANTEE**

The performance of the Grantee shall be guaranteed in all respects by TCI West, Inc. A signed guarantee, in a form acceptable to the Grantor, shall be filed with the Grantor prior to the effective date hereof.

#### **19.8 CAPTIONS**

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

#### **19.9 ENTIRE AGREEMENT**

This Agreement, together with all appendices and attachments, contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

#### **19.10 CONSTRUCTION OF AGREEMENT**

The provisions of this Agreement shall be liberally construed to promote the public interest.

Entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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**John N. Morgan**  
**City Manager**  
**City of Sherwood, Oregon ("Grantor")**

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**James H. Smith III, President**  
**TCI Cablevision of Tualatin Valley, Inc.**

**Approved as to Form By:**

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**Derryck H. Dittman**  
**Attorney Representing the City of Sherwood, Oregon ("Grantor")**

## ATTACHMENT A

### INSTITUTIONAL (I-Net) SERVICE AND PERFORMANCE STANDARDS

#### SIGNAL QUALITY

The Institutional Network (I-Net) shall achieve the performance standards listed below under worst-case conditions for communications occurring between each I-Net institution and Grantee's headend, since all communications will be regenerated at the headend.

Noise and Distortion Performance - The combined upstream and downstream performance of the system shall meet or exceed the following:

- ◆ Carrier to noise equals 45 dB or better
- ◆ Carrier to composite triple beat equals -55 dB or better
- ◆ Carrier to second order distortion equals -58 dB or better
- ◆ Carrier to cross modulation equals -54 dB or better

Data Communications - For any data communications link on the network, the bit error ratio (BER) shall be equal to or better than  $1 \times 10$  to the minus 9, provided customer premise equipment meets or exceeds, and is operating to these specifications.

Network Availability - For each user on the network, network availability shall be equal to or better than 99.965% (no more than 184 minutes of network downtime per user) as measured on an annual basis.

The network shall be defined as 'unavailable' under the standards in Attachment A for any given user when such user:

A. Cannot, because of a network problem, measured by SNMP software or other appropriate software and associated hardware, or through a failure of a Grantee-provided interconnect, transmit video, voice and/or data communications to, from, and/or on the network, for which such user is paying a fee to Grantee.

Such problems shall be the result of a failure of one or more of the following: 1) the fiber optic cabling, connections and transmission equipment on the network; 2) the optical to RF conversion equipment at Grantee's headend; 3) the optical to RF conversion equipment at the customer's premise (if such equipment is provided by Grantee); 4) network powering systems; 5) the network equipment, connections and cabling, network management, hardware and software, and related equipment provided by Grantee at Grantee's headend; and/or 6) any other Grantee-provided network component; and/or

B. Experiences, due to a network problem, video, voice, and data transmissions that are below the standards set forth in Attachment A; and/or

C. Experiences due to a network problem a data communications packet loss of greater than ten (10) percent.

For purposes of this availability standard, network problems shall not be defined as: infrequent scheduled preventative maintenance as long as I-Net customers are notified well in advance, according to the provisions of the Franchise and user contracts. Except as otherwise provided for herein, network availability is subject to the force majeure provisions of the Franchise and those conditions which are not within the control of the Grantee. These include, but are not limited to: damage resulting from conduct by a third party, natural disasters, civil disturbances, major non-Grantee owned telephone network outages, or severe and unusual weather conditions. Grantee shall comply with the requirements of "Demand Maintenance/Service and Repair" to restore service following any of these occurrences. Grantee will give Grantor and affected I-Net users notice in the event of any of the foregoing occurrences.

Signal Level Variation - The signal level variation (peak to valley) shall be better than or equal to  $N / 10 + 2$  (where "N" equals the number of RF amplifiers in cascade from the node).

RF Signal Level at the Institution - The RF signal level on any channel delivered to the designated demarcation point at each I-Net user location shall meet or 10 dBmV and shall, in all cases, enable operation within the manufacturer's minimum specifications of all I-Net network transmission and reception equipment located within a facility connected to the I-Net.

### **SERVICE RESPONSE**

Network Maintenance - Grantee shall be responsible for the ongoing maintenance and performance of the I-Net from the demarcation point within a facility through the network, including the I-Net headend. The demarcation point shall be that point, designated by a I-Net site agreement, where the I-Net connects to internal wiring and/or equipment within the facility unless such wiring or equipment has been supplied or is maintained by Grantee, in which case the Grantee shall be responsible for I-Net performance to the point of connection to facility owner supplied wiring or equipment. Routine and preventive maintenance shall be performed continually on the network to ensure that it meets all performance criteria detailed herein. I-Net users shall have at least ten (10) business days advance notice of routine and preventative maintenance activities that may affect operation of their I-Net circuits.

Demand Maintenance/Service and Repair - Response to network problems shall occur at all hours (24 x 365). This shall include response to all situations creating problems on the network, regardless of whether they originate within the network or within equipment or software at the user site. Appropriate Grantee technical support shall respond and actively begin working on network problems within 30 minutes of either 1) Grantee



identifying such problem or 2) Grantee receiving a call from a I-Net user reporting a network problem.

Grantee shall work continuously until the problem is resolved. If it is determined that the network problem is caused by user equipment or software, then the user shall correct the problem such that other I-Net users are no longer affected. If the user does not correct the problem, then Grantee may disconnect the affected user site from the I-Net until such time that the user equipment or software is repaired. If the user desires assistance from Grantee in correcting the equipment or software problem, then Grantee shall provide such assistance, but Grantee shall also have the right to invoice the user, at Grantee's prevailing hourly rate for the time spent correcting user equipment or software problems.

**Network Support** - Grantee shall provide an appropriate complement of administrative, headend and field personnel at all times to meet the performance criteria detailed herein.

**Service Call Processing and Tracking** - Grantee will establish mechanisms and procedures for all I-Net users to quickly and easily report system problems. All trouble or service calls will be documented, processed and completed in an expedient manner. Grantee will consider employing an automated trouble notification system accessible to I-Net users.

Documentation will include monthly I-Net service call reports, distributed to both affected users and Grantor, which will include a breakdown of reasons and resolutions as well as call handling efficiency (including all activities from the time a network trouble call is received to the time Grantee and user agree that network trouble is resolved).

Notwithstanding the staffing, testing and equipment and response requirements set forth herein, the Grantee will provide: in-house and/or contractor staff; spare and back-up headend, distribution, and other applicable equipment; test and maintenance equipment; and additional steps necessary to ensure that the network performs reliably in accordance with all standards detailed herein.

### **NETWORK PERFORMANCE TESTING**

**Proof of Performance** - Proof of performance testing will be conducted on the I-Net two times per year, no less frequently than every six months. A minimum of six test point locations will be established for the I-Net which are representative of worst-case performance of the I-Net. A representative sampling of active channels upstream and downstream shall be tested at each test point location. Testing shall be performed to ensure compliance with all network performance specifications included in this Attachment. Tests shall be performed using standard test methodologies as incorporated in the current version of the National Cable Television Association's Recommended Practices for Measurement on a Cable Television System, or another test methodology as mutually agreed to by Grantor and Grantee.

**Network Frequency Response Sweep** – Grantee shall sweep designated active portions of the I-Net for frequency response in the forward and return bands, if needed, as determined by either Grantee or Grantor, to ensure compliance with the signal level variations specifications herein. The determining party shall be responsible for notifying I-Net users that such testing is needed and for notifying I-Net users that the I-Net users' data network will be off-line for the affected period of time.

**System Leakage Monitoring** - Grantee shall continually monitor and measure signal leakage of the I-Net cable plant such that points of egress are identified that could also be points of ingress. The Signal Leakage Standard for the I-Net shall be two (2) microvolts/meter or less for all frequencies in the forward and reverse directions. Signal leakage tests will be done in accordance with the current National Cable Television Association Recommended Practices for Measurement on a Cable Television System for Signal Leakage Performance.

**Power Supply Inspections** – Grantee shall provide continuous generator and UPS back-up for all I-Net components at Grantee's headend. All I-Net power supplies will be manually inspected at least twice per year, which will include the following checks and tests:

- ◆ Full load transfer and runtime test;
- ◆ Battery condition and maintenance check, including replacement if required;
- ◆ Status monitoring functional test

**Continual Status Monitoring** - Status monitoring system parameters and levels will be continually reviewed and worst-case values will be monitored at least daily and logged at least weekly. On a monthly basis, Grantee will provide I-Net users and Grantor with network traffic analysis, including a determination of data throughput, transfer rate, and network response under both normal and worst-case network operations using SNMP and/or other software and firmware such as RMON2.

**I-Net User Location Performance Testing** - All network performance specifications shall be met at each I-Net user location, and the network shall at all times enable I-Net user video, voice and data communications to be successfully transmitted in accordance with the reliability and availability standards incorporated herein. Grantee shall schedule with each user such testing as required to ensure successful network performance at each I-Net user location.

**Physical Network Characteristics** - The physical and electrical configuration of the I-Net will comply with all applicable Federal, State and local requirements. Inspections of all cable runs and components will be made by Grantee during the upgrade process to ensure the integrity of the network and Grantee shall keep records thereof. During the initial sweep and balance procedure of the system upgrade, all corroded connectors, amplifiers performing below manufacturer's specifications, corroded amplifier brackets,

corroded passives and damaged cables, and any equipment or part of the system that is in disrepair or is improperly placed will be repaired or replaced by Grantee.

Performance Documentation - All tests and checks will be documented and, upon request, filed with Grantor. At Grantor's request, all testing processes may be conducted under the observation of a representative from Grantor.

**I-Net SERVICE PENALTIES AND PROCEDURES**

(Note: These penalties will apply beginning thirty (30) days from the date any user begins service on the upgraded I-Net. Until that time, current I-Net user contract penalties will apply.)

I-Net Network Outages - I-Net network outages are defined in I-Net Service & Performance Standards, Attachment A, Network Availability. Each minute of each network outage shall be counted against the 184 minutes per site, per contract year, allowed under the above Standards.

Claims for a network outage credit will be subject to the following schedule:

There will be no credits for outages for the first 184 cumulative minutes for each I-Net site in a single contract year. Credits will apply for each month of the contract year, beginning with the month in which the total of 184 outage minutes is reached. For each outage minute, or fraction thereof, during a single month, the network outage credit shall be two percent (2%) of the monthly rate, and shall increase by two percent (2%) for each additional minute, or fraction thereof. The maximum monthly outage credit for each I-Net site shall not exceed 100% of the monthly rate.

**OUTAGES FOR EACH I-Net SITE EXCEEDING 184 CUMULATIVE MINUTES DURING A SINGLE CONTRACT YEAR:**

<b>Cumulative Duration of Network Outages During a Single Month (measured in minutes)</b>	<b>Credit Towards Monthly Rate</b>
0.1 – 1.0	2%
1.1 – 2.0	4%
2.1 – 3.0 up to 49.1	6%
49.1 and above 100%	100%

Written claims for outage credit. I-Net users must provide Grantee and Grantor with a written claim for outage credit within seven (7) business days of the event that caused the outage.

The following information must be filed by the I-Net user's designated contract representative and the claim must include the following information:

- 1) Organizations name and contact information
- 2) Name of User Contract Representative
- 3) Date and beginning/end time of claimed outage
- 4) Site address(es) where outage(s) occurred
- 5) Description of outage event.

**Claim Process:** I-Net users must submit the required information by United States Postal Service and mail to:

TCI Cablevision of Oregon, Inc.  
3500 SW Bond Avenue  
Portland, Oregon 97201

Grantee will acknowledge all claims within two business days of receipt of claim and will review all claims within ten (10) business days of receipt.

Grantee shall inform I-Net user and Grantor in writing whether the appropriate service credit claim will be granted or rejected. If rejected, the notification will specify the basis for the rejection. If Grantee fails to respond to properly made claim within fifteen (15) days of receipt of claim, claim is deemed to be accepted by Grantee and appropriate service credits will be due. I-Net user or Grantor may request Grantor to mediate disputed claims.

**Credit Process:** Grantee will issue service credits in the form of deductions applied towards the I-Net user's next applicable contract period service rate.

**ATTACHMENT B**

**INSTITUTIONAL NETWORK (I-Net) RATE SCHEDULE (TO BE DETERMINED)**