



ORDINANCE 2007-008

AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE FRANCHISE TO VERIZON NORTHWEST INC.

WHEREAS, the City of Sherwood is a “Franchising Authority” as defined in Title VI of the federal Communications Act, see 47 U.S.C. §522(10), and is authorized to grant one or more nonexclusive cable franchises, see 47 U.S.C. 541(a)(1); and

WHEREAS, Verizon Northwest Inc. (“Verizon”) is in the process of installing a Fiber to the Premise Telecommunications Network (“FTTP Network”) that will occupy Public Rights-of-Way within the City of Sherwood for the transmission of non-cable services pursuant to its status as a telecommunications carrier as set forth in Title II of the Communications Act; and

WHEREAS, the FTTP Network, once installed, will enable the provision of cable service to the residents of Sherwood; and

WHEREAS, Verizon has requested a cable franchise from the City of Sherwood, and negotiations between the City and Verizon have resulted in a franchise agreement, which agreement comports with the requirements of applicable law; and

WHEREAS, the City has reviewed the legal, technical and financial qualifications of Verizon to operate and provide cable service within the City; and

WHEREAS, the Council determines that is in the public interest to approve the proposed cable franchise agreement and authorize and direct its execution.

NOW THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. There is hereby granted to Verizon Northwest Inc. a non-exclusive cable franchise under the terms and conditions set forth in Exhibit A.

Section 2. The City Manager is authorized and directed to execute the franchise agreement on behalf of the City.

Section 3. The grant of franchise in Section 1 is conditioned upon Verizon’s fulfillment of the franchise acceptance provisions contained in Section 2.5 and 14.2 of the franchise.

Section 4. This Ordinance shall become effective 30 days from the date of its adoption as provided in the City charter.

Duly passed by the City Council this 21st day of August 2007.



Keith S. Mays, Mayor

ATTEST:



Sylvia Murphy, City Recorder

| | AYE | NAY |
|------------|-------------------------------------|-------|
| Weislogel | <input checked="" type="checkbox"/> | _____ |
| Luman | <input checked="" type="checkbox"/> | _____ |
| King | <input checked="" type="checkbox"/> | _____ |
| Henderson | <input checked="" type="checkbox"/> | _____ |
| Heironimus | <input checked="" type="checkbox"/> | _____ |
| Grant | <input checked="" type="checkbox"/> | _____ |
| Mays | <input checked="" type="checkbox"/> | _____ |

CABLE FRANCHISE AGREEMENT

between

the CITY OF SHERWOOD

AND

VERIZON NORTHWEST INC.

2007

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THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Sherwood (the “City”) and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (the “Franchisee”).

WHEREAS, the City wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the City is a “franchising authority” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network (“FTTP Network”) in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Oregon;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the jurisdictional boundaries of the City, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the City has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee’s plans for its Cable System are adequate in a full public proceeding affording due process to all parties;

WHEREAS, the City has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the City has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the City’s grant of a franchise to Franchisee, Franchisee’s promise to provide Cable Service to residents of the Franchise Area pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

Except as otherwise provided herein the following definitions shall apply:

1.1. *Access Channel*: A video channel, which Franchisee shall make available to the City without charge for non-commercial public, educational, or governmental use for the transmission of video programming as directed by the City.

1.2. *Additional Service Area*: Shall mean any such portion of the Service Area added pursuant to Section 3.1.2 of this Agreement.

1.3. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.4. *Basic Service*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522, which currently states, “any service tier which includes the retransmission of local television broadcast signals.”

1.5. *Cable Operator*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(5), which currently states, “any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.”

1.6. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), which currently states, “the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.”

1.7. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), which currently states, “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 (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent that 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 services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems.” Subject to Section 2.10, the Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.8. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), which currently states, “a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).”

1.9. *Communications Act*: The Communications Act of 1934, as amended.

1.10. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.11. *Days*: Calendar days unless otherwise noted.

1.12. *Educational Access Channel*: An Access Channel available solely for the use of the local public schools in the Franchise Area and other higher level educational institutions in the Franchise Area.

1.13. *Effective Date*: The effective date of this Agreement shall be upon the date of the last signature following approval by the City’s governing authority authorized to grant franchises.

1.14. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.15. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee’s FTTP Network is attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Franchisee to foresee or control.

1.16. *Franchise Area*: The incorporated area (entire existing territorial limits) of the City, and such additional areas as may be included in the corporate (territorial) limits of the City during the term of this Franchise.

1.17. *Franchisee*: Verizon Northwest Inc., and its lawful and permitted successors, assigns, and transferees.

1.18. *Government Access Channel*: An Access Channel available solely for the use of the City.

1.19. *Gross Revenue*: All revenue, including any and all cash, credits, property, or consideration of any kind, as determined in accordance with generally accepted accounting principles which is earned or derived by Franchisee and/or its Affiliates received from

Franchisee's provision of Cable Service over the Cable System in the Franchise Area. Gross Revenue shall be reported to the City using the "accrual method" of accounting. Gross Revenue shall include the following items so long as all other Cable Operators in the Service Area include the same in Gross Revenues for purposes of calculating franchise fees:

- (a) fees charged for Basic Service;
- (b) fees charged to Subscribers for any service tier other than Basic Service;
- (c) fees charged for premium Channel(s), *e.g.* HBO, Cinemax, or Showtime;
- (d) fees charged to Subscribers for any optional, per-channel, or per-program services;
- (e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees for video or audio programming;
- (f) fees for downgrading any level of Cable Service programming;
- (g) fees for service calls;
- (h) fees for leasing of Channels;
- (i) rental of customer equipment, including converters (*e.g.* set top boxes, high definition converters, and digital video recorders) and remote control devices;
- (j) advertising revenue as set forth herein;
- (k) revenue from the sale or lease of access Channel(s) or Channel capacity;
- (l) revenue from the sale or rental of Subscriber lists;
- (m) revenues or commissions received from the carriage of home shopping channels;
- (n) fees for any and all music services that are deemed to be a Cable Service over a Cable System;
- (o) revenue from the sale of program guides;
- (p) late payment fees;
- (q) forgone revenue that Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value;
- (r) revenue from NSF check charges;
- (s) revenue received from programmers as payment for programming content cablecast on the Cable System; and
- (t) Franchise fees.

Advertising commissions paid to independent third parties shall not be deducted from advertising revenue included in Gross Revenue. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Franchisee's Subscribers within all areas covered by the particular advertising source as of the last day of such period, *e.g.*, Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Oregon. Franchisee has 100 Subscribers in the Franchise Area, 500 Subscribers in Oregon, and 1,000 Subscribers nationwide. Gross Revenue as to the City from Ad "A" is 10% of Franchisee's revenue therefrom. Gross Revenue as to the City from Ad "B" is 20% of Franchisee's revenue therefrom.

Gross Revenue shall not include:

1.19.1. Revenues received by any Affiliate or other Person from Franchisee in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System in the Franchise Area;

1.19.2. Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.19.3. Refunds, rebates, or discounts made to Subscribers or other third parties;

1.19.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from: Telecommunications Services; Information Services, including without limitation Internet Access services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed to Non-Cable Services in accordance with applicable federal and state laws or regulations;

1.19.5. Any revenue of Franchisee or any Person that is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue that represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.19.6. The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.19.7. The imputed value of the provision of Cable Services to customers on a complimentary basis including, without limitation, the provision of Cable Services to public buildings as required or permitted herein;

1.19.8. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal, or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and non-cable franchise fees and revenue);

1.19.9. Any forgone revenue that Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Agreement; provided, however, that such forgone revenue that Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value in place of cash consideration shall be included in Gross Revenue;

1.19.10. Sales of capital assets or sales of surplus equipment;

1.19.11. Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction of new programming pursuant to a written marketing agreement;

1.19.12. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; or

1.20. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), which currently states, “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.”

1.21. *Initial Service Area*: That portion of the Franchise Area as outlined in Exhibit A.

1.22. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.23. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services consistent with FCC rules and orders by courts of competent jurisdiction following all appeals.

1.24. *Normal Business Hours*: Those hours during which most similar businesses in the Franchise Area are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

1.25. *PEG*: Public, educational, and governmental.

1.26. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.27. *Public Access Channel*: An Access Channel available solely for use by the residents and others in the Franchise Area, as authorized by the City.

1.28. *Public Communications Network (“PCN”) / Institutional Network*: The separate communications network provided by Comcast Inc. or its successor in interest, designed principally for the provision of non-entertainment, interactive services to schools, public agencies, or other non-profit agencies for use in connection with the ongoing operations of such institutions. Services provided may include video, audio, and data to PCN subscribers on an individual application, private channel basis. This may include, but is not limited to, two-way video, audio, or digital signals among institutions.

1.29. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City, to the full extent of the City’s right, title, interest, and/or authority to grant a franchise to occupy and use such streets and easements for Telecommunications Facilities and Cable Service. Public Rights-of-Way shall also include any

easement granted or owned by the City and acquired, established, dedicated or devoted for public utility purposes. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.30. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any Additional Service Areas.

1.31. *Service Date*: The date that Franchisee first provides Cable Service on a commercial basis directly to more than one Subscriber in the Franchise Area. Franchisee shall memorialize the Service Date by notifying the City in writing of the same, which notification shall become a part of this Franchise.

1.32. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.33. *Telecommunications Facilities*: Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.34. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), which currently states, "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

1.35. *Title II*: Title II of the Communications Act.

1.36. *Title VI*: Title VI of the Communications Act.

1.37. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), which currently states, "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement, the City hereby grants Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.1.1. This Agreement is intended to convey limited rights and interests only as to those streets and Public Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Public Right-of-Way, it does not provide the Franchisee any interest in any particular location within the Public Right-of-Way, and it does not confer rights other than as expressly provided in the grant hereof. Except as set forth in this Agreement, this Agreement does not deprive the City of any powers, rights, or privileges they now have or may acquire in the future under applicable law, to use, perform work on, or regulate the use and control of the City's streets covered by this Agreement,

including without limitation, the right to perform work on their roadways, Public Rights-of-Way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading or excavating thereof.

2.1.2. This Agreement authorizes Franchisee to engage in providing Cable Service. Nothing herein shall be interpreted to prevent the City or Franchisee from challenging the lawfulness or enforceability of any provisions of applicable law.

2.1.3. To the extent Franchisee uses other parties (whether or not affiliated) to fulfill its obligations hereunder, Franchisee will insure such parties comply with the terms and conditions of this Agreement.

2.2. *Regulatory Authority Over the FTTP Network:* The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. Jurisdiction over such Telecommunications Facilities is governed by federal and state law, and the City does not and will not assert jurisdiction over Franchisee's FTTP Network in contravention of those laws. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. § 541, the City's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained, or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services. Nothing in this Agreement shall affect the City's authority, if any, to adopt and enforce lawful regulations with respect to Franchisee's Telecommunications Facilities in the Public Rights-of-Way.

2.3. *Term:* The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through the fifteenth (15th) anniversary thereof, unless extended or terminated sooner as hereinafter provided.

2.4. *Grant Not Exclusive:* This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by the City to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of the City to use same for any purpose they deem fit, including the same or similar purposes allowed Franchisee hereunder. The City may, at any time, grant authorization to use the Public Rights-of-Way for any purpose not incompatible with Franchisee's authority under this Agreement, and for such additional franchises for cable systems as the City deems appropriate. Any such rights which are granted shall not adversely impact the authority as granted under this Agreement and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Effect of Acceptance:* By accepting the Agreement, the Franchisee: (1) acknowledges and accepts the City's legal right to issue the Agreement; (2) acknowledges and accepts the City's legal right to enforce the Agreement; (3) agrees that it will not oppose the City intervening or other participation in any proceeding affecting Cable Service over the Cable System in the Franchise Area; (4) accepts and agrees to comply with each and every provision of

this Agreement; and (5) 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.

2.6. *Franchise Subject to State and Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise and its exhibits are subject to and shall be governed by all applicable provisions of state and federal laws and regulations as they may be amended, including but not limited to the Communications Act.

2.7. *No Waiver:*

2.7.1. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.7.2. The failure of Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the City from performance, unless such right or performance has been specifically waived in writing.

2.8. *Construction of Agreement:*

2.8.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.8.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.9. *Police Powers:* In executing this Franchise Agreement, the Franchisee acknowledges that its rights hereunder are subject to the lawful police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and Franchisee agrees to comply with all lawful and applicable general laws and ordinances enacted by the City pursuant to such power. Nothing in this Agreement shall be construed to prohibit the reasonable, necessary, and lawful exercise of the City's police powers. However, if the reasonable, necessary and lawful exercise of the City's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the satisfaction of both parties to ameliorate the negative effects on Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to City or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.10. *Termination of Telecommunications Services:* Notwithstanding any other provision of this Agreement, if Franchisee ceases to provide Telecommunications Services over the FTTP Network at any time during the Term and is not otherwise authorized to occupy the

Public Rights-of-Way in the Franchise Area, the City may regulate the FTTP Network as a cable system to the extent permitted by Title VI.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. *Initial Service Area:* Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Initial Service Area within two (2) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the City; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirement set forth in Subsection 3.1.1.1.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than ten (10) occupied residential dwelling units per quarter mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should new construction in an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Franchisee shall provide Cable Service to such area within ninety (90) days of the date that the Franchisee's Franchise Service Manager is notified of a request from a potential Subscriber and verification that the density requirement is satisfied. Franchisee has an ongoing obligation to notify the City of any changes to the name and contact information for the Franchise Service Manager.

3.1.2. *Additional Service Areas:* Aside from the Initial Service Area, Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any renewals thereof. The parties agree that if any land is annexed by the City during the term of this Agreement, such annexed areas ("Additional Service Areas") shall become part of the Franchise Area. Franchisee shall be required to extend Cable Service to such annexed area within a reasonable time of notice of such annexation from the City to Franchisee (subject to the exceptions in Section 3.1.1 above,) provided that such annexed area: (a) is contiguous to the City, (b) is within Franchisee's Title II service territory, and (c) is served by Franchisee's video-enabled FTTP Network. If Franchisee desires to add Additional Service Areas within the Franchise Area, Franchisee shall notify the City in writing of such Additional Service Area at least thirty (30) days prior to providing Cable Services in such areas.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense (other than a standard installation charge) all residential dwelling units that are within one hundred twenty-five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty-five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Subject to 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each of the following three locations: Civic Building located at 22560 SW Pine Street, Public Works/Operations Facility located at 15527 SW Willamette Street, and Senior Center located at 22560 SW Pine Street; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred twenty-five (125) feet solely to provide service to any such public building, the City shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred twenty-five (125) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty-five (125) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged.

4. **SYSTEM OPERATION**

As provided in Section 2.2, the parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The City's jurisdiction over such Telecommunications Facilities is restricted by federal and state law, and the City does not and will not assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

5. **SYSTEM FACILITIES**

5.1. *System Characteristics:* The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time. Franchisee's Cable System shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry standards.

5.1.1. The System shall be designed with an initial analog and digital carrier passband of between 50 MHz and 860 MHz.

5.1.2. The System shall have a modern design, when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise Term.

5.1.3. The System shall have protection against outages due to power failures, so that back-up power is available at a minimum for at least twenty-four (24) hours at each headend, and conforming to industry standards, but in no event rated for less than four (4) hours, at each power supply site.

5.1.4. All work authorized and required hereunder shall be done in a safe, thorough and workman-like manner. The Franchisee 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 Franchisee must comply with the National Electrical Code, National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

5.2. *Inspection of Facilities:* The City may inspect upon request any of Franchisee's facilities and equipment to confirm performance under this Agreement upon at least twenty-four (24) hours notice. In all instances, a qualified representative of Franchisee must be available to accompany the tour to insure that no privacy requirements are violated.

5.3. *Emergency Alert System:*

5.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the State EAS Plan. The City shall permit only appropriately trained and authorized Persons to activate the EAS equipment through the EAS Local Primary Stations (LP1 or LP2) and remotely override the audio and video on all channels on the Cable System. The City shall take reasonable precautions to prevent any inappropriate use of the EAS or Cable System, or any loss or damage to the Cable System, and, except to the extent prohibited by law, shall hold harmless and defend Franchisee, its employees, officers and assigns from and against any claims arising out of use of the EAS, including but not limited to, reasonable attorneys' fees and costs. Subject to Section 2.9, Franchisee will comply with any EAS requirements in any local emergency management plan adopted by the City during the term of this Franchise that is consistent with federal and state law to the extent such compliance is reasonable, economically feasible, and technically compatible with the Cable System, all of which Franchisee shall determine in Franchisee's sole and absolute discretion.

6. **PEG SERVICES**

6.1. *PEG Access Channels:*

6.1.1. All PEG Access Channels provided for herein shall be administered by the City or its designee. The City or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. §531.

Franchisee shall cooperate with the City or its designee in the use of the Cable System for the provision of PEG Access Channels.

6.1.2. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide one (1) dedicated public, educational, or government Access Channel. Such Access Channel shall be provided by Franchisee within 180 days of the later of: (i) receipt of a suitable video signal from the City as set forth in Section 6.2.1; or (ii) the Service Date.

6.1.3. Franchisee will reserve one (1) additional Access Channel to be used for public, educational or government purposes and shall activate the reserved PEG Access Channel following a written request from the City when the following criteria have been met:

6.1.3.1. the City must provide Franchisee written documentation (e.g. programming schedules) of the nature of the programming to be carried on the additional Access Channel;

6.1.3.2. all Cable Operators within the Franchise Area similarly provide such additional PEG Access Channel; and

6.1.3.3. as long as the signal source location is an existing one in the Service Area, the additional PEG Access Channel shall be made available within one hundred eighty (180) days following the City's request (which shall constitute the City's authorization to transmit the PEG Access Channel within and outside the Franchise Area) and verification of compliance with each of the foregoing conditions. If the signal source location is not an existing one, the timing of the availability and other conditions will be by mutual agreement of the City and Franchisee. In no event shall the origination point be located outside the Franchise Area.

6.1.4. All PEG Access Channels will be on the Basic Service Tier and will be fully accessible to Subscribers, consistent with FCC regulations. Franchisee shall ensure that the signal quality for all PEG Access Channels is in compliance with all applicable FCC technical standards. Franchisee will use equipment and procedures that will minimize the degradation of signals that do not originate with the Franchisee. Franchisee shall provide regular and routine maintenance and repair/replacement of transmission equipment it supplies necessary to carry a quality signal on the PEG Access Channels.

6.1.5. Within ten (10) days after the Effective Date of this Agreement, the City shall inform Franchisee of the general nature of the programming to be carried on the initial PEG Access Channel set aside by Franchisee. The City authorizes Franchisee to transmit PEG programming within and outside the Franchise Area. Franchisee shall assign the PEG Access Channels on its channel line-up as set forth in the notice from the City to the extent such channel assignments do not interfere with Franchisee's existing or planned channel line-up. If the City later changes the programming carried on a PEG Access Channel(s), the City shall provide Franchisee with at least ninety (90) days notice of the change(s).

6.1.6. If a PEG Access Channel provided under this Article is not being utilized by the City, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the City elects to utilize the PEG Access Channel for its intended purpose.

6.1.7. The City shall require all local producers and users of any of the PEG facilities or Channels to agree to authorize Franchisee to transmit programming consistent with this agreement in writing and to defend and hold harmless Franchisee and the City from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or PEG Access Channel.

6.1.8. If all of Franchisee's video programming is delivered in a digital format, then Franchisee shall reserve two (2) additional PEG Access Channels, for a total of four (4) PEG Access Channels. Franchisee shall activate the additional reserved PEG Access Channels following a written request from the City when the following criteria have been met for each additional PEG Access Channel:

6.1.8.1. the City must have a documented need for additional programming capacity that cannot be fulfilled by existing PEG Access Channels;

6.1.8.2. the existing PEG Access Channels must be utilized for PEG programming within the Franchise Area as follows:

6.1.8.2.1. Public Access Channels: During any eight (8) consecutive weeks, the Public Access Channel is in use for Locally Produced, Locally Scheduled Original Programming 80% of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or

6.1.8.2.2. Educational Access Channels: During any eight (8) consecutive weeks, the Educational Access Channel is in use for Locally Scheduled, Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.; or

6.1.8.2.3. Government Access Channels: During any eight (8) consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.;

6.1.8.3. all Cable Operators within the Franchise Area similarly provide such additional PEG Access Channels; and

6.1.8.4. as long as the signal source location is an existing one in the Service Area, any additional PEG Access Channel shall be made available within one

hundred twenty (120) days following the City's written request (which shall constitute the City's authorization to transmit the PEG Access Channel within and outside the City) and verification of compliance with each of the foregoing conditions. If the signal source location is not an existing one in the Service Area, the timing of the availability and other conditions will be by mutual agreement of the parties. In no event shall the signal source location be located outside the Franchise Area.

6.1.9. For the purpose of Section 6.1.8:

6.1.9.1. "Locally Produced" means programming produced in Clackamas, Multnomah or Washington Counties, or the Vancouver/Clark County, Washington metropolitan area; and

6.1.9.2. "Original Programming" means programming in its initial cablecast on the Cable System or in its first or second repeat; and

6.1.9.3. "Locally Scheduled" means that the scheduling, selection or playback of Original Programming on a per program basis is determined in consultation with, or pursuant to the operating procedures of the City or its designee or, with respect to programming received from an Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any PEG Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as a part of its Basic or expanded Basic Cable Services shall not be considered "Locally Scheduled."

6.2. *PEG Connection:*

6.2.1. Grantor shall provide suitable video signals for the Access Channel(s) to Franchisee at one of the following locations: (a) the Civic Center located at 22560 SW Pine Street, Sherwood, Oregon 97140; (b) a pre-existing connection at which Franchisee is receiving PEG programming; or (c) a mutually agreed location. Upon receipt of a suitable video signal, Franchisee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to Subscribers. Franchisee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Grantor as is reasonably necessary for Franchisee to fulfill such obligations. In the event the City originates PEG programming from a second location, which second location shall be a public building or school within the Service Area, within one hundred eighty (180) days of receiving such request Franchisee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal from that location to Subscribers subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Grantor as is reasonably necessary for Franchisee to fulfill such obligations.

6.3. *PEG/PCN Grant:*

6.3.1. Franchisee shall provide an annual grant (the “PEG/PCN Grant”) to the City to be used in support of the production of local PEG programming and in support of the PCN. Such grant shall be used by the City for capital costs for public, educational, or governmental access facilities, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities, and for PCN capital support.

6.3.2. The PEG/PCN Grant provided by Franchisee hereunder shall be an amount specified by the City up to a maximum sum of \$1.00, per month, per Subscriber in the Service Area to Franchisee’s Basic Service Tier, and shall be the same amount required of other cable operators in the Franchise Area. Franchisee shall deliver the PEG/PCN Grant payment, along with a brief summary of the Subscriber information upon which it is based, to the City concurrent with the Franchise fee payment. Calculation of the PEG/PCN Grant will commence with the first calendar quarter during which Franchisee obtains its first Subscriber in the Service Area.

6.3.3. The City shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section.

6.3.4. In addition to the PEG/PCN Grant, in lieu of providing free Cable Service to public buildings served by other Cable Operators, Franchisee shall pay the City an In Lieu Grant of Five Thousand Four Hundred Dollars (\$5,400), also to be used for PEG capital support, payable within sixty (60) calendar days of the Service Date (the “In Lieu Grant”). As part of the In Lieu Grant, Franchisee will pay the City an additional Six Hundred Dollars (\$600) for each public building to which another cable operator provides a free activated service outlet during the Term of this Franchise, up to a total In Lieu Grant amount of Six Thousand Six Hundred Dollars (\$6,600). Such additional amounts of the In Lieu Grant shall be paid within sixty (60) days of written verification from the City that such free activated service outlets have been provided by another Cable Operator.

6.3.5. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the PEG/PCN Grant, the In Lieu Grant, any funds provided under Section 6.3.6, and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber’s bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through these costs to Subscribers.

6.3.6. If, during the term of the Franchise, another Cable Operator without reimbursement of costs from the City: (1) provides the City with an institutional network, as defined in Section 611 of the Communications Act (“INET”), (2) upgrades the existing PCN/INET within the Franchise Area, or (3) adds additional locations to the PCN/INET within the Franchise Area, adequate to meet community needs and as a condition of its franchise with the City, Franchisee agrees within sixty (60) days of being requested to do so, to enter into good faith negotiations with City concerning Franchisee’s provision of a pro rata, per Subscriber grant to City in relation to Franchisee’s proportional share (in relation to other Cable Operators)

of the incremental, verifiable cost to the Cable Operator of (1), (2), or (3) above; provided, however, that City agrees that it will require all Cable Operators within the Franchise Area to make equitable pro rata contributions for (1), (2) or (3) above.

7. **FRANCHISE FEES**

7.1. *Payment to the City:* Franchisee shall pay to the City a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of annual Gross Revenues required herein, Franchisee 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 Franchisee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

7.2. *Supporting Information:* Each Franchise fee payment shall be accompanied by a written report prepared by a representative of Franchisee showing the basis for the computation in the form attached hereto as Exhibit B. The City shall have the right to reasonably request further supporting documentation and information for each Franchise fee payment, subject to the confidentiality provisions in this Agreement; provided that Franchisee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have not been defined specifically within this Agreement.

7.3. *Acceptance of Payments:* Subject to Section 7.4 below, no acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Franchisee.

7.4. *Audit of Franchise Fee Payments:*

7.4.1. The City, or its designee, may conduct an audit or other inquiry in relation to payments made by Franchisee no more than once every two (2) years during the Term. As a part of the audit process, the City or the City's designee may inspect Franchisee's books of accounts relative to the City any time during regular business hours and after thirty (30) calendar days prior written notice.

7.4.2. All records deemed by the City or the City's designee to be reasonably necessary for such audit, which shall include, but not be limited to, all records subject to inspection by the City pursuant to Section 9.2 herein, shall be made available by Franchisee in a mutually agreeable format and location. Franchisee agrees to give its full cooperation in any audit

and shall provide responses to inquiries within thirty (30) calendar days of a written request. Franchisee may provide such responses within a reasonable time after the expiration of the response period above so long as Franchisee makes a good faith effort to procure any such tardy response.

7.4.2.1. If the results of any audit indicate that Franchisee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by three percent (3%) or less, then the City shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the Franchise fee by more than three percent (3%) during the audit period, then Franchisee shall pay the reasonable, documented, third-party costs of the audit up to Five Thousand Hundred Dollars (\$5,000) per audit.

7.4.2.2. The City agrees that any audit shall be performed in good faith. If any audit discloses an underpayment of the Franchise fee of any amount, Franchisee shall pay the City the amount of the underpayment, together with interest as provided in Section 7.7 below. Any auditor employed by the City shall not be compensated on a success based formula, e.g., payment based on a percentage on underpayment, if any.

7.5. *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.

7.6. *Bundled Services:* In the case of a Cable Service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of Franchisee's revenue attributable to such other services, capabilities, or applications shall be included in Gross Revenue unless Franchisee's books and records that are kept in the regular course of business identify the revenue as being attributable to the other services, capabilities or applications.

7.7. *Annual Franchise Fee Report:* Franchisee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to the City an annual summary of Franchise fee calculations, substantially in the form attached hereto as Exhibit B but showing annual rather than quarterly amounts.

7.8. *Interest on Late Payments:* In the event that a Franchise fee payment or other sum is not received by the City on or before the due date, or is underpaid, Franchisee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the statutory interest rate on judgments in the State of Oregon.

7.9. *Payment on Termination:* If this Agreement terminates for any reason, Franchisee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement showing the Gross Revenues received by the Franchisee since the end of the previous calendar quarter for which Franchise fees were paid. If, within sixty (60) days of providing such financial statement, Franchisee has not satisfied all remaining financial obligations to the City, the City reserves the right to satisfy any remaining financial obligations

of the Franchisee to the City by utilizing the funds available in the Letter of Credit provided by the Franchisee under Section 13.6 of this Agreement.

7.10. *Costs of Publication:* Franchisee 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 the City under applicable law.

8. **CUSTOMER SERVICE**

8.1. Customer Service Requirements are set forth in Exhibit C, which shall be binding unless amended by written consent of the parties.

8.2. If, at any time during the term of this Franchise, “Effective Competition,” as defined by the Communications Act, as the term may be reasonably applied to Franchisee, ceases to exist in the Service Area, the City and Franchisee agree to enter into good faith negotiations to determine if there is a need for additional customer service requirements. The City and Franchisee shall enter into such negotiations within forty-five (45) days following a request for negotiations by Franchisee after the cessation of “Effective Competition” as described above.

9. **REPORTS AND RECORDS**

9.1. *Open Books and Records:* Upon reasonable written notice to Franchisee and with no less than thirty (30) days written notice to Franchisee, the City shall have the right to inspect Franchisee’s books and records pertaining to Franchisee’s provision of Cable Service in the Franchise Area at any time during weekday business hours and on a nondisruptive basis at a mutually agreed location within Franchisee’s Title II service territory in Oregon and Washington, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. If any books, records, maps, plans or other requested documents are too voluminous, not available locally in the Franchisee’s Title II service territory in Oregon and Washington, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at a location mutually agreed to by the City and the Franchisee, provided that the Franchisee must pay all travel expenses incurred by the City in inspecting those documents or having the documents inspected by its designee, above those that would have been incurred had the documents been produced in Franchisee’s Title II service territory in the Portland metropolitan area.

9.2. *Proprietary Books and Records:* If the Franchisee believes that the requested information is confidential and proprietary, the Franchisee must provide the following documentation to the City: (i) specific identification of the information; and (ii) statement attesting to the reason(s) Franchisee believes the information is confidential. The City shall take

reasonable steps to protect the proprietary and confidential nature of any books, records, Service Area maps, plans, or other documents requested by the City that are provided pursuant to this Agreement to the extent they are designated as such by the Franchisee, consistent with the Oregon Public Records Law. Should the City be required under state law to disclose information derived from Franchisee's books and records, the City agrees that it shall provide Franchisee with reasonable notice and an opportunity to seek appropriate protective orders prior to disclosing such information. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area, or any confidential information relating to such Cable Service where the City cannot lawfully protect the confidentiality of the information.

9.3. *Records Required:* Franchisee shall maintain:

9.3.1. Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.3.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.3.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.3.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.3.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

9.4. *Additional Requests:* The City shall have the right to request in writing such information as is appropriate and reasonable to determine whether Franchisee is in compliance with applicable Customer Service Standards, as referenced in Exhibit C. Franchisee shall provide the City with such information in such format as Franchisee customarily prepares reports. Franchisee shall fully cooperate with the City and shall provide such information and documents as necessary and reasonable for the City to evaluate compliance, subject to Section 9.6.

9.5. *Copies of Federal and State Documents:* Franchisee shall submit to the City a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Franchisee 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 Franchisee's Cable System within the Franchise Area. Franchisee shall submit such list or documents to the City no later than thirty (30) days after filing, mailing or publication thereof. Franchisee 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 or a request for confidential treatment is pending. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the City and its duly authorized agents and shall not be made available for public inspection.

9.6. *Report Expense:* All reports and records required under this or any other Section shall be furnished, without cost, to the City. Franchisee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have been defined specifically within this Section 9 in order to meet the requirements of this Section 9.

10. **INSURANCE AND INDEMNIFICATION**

10.1. *Insurance:*

10.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of Three Million Dollars (\$3,000,000) combined single limit for property damage and bodily injury; one million dollar (\$1,000,000) limit for broadcaster's liability. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the Franchise Area.

10.1.1.2. Automobile Liability Insurance in the amount of Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$2,000,000 policy limit.

10.1.2. The City shall be designated as additional insureds under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Oregon, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

10.1.5. Upon written request, Franchisee shall deliver to the City Certificates of Insurance showing evidence of the required coverage.

10.2. *Indemnification:*

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend the City, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that the City shall give Franchisee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access Channels, use of the PCN, or EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the City by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the City, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the City from cooperating with Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the City, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement does not include the release of the City and the City does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the City shall in no event exceed the amount of such settlement.

10.2.3. The City shall hold Franchisee harmless and shall be responsible for damages, liability or claims resulting from willful misconduct or negligence of the City.

10.2.4. The City shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the City for which the City is legally responsible, subject to any and all defenses and limitations of liability provided by law. Franchisee shall not be required to indemnify the City for acts of the City which constitute willful misconduct or negligence, on the part of the City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

11. TRANSFER OF FRANCHISE

11.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no “Transfer of the Franchise” shall occur without the prior consent of the City, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under this Article 11.

11.2. A “Transfer of the Franchise” shall mean any transaction in which:

11.2.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

11.2.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

However, notwithstanding Subsections 11.2.1 and 11.2.2, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of Franchisee; or any action which is the result of a merger of another Affiliate of Franchisee. The parent of Franchisee is shown in Exhibit D.

11.3. Franchisee shall make a written request (“Request”) to the City for approval of any Transfer of the Franchise and furnish all information required by law and/or reasonably requested by the City in respect to its consideration of a proposed Transfer of the Franchise. The City 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 City fails to render a written decision on the Request within one hundred twenty (120) days, the Request shall be deemed granted unless Franchisee and the City agree to an extension of time.

11.4. In reviewing a Request related to a Transfer of the Franchise, the City may inquire into the legal, technical and financial qualifications of the prospective transferee, and Franchisee shall assist the City in so inquiring. The City may condition said Transfer of the Franchise upon such terms and conditions as they deem reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective or transferee and to the resolution of outstanding and unresolved issues of Franchisee’s noncompliance with the terms and conditions of this Agreement.

11.5. The consent or approval of the City to any Request by the Franchisee shall not constitute a waiver or release of any rights of the City, and any transferee shall be expressly subordinate to the terms and conditions of this Agreement.

11.6. Notwithstanding the foregoing, the parties agree that the City's consent and/or approval to any transfer or assignment of any rights, title, or interest of Franchisee to any Person shall not be required where Verizon Northwest Inc. or its lawful successor which is not a third party transferee remains the Franchisee following any such transfer or assignment.

12. **RENEWAL OF FRANCHISE**

12.1. The parties agree that any proceedings undertaken by the City that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, the City agrees to notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. The City further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of the Franchise prior to expiration of its term.

13. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1. *Notice of Violation:* In the event the City believes that Franchisee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, the City shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, the City shall notify Franchisee in writing, stating with reasonable specificity the nature of the alleged violation.

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to the City, contesting (in whole or in part) the City's assertion that a violation has occurred, and requesting a hearing in accordance with subsection 13.3 below; (ii) cure the violation; or (iii) notify the City that Franchisee cannot cure the violation within the thirty (30) days, and notify the City in writing of what steps Franchisee shall take to cure the violation including Franchisee's projected completion date for such cure. The procedures provided in Section 13.4 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Franchisee receives notice of the violation provided, however, that if the City has actual knowledge of the violation and fails to give the Franchisee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the City gives Franchisee the notice of the violation.

13.2.1. In the event that the Franchisee notifies the City that it cannot cure the violation within the thirty (30) day cure period, The City shall, within thirty (30) days of the City's receipt of such notice, set a hearing.

13.2.2. In the event that the Franchisee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the City pursuant to subsection 13.2(iii), the City shall set a hearing to determine what fines, if any, shall be applied.

13.2.3. In the event that the Franchisee contests the City's assertion that a violation has occurred, and requests a hearing in accordance with subsection 13.2(i) above, the City shall set a hearing within sixty (60) days of the City's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.

13.3. *Public Hearing:* In the case of any hearing pursuant to section 13.2 above, the City shall provide reasonable notice to Franchisee of the hearing in writing. At the hearing Franchisee shall be provided an opportunity to be heard, to examine the City's witnesses, and to present evidence in its defense. The City may also hear any other person interested in the subject, and may provide additional hearing procedures as the City deems appropriate.

13.3.1. If, after the hearing, the City determines that a violation exists, the City may use one of the following remedies:

13.3.1.1. Order Franchisee to correct or remedy the violation within a reasonable time frame as the City shall determine;

13.3.1.2. Establish the amount of fine set forth in Section 13.5, taking into consideration the criteria provided for in subsection 13.4 of this Agreement as appropriate in the City's discretion; or

13.3.1.3. Pursue any other legal or equitable remedy available under this Agreement or any applicable law; or

13.3.1.4. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.7.

13.4. *Reduction of Fines:* The fines set forth in Section 13.5 of this Agreement may be reduced at the discretion of the City, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

13.4.1. Whether the violation was unintentional;

13.4.2. The nature of the harm which resulted;

13.4.3. Whether there is a history of prior violations of the same or other requirements;

13.4.4. Whether there is a history of overall compliance, and/or;

13.4.5. Whether the violation was voluntarily disclosed, admitted or cured.

13.5. *Fine Schedule:*

13.5.1. If all other Cable Operators in the Franchise Area are subject to similar fines, fines for violating telephone answering standards set forth in Exhibit C, Section

2.D for a quarterly measurement period, unless the violation has been cured, shall be as set forth below. A cure is defined as meeting the telephone answering standards for two consecutive quarterly measurement periods. For any other violation of the Customer Service Standards, the fine shall be \$100 per day if all other Cable Operators in the Franchise Area are subject to similar fines.

| <u>Quarterly Telephone Answer Time Fines</u> | | | |
|--|---------------------------|---------------------------|---------------------------|
| | 1 st Violation | 2 nd Violation | 3 rd Violation |
| Quarterly Fine | \$500* | \$750* | \$1,000* |
| * If after thirty-six (36) months there have been no violations of the telephone answering standards, fines shall be reduced by fifty percent (50%). | | | |

13.5.2. For all violations of this Agreement other than violations of the Customer Service Standards, the fine shall be \$100 per day.

13.5.3. Total fines shall not exceed Two Thousand Five Hundred Dollars (\$2,500) in any twelve-month period.

13.5.4. If the City elects to assess a fine pursuant to this Section, such election shall constitute the City's exclusive remedy for the violation for which the fine was assessed for a period of sixty (60) days. Thereafter, 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 City at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed.

13.5.5. If, at any time during the term of this Franchise, "Effective Competition," as defined in the Communications Act, and as that term may reasonably be applied to Franchisee, no longer exists in the Franchise Area, Franchisee agrees to enter into good faith negotiations with the City as to appropriate fines for violations of the Customer Service Standards.

13.6. *Letter of Credit:* Franchisee shall provide a letter of credit in the amount of Five Thousand Dollars (\$5,000) as security for the faithful performance by Franchisee of all material provisions of this Agreement.

13.7. *Revocation:* Should the City seek to revoke the Franchise after following the procedures set forth in Sections 13.1 through 13.5 above, the City shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. Franchisee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon Franchisee, at least thirty (30) days prior to such public hearing, a

written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.7.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

13.7.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the City shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Franchisee. The City shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If the City determines that the Franchise shall be revoked, the City shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the City to an appropriate court, which shall have the power to review the decision of the City *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the City.

13.7.3. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

13.8. *Limitation on Liability:* The parties agree that the limitation of City liability set forth in 47 U.S.C. §555a is applicable to this Agreement.

13.9. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of four (4) years from the Service Date of this Franchise, if at the end of such four (4) year period, Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System after a good faith effort to do so. Franchisee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.9 shall be given to the City in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then-current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

14. **MISCELLANEOUS PROVISIONS**

14.1. *Actions of Parties:* In any action by the City or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the

terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

14.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

14.4. *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

14.4.1. Furthermore, the parties hereby agree that it is not the City's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the City and/or Subscribers.

14.5. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.5.1. Notices to Franchisee shall be mailed to:

Verizon Northwest Inc.
Attn: Tim McCallion, President
112 Lakeview Canyon Road, CA501GA
Thousand Oaks, CA 91362

with a copy to:

Mr. Jack H. White
Senior Vice President & General Counsel – Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

14.5.2. Notices to the City shall be mailed to:

City of Sherwood
Attn: City Manager
22560 SW Pine Street
Sherwood, OR 97140

14.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the City, and it supersedes all prior or contemporaneous agreements, representations or understanding of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

14.7. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.8. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.9. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof 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, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.10. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

14.12. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the cable system and any capacity used for cable service or otherwise, to the City or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.13. *Independent Legal Advice:* The City and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s)

shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.14. *Franchisee Authority*: Franchisee represents and warrants that it is authorized to enter into this Agreement and that the party signing below is authorized to execute this Agreement.

AGREED TO THIS ____ DAY OF _____, 2007.

CITY OF SHERWOOD

By: _____
[Title]

VERIZON NORTHWEST INC.

By: _____
Tim McCallion, President

EXHIBITS

Exhibit A: Initial Service Area/Franchise Area

Exhibit B: Quarterly Franchise Fee Remittance Form

Exhibit C: Customer Service Standards

Exhibit D: Franchise Parent Structure as of January 24, 2007

EXHIBIT B

QUARTERLY FRANCHISE FEE REMITTANCE FORM

FRANCHISE FEE SCHEDULE/REPORT

For the Quarter Ending _____

| | Month 1 | Month 2 | Month 3 |
|--|----------|----------|----------|
| 1 Monthly Recurring Cable Service Charges (e.g., Basic, Enhanced Basic, Premium and Equipment Rental) | _____ | _____ | _____ |
| 2 Usage Based Charges (e.g., Pay Per View, Installation) | _____ | _____ | _____ |
| 3 Other Misc. (e.g., Late Charges, Advertising, Leased Access) | _____ | _____ | _____ |
| 4 Franchise Fees Collected | _____ | _____ | _____ |
| Less: | | | |
| 1 Sales Tax Collected | \$ _____ | \$ _____ | \$ _____ |
| 2 Uncollectibles | _____ | _____ | _____ |
| Total Receipts Subject to Franchise Fee Calculation | _____ | _____ | _____ |
| Franchise Fee Rate 5% | | | |
| Franchise Fee Due | _____ | _____ | _____ |
| Quarter Franchise Fee _____ | | | |

Monthly PEG Grant Collection

Quarterly PEG Grant Remission

\$ _____

EXHIBIT C

CUSTOMER SERVICE STANDARDS

These standards shall apply to Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area. However, for the first three (3) months after the Service Date, Franchisee shall not be required to provide reports under this Agreement. This Section sets forth the minimum customer service standards that the Franchisee must satisfy.

SECTION 1: DEFINITIONS

A. Normal Operating Conditions: Those service conditions which are within the control of Franchisee, as defined under 47 C.F.R. § 76.309(c)(4)(ii). Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

B. Respond: The start of Franchisee's investigation of a Service Interruption by receiving a Subscriber call, and opening a trouble ticket, and begin working, if required.

C. Service Call: The action taken by Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Service Interruption: The loss of picture or sound on one or more cable channels.

E. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

F. Standard Installation: Installations where the Subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.

SECTION 2: TELEPHONE AVAILABILITY

A. Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and such representatives shall be available to receive all other inquiries at least forty-five (45) hours per week including at least one night per week and/or some weekend hours. Franchisee representatives shall identify themselves by name when answering this number.

B. Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local

telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by Franchisee.

C. Franchisee may use an Automated Response Unit (“ARU”) or a Voice Response Unit (“VRU”) to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.

E. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Within a reasonable time after receipt of a request from the City, Franchisee shall report to the City, the most recent quarterly measurement of the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D; and

(2) Percentage of time customers received a busy signal when calling the Franchisee’s service center as set forth in Subsection 2.E.

G. At the Franchisee’s option, the measurements above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify the City of such a change not less than thirty (30) days in advance.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after the placement of the Optical Network Terminal (“ONT”) on the customer’s premises or within seven (7) business days after an order is placed if the ONT is already installed on the customer’s premises. Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding those requested by the customer outside of the seven (7) day period.

C. Within a reasonable time after receipt of a request from the City, Franchisee shall provide the City with a report for the most recent quarter for which data is available, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request.

D. At Franchisee’s option, the measurements above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify the City of such a change not less than thirty (30) days in advance.

E. Franchisee will offer Subscribers “appointment window” alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Franchisee’s discretion, Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.

(1) Franchisee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.

(2) If Franchisee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

F. Franchisee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Franchisee representative going to the Subscriber’s residence, (ii) by using a mailer, or (iii) by establishing a local business office within the Franchise Area. If requested by a mobility-limited customer, the Franchisee shall arrange for pickup and/or replacement of converters or other Franchisee equipment at Subscriber’s address or by a satisfactory equivalent.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. Franchisee shall promptly notify the City of any Significant Outage of the Cable Service.

B. Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an

emergency or other situation necessitating a more expedited or alternative notification procedure, Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the City and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Franchisee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.

(2) Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the City of a Cable Service problem.

E. Under Normal Operating Conditions, Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. Within a reasonable time after receipt of a request from the City, Franchisee shall provide the City with a report for the most recent quarter for which data is available, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request. At the Franchisee's option, the above measurements may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. The Franchisee shall notify the City of such a change at least thirty (30) days in advance.

H. At Franchisee's option, the above measurements may be changed for calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify the City of such a change at least thirty (30) day in advance.

I. Under Normal Operating Conditions, Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber experience the loss of picture or sound for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Franchisee to verify the problem if requested by Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

J. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5: CUSTOMER COMPLAINTS REFERRED BY THE CITY

Under Normal Operating Conditions, Franchisee shall begin investigating Subscriber complaints referred by the City within twenty-four (24) hours. Franchisee shall notify the City of those matters that require more than seventy-two (72) hours to resolve, but Franchisee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. The City may require Franchisee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Franchisee shall inform the City in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section, “resolve” means that Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer’s complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmental-imposed fees. Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved, provided that:

(1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. Franchisee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Franchisee.

G. Franchisee shall forward a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to the City.

H. Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Franchisee, the payment alternative may be limited.

I. Upon request from the City, Franchisee shall provide Grantor with a sample Cable Services bill.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to Franchisee, or 3) who rent Subscriber equipment from Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit Franchisee may charge Subscribers with poor credit or poor

payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Franchisee may charge for Subscriber equipment is the cost of the equipment which Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by Franchisee or its authorized agent. Appropriate time considerations shall be included in Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. Franchisee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Franchisee's equipment (for example, a dog chew).

B. Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice. Such late fees are subject to ORS 646.649.

C. All of Franchisee's rates and charges shall comply with applicable law. Franchisee shall maintain a complete current schedule of rates and charges for Cable Services on file with the City throughout the term of this Franchise.

SECTION 9: DISCONNECTION/DENIAL OF SERVICE

A. Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable

Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Franchisee's equipment, abusive and/or threatening behavior toward Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

D. Charges for cable service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Franchisee and to receive Cable Service or other multi-channel video service from another Person or entity.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Franchisee shall wear a clearly visible identification card bearing their name and photograph. Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing Franchisee shall be conducted in a courteous manner.

C. Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Franchisee may be referred to the City. A

copy of the annual notice required under this Subsection 10.C will be given to the City at least fifteen (15) days prior to distribution to Subscribers.

D. Franchisee shall provide the name, mailing address, and phone number of the City on all Cable Service bills in accordance with 47 C.F.R. §76.952(a).

E. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

F. Franchisee shall provide reasonable notice to Subscribers and the City of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Franchisee. If the change is not within Franchisee's control, Franchisee shall provide an explanation to the City of the reason and expected length of delay. Franchisee shall provide a copy of the notice to the City including how and where the notice was given to Subscribers.

G. Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Franchisee:

(1) Products and Cable Service offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Franchisee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address, and telephone number of the City, but with a notice advising the Subscriber to initially contact Franchisee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.F. will be given to the City at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not with the control of Franchisee.

H. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

I. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

J. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and
- (4) The telephone number for Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

K. Franchisee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C. §551.

EXHIBIT D
FRANCHISEE PARENT STRUCTURE AS OF JANUARY 24, 2007

Verizon Northwest parent: GTE Corporation 100%

GTE Corporation Parents:

Verizon Communications Inc. 92.88%

NYNEX Corporation 5.93% (which is 100% owned by Verizon Communications Inc.)

Bell Atlantic Global Wireless, Inc. 1.19% (which is 100% owned by Verizon Investments Inc., which is 100% owned by Verizon Communications Inc.)