

MODEL



Model Cable Television Franchise Agreement

JULY 2022

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Foreword

Background

On August 2, 2019, the Federal Communications Commission (“FCC”) released its Third Report and Order¹ in its 2005 docket interpreting provisions of the Federal Cable Act. The 621 Cable Franchising Order (“the Order”):

- Allows cable operators with a franchise or other valid agreement to deduct the “fair market value” of any in-kind franchise obligations from their cash franchise payments when the 5% cap is reached. This includes any obligation other than build-out requirements, customer service requirements, public, educational, and governmental (“PEG”) capital costs or channel placement value. This also includes the value of service or infrastructure to government buildings or schools, discounted or gratis service for seniors or low-income households or institutional networks (“I-Nets”).
- Contains “mixed-use” provisions when both cable and non-cable services are provided. Preempts state and local authority to regulate non-cable services and infrastructure of franchised cable operators, including the provision of Internet, Wi-Fi and voice and small cell infrastructure. An increasing number of residents get broadband service from their community’s cable operator.
- Limits state and local governments’ ability to regulate non-cable services of cable operators.

In fall 2019, many local governments across the United States, including the cities of Portland and Eugene, filed suit against the FCC on this matter. Cities argued the Order would likely reduce franchise revenues at the local level and wholly preempt state and local authority over the growing non-cable services (broadband and wireless services) being provided by cable operators. While the case originated in the Ninth Circuit Court of Appeals, the case *City of Eugene v. FCC* was consolidated with similar cases and transferred to the Sixth Circuit Court of Appeals. On April 15, oral arguments were heard before the Sixth Circuit Court of Appeals.

On May 26, 2021, the Sixth Circuit Court of Appeals released their decision on the Order. Cities received a mixed bag of results from the court.² The court upheld the FCC’s decision to redefine in-kind obligations as franchise fees, which count towards the 5% cap. Fortunately, the court determined cable operators were not to value in-kind contributions using “fair market value” of those obligations, but instead use the value based on the cost to operators to provide them, which should be marginal. The shift from fair market value valuation to marginal costs is a win for cities.

The mixed-use portion of the decision is less clear. While the court critiqued the FCC's interpretation of the statute to reach its justification in the mixed-use portion of the Order, it simultaneously seemed to

¹ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 9088 (September 26, 2018).

² *City of Eugene, et al. v. Federal Communications Commission*, 998 F.3d 701 (6th Cir. 2021).

uphold the FCC’s preemption that state and local governments, as franchising authorities, cannot regulate some non-cable services provided by cable operators. However, the Court, stated that “[w]e do not address, however, the question whether a state or local government (as opposed to a franchising authority) may impose a fee on *telecommunications* services provided by cable operators. The question where a fee of that sort would circumvent Title VI’s limits on franchisor regulation of a cable operator’s telecommunications services is neither fully briefed nor clearly presented on the facts here.”³

Since the court decision, some local government entities petitioned for a rehearing by a panel or an *en banc*. The United States Supreme Court denied the petition for a rehearing.⁴

Cities should work with their legal counsel and/or right-of-way experts to assess how the decision in this case affects current cable franchise negotiations.

LOC Model Cable Franchise

The LOC met with right-of-way professionals, who advocate on behalf of jurisdictions, from April 2021 to July 2021 to discuss and craft a model cable franchise while there was litigation and a decision on the Order.

There is no model that will work for every jurisdiction. As such, the LOC Model Cable Franchise (“the Model”) is intended as a roadmap to assist local governments in negotiating with a cable operator for a franchise. The Model provides typical franchise language — the LOC does not intend to suggest the typical language would work for every jurisdiction.

The LOC also recognizes there are many ways to structure a cable franchise. The appropriate structure will vary by jurisdiction. The intent is to allow each jurisdiction to draft the substantive provisions that best reflect local needs and interests. The circumstances of each municipality may, and likely will, require modifications to the framework and/or example language of this model.

Additional Considerations

The Model primarily focuses on new entrant cable operators. Municipalities should review any existing cable agreements and/or franchises (specifically the material provisions), ordinances, standards and policies to determine if this framework is appropriate. For reference, material provisions, sometimes referred to as “competitive equity” by cable operators, are meant to ensure nondiscrimination across similarly situated providers or similar service. This Model is intended for wireline cable service operators who are providing wireline cable services over a cable system. Some cable operators may provide other services, so it is important to be very specific on what the franchise does and does not cover. Cities should cross check material provisions that are spelled out in other wireline cable franchises. It is recommended that cities consult their attorney and right-of-way specialists with expertise in cable regulation before finalizing franchise language.

³ *City of Eugene, et al. v. FCC*, 998 F.3d 701, 712, n 2 (6th Cir. 2021).

⁴ 142 S.Ct. 1109 (2022).

Understanding the Organization of the Model

As stated above, the Model is best described as an outline or roadmap to assist municipalities in drafting the appropriate franchise for their community. The Model includes example language to illustrate the intent of the section. The example language, or a variation thereof, may be appropriate for final adoption in some jurisdictions.

Finally, there may be additional notes or issues for consideration within the subsections of the model, which are **[BRACKETED]**, **bolded**, *italicized* and in ALL CAPS. These notes are intended as guidance for municipal drafters, not for adoption in a final ordinance, and therefore should be deleted before releasing the document for public view.

CABLE TELEVISION FRANCHISE AGREEMENT

Between

THE CITY OF _____

And

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The City of _____, (hereafter “City” or “Grantor” depending on the context) and _____ (hereafter “Grantee”) enter into a Franchise Agreement. The term of this Franchise is _____ years (Term) from the Effective Date, which shall be _____.

1. PURPOSE AND INTENT

- A. Grantor is authorized to and by this Franchise, does grant to Grantee a non-exclusive franchise, revocable as provided herein, to construct, operate and maintain a Cable System in the City for the purpose of providing Wireline Cable Services within the City.
- B. The purpose of this Franchise is to create a binding, enforceable contract between Grantor and Grantee.
- C. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of one or both parties, then the parties will modify this Franchise to ensure that the Franchise remains consistent with Applicable Law. **[THE 621 ORDER WAS MOSTLY UPHELD BY THE SIXTH CIRCUIT COURT OF APPEALS. THE COURT UPHELD THE FCC’S NEW DEFINITION OF FRANCHISE FEES BUT FINDING THAT NON-MONETARY, CABLE-RELATED FRANCHISE PROVISIONS SHOULD BE VALUED AT “MARGINAL COST,” NOT FAIR MARKET VALUE. THOUGH THE SIXTH CIRCUIT’S DECISION AND THE FCC ORDER ARE CURRENTLY THE LAW OF THE LAND, THEY MAY BE CHANGED VIA SUBSEQUENT LEGISLATION OR RULEMAKING, IN WHICH EVENT YOUR CITY WILL WANT TO RESERVE THE RIGHTS THAT MAY BE RESTORED.]**

2. DEFINITIONS

For the purposes of this Franchise and all attachments and amendments included hereto, the following words, terms, phrases, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. Capitalized words used in this Franchise which are not defined hereunder but defined in the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (“Cable Act”) will have the meaning specified in the Cable Act definition.

- A. “Access” or “Community Access” or “Public, Educational and Government (PEG) Access” means the availability for use of the Cable System by various agencies, institutions, organizations, groups and individuals in the community, including the Grantor and its designees, of designated Channels on the Cable System to acquire, create, and distribute non-commercial programming.
- B. “Access Center” means a facility or facilities where PEG use Signals are managed and delivered Upstream to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- C. “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or service.

- D. “Affiliate” when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with such person.
- E. “Basic Cable Service” means any service tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise and is made available to all Cable Services Subscribers.
- F. “Broadcast Signal” means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system off-the-air, whether by microwave link, by satellite receiver, or by other means.
- G. “Cable Act” will have the meaning provided under Federal law and regulations.
- H. “Cable Operator,” or “Wireline Cable Service Provider” means any person or group of persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operations of such a Cable System.
- I. “Cable Service” or “Wireline Cable Service” will have the meaning provided under Federal law and regulations. **[NOTE: WHEN CHOOSING A DEFINITION FOR “CABLE SERVICE” USING THE FEDERAL DEFINITION WILL ALLOW CITIES WITH MORE FLEXIBILITY AS THE FEDERAL LAWS CHANGE. IT IS RECOMMENDED THAT IF CITIES USE THE FEDERAL DEFINITION THAT THEY ALSO DEFINE “NONCABLE SERVICES” TOO. HOWEVER, SOME CITIES MAY CHOOSE TO USE A MORE SPECIFIC DEFINITION FOR “CABLE SERVICE” OR “WIRELINE CABLE SERVICES.”]**
- J. “Cable System” or “Cable Communications System” or “System” will have the meaning specified in the definition of “Cable System” in the Cable Act. In every case of its use in this Franchise, unless otherwise specified the term will refer to the cable system constructed and/or operated by the Grantee in the City under this Franchise.
- K. “Calendar Year” means the period of time from January 1 to December 31.
- L. “Capacity” means the maximum ability to carry Signals or other information within the specified format.
- M. “Capital Cost” means the expenditure of funds for PEG capital resources whose useful life can be expected to exceed a period of one (1) year or longer.
- N. “Channel” will have the meaning specified in the definition of “Channel” in Section 602 of the Cable Act (47 U.S.C. 522 (4)).
- O. “City” means the City of _____, a municipal corporation, or its duly appointed and/or authorized representative, and all the territory within its boundaries, as such may change from time to time.
- P. “Demarcation” means up to and including the device where the Designated Access Provider (“DAP”) Signal is converted into a format to be transmitted over a connection to the Grantee.

- Q. “Designated Access Provider (“DAP”) means the entity or entities designated by the Grantor to manage or co-manage PEG Access Channels and Access Centers. The Grantor may be a DAP.
- R. “Downstream” means the transport of Signals from the Headend to Subscribers or to Interconnection points service by the Cable System.
- S. “Educational Access Channel” means any Access channel or portion of an Access channel available for educational programming by individuals or institutions, where educational institutions are the primary or designated Programmers or user having editorial control over their Programming.
- T. “Emergency” means a circumstance in which immediate work to repair damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- U. “FCC” means the Federal Communications Commission.
- V. “Fiscal Year” means the period from July 1 to June 30.
- W. “Franchise” or “Agreement” means the authorization granted by this document for the construction or operation of a cable system for the sole purpose of delivering cable services.
- X. “Franchise Area” means the present legal boundaries of the City as of the Effective Date, and will also include any additions or deletions thereto, by annexation or other legal means.
- Y. “Government Access Channel” means any Access channel or portion of an Access channel available for programming by government agencies, where governmental institutions are the primary or designated Programmers or users having editorial control over their Programming.
- Z. “Grantee” means **[INSERT CABLE OPERATOR'S LEGAL NAME]**, and its lawful successors, transferees, or assignees thereof.
- AA. “Grantor” means the City, a municipal corporation in the State of Oregon and/or its authorized representative or agents.
- BB. “Gross Revenues” means, and will be construed broadly to include all amounts, in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee’s Cable System to provide Cable Service within the Franchise Area. Gross revenues include, by way of illustration and not limitation:
- I. Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
 - II. Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service within the Franchise Area;
 - III. Fees paid to Grantee for channels designated for commercial/leased access use, which will be allocated on a pro rata basis using total Cable Service Subscribers;
 - IV. Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
 - V. Payments for pre-paid Cable Services and/or equipment;

- VI. Advertising Revenues as defined herein;
- VII. Fees including, but not limited to:
 - a. Late fees, convenience fees, administrative fees and similar multiservice fees, which will be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
 - b. Franchise fees;
 - c. The FCC User Fee;
 - d. PEG fees, if included on Subscriber billing statements;
- VIII. Revenue from programing guides; and
- IX. Commissions from home shopping channels and other Cable Service revenue sharing arrangements which will be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise area.

“Gross Revenues” will not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, will not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, will be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, will not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" will include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. "Gross Revenues" will not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" will not include bad debt.

“Advertising Revenues” will mean amounts derived from sales of advertising that are made available to Grantee’s Cable System Subscribers and will be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees will include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., “revenue offsets” and “contra expenses” and “administrative expenses” or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Effectv or similarly affiliated advertising representations firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

“Gross Revenues” will **not** include:

- I. Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which will be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
- II. Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise Fee, the FCC User Fee will not be regarded as such a tax or fee;
- III. Launch fees and marketing co-op fees;

- IV. Unaffiliated third-party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above;
- V. Refunds, rebates or discounts made to Subscribers; and,
- VI. Sales of capital assets or sales of surplus equipment.

To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee will calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation will be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

Example: Cable Service represents 50% of the total rate card for services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than 50% of the price of the bundled service total.

The parties acknowledge that Grantee maintains its books and records in accordance with Generally Accepted Accounting Principles ("GAAP"). Grantee further agrees that it will not utilize GAAP to unlawfully, or in contravention of this Franchise, avoid payment of franchise fees. At all times, Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise required document at the time of submittal, identifying each revised Section or line item.

[NOTE: GAAP – “Generally Accepted Accounting Principles” – and pronouncements of the financial accounting standards board “FASB,” EITF and SEC should not be included. The franchise agreement is a contract representing things at a point in time and for the contract period. Including GAAP and FASB allows for unilateral changes based upon accounting practices not anticipated during the negotiation of the agreement. The agreement does not need to conform to GAAP.]

In 2007, the FCC ruled that “gross revenues,” as defined under federal law, is not determined in accordance with GAAP, by declining to adopt a requirement that an operator's gross income be determined under GAAP. Time Warner asked the FCC to mandate that the calculation of an operator's gross income under Section 622 be determined in accordance with GAAP. Time Warner argued that the FCC has authority from Congress to mandate that uniform federal standards be used to govern franchise fee calculations. Some franchising authorities reject this assertion and argue that GAAP will not produce the clarity and uniformity Time Warner is seeking, because GAAP does not create rules but rather functions as a set of guidelines interpreted by professionals. They also state that GAAP was established by the financial community to govern disclosures to investors and stockholders, not to determine franchise fee payments, and these differing purposes may result in characterization of revenues that are not applicable to cable operations. Finally, they argue this has nothing to do with competitive entry, and a separate NPRM must be issued to consider it. Given the paucity of comments on the matter, and conflicting information of the

applicability of GAAP to the franchising process, the FCC did not believe there was a sufficient record supporting the requested regulation. The FCC declined to adopt such a requirement here.]

- CC. “Headend” means Grantee’s facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for Interconnection of the Cable System with adjacent Cable Systems or other separate communications networks, and all other related equipment and facilities.
- DD. “I-Net Institution” means any public primary and secondary school and community college, which have received the appropriate accreditation from the State of Oregon; public libraries; Designated Access Providers; and any agency of local government, excluding state or federal governments, except that the Oregon Judicial Department and Oregon Department of Justice shall be included as I-Net Institutions.
- EE. “I-Net Site” means a site within the Franchise Area identified by the City/County to receive I-Net Services over the Institutional Network in accordance with this Franchise.
- FF. “I-Net Subscriber” means an I-Net Institution receiving I-Net Services.
- GG. “Institutional Network” or “I-Net” means Capacity on the Cable System facilities used to provide one-way and bi-directional communication services to and among I-Net Subscribers pursuant to 47 USC § 531 and § 541. The facilities include all equipment on Grantee’s side of the demarcation point at the I-Net Site’s termination panel required to make the Capacity available including but not limited to Fiber, coaxial cable, switching, patching, electronic transmitting, receiving, and Signal conversion necessary for effective use of the I-Net.
- HH. “Interconnect” or “Interconnection” means the linking of the Cable System or I-Net with another cable system, communications systems or I-Net, or the linking of locations connected to portions of the Cable System outside the Franchise Area and those portions of the Cable System inside the Franchise Area, including technical, engineering, physical, financial and other necessary components to accomplish, complete, and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the systems or locations. Such linking does not necessarily include the provision of end-user equipment for generating or receiving signals.
- II. “Leased Channel” means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- JJ. “Non-Cable Services” means the transmission(s) of Telecommunications or information including, but not limited to, voice, video or data, without regard to the transmission protocol employed, whether or not the transmission facilities are owned by the provider itself, and includes all forms of telephone services and voice, video, data or information transport, but does not include (1) Cable Service; (2) open video system service, as defined in 47 C.F.R. 76 (3) private communication systems services provided without using the public right-of-way; (4) over-the-air radio or television broadcasting to the public at-large from facilities licensed by the FCC (5) direct-to-home satellite service within the meaning of Section 602 of the Communications Act, and (6) public communications systems.
- KK. “Origination Point” means a location other than the Access Center, where PEG use programing is

delivered to the Grantee for Upstream transmission.

- LL. “PEG Access” means Public Access Channels, Educational Access Channels and Government Access Channels collectively cablecast in standard definition and high definition.
- MM. “Person” means any corporation, partnership, proprietorship, individual, organization, association, or other entity authorized to do business in the State of Oregon, or any natural person.
- NN. “Programmer” means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to Subscribers, by means of the Cable System.
- OO. “Programming” means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System and includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.
- PP. “Public Access Channel” or “Public Access” means any Access channel or portion of an Access channel where any member of the general public or any non-commercial organization may be an Access Programmer on a non-discriminatory basis, subject to operating rules formulated by the Grantor or its designee. Such rules will not be designed to control the content of public access programming.
- QQ. “Public, Educational or Government Access (PEG) Channel” means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any organization may be a Programmer, without charge by the Grantee, on a non-discriminatory basis.
- RR. “Record” means written or graphic materials, however produced, or reproduced, or any other tangible permanent record, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, magnetic and laser disk files, opinions or reports of consultants or expert, invoices, billings, statement of accounts, studies, appraisal, analyses, contracts, agreement, charts, graphs, and photographs, to the extent related to the enforcement or administration of this Franchise.
- SS. “Resident” means any natural person residing within the Franchise Area.
- TT. “Residential Service” means Cable Services delivered on the Cable System to residential subscribers.
- UU. “Residential Subscriber” means any Resident who is lawfully receiving for any purpose or reason, any Cable Service provided by Grantee.
- VV. **INSERT A CONSISTENT DEFINITIONS OF RIGHTS OF WAY ACROSS OTHER CODES, FRANCHISES, ETC.** Example: “*Right of Way*”, “*Rights of Way*”, “*ROW*”, or “*Public Right of Way*” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or any other real property owned or controlled by the City that is not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest and

authority to grant a person permission to occupy and use such areas for utility facilities.]

- WW. “School” means any public or accredited private primary or secondary schools and all similarly situated private and parochial educational institutions that have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.
- XX. “Section” means any section, subsection or provision of this Franchise Agreement.
- YY. “Signal” means any electrical or light impulses carried on the Cable System whether one-way or bi-directional.
- ZZ. “Streets and Public Ways” means the surface of and the space above and below any public street, road, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them, and except the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.
- AAA. “Subscriber” means any person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of or in connection with the Cable System whether or not a fee is paid for such services.
- BBB. “Tap” or “Tapping” means observing a two-way communication signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- CCC. “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).
- DDD. “Telecommunications Services” means 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 (as provided in 47 U.S.C. Section 153(46)).
- EEE. “Upstream” means the direction of Signals transmitted to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.
- FFF. “Year” means a full twelve-month calendar year, unless designated otherwise, such as a “fiscal year.”

3. GRANT OF FRANCHISE

3.1 Grant

- A. Grantor hereby grants to the Grantee a non-exclusive and revocable franchise Effective on _____ revocable as provided herein, to construct, operate and maintain a Cable System for the provision of Wireline Cable Service within the Franchise area. This Franchise constitutes the authority, right, privilege and obligation to provide Wireline Cable Services over the Facilities of the Cable Communications System as required and conditioned by the provisions of this Franchise.

- B. This Franchise is subject to the laws of the United States and the State of Oregon, to the general codes and police powers of the City enacted pursuant thereto affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. The Grantor will make a good faith effort to notify the Grantee of any City proceedings which would substantially affect the Grantee's operations and will upon request supply the Grantee with copies of any City laws or regulations affecting Grantee's operations. Notwithstanding Grantor's general exercise of police power described in Section 3.7 below, in cases of conflict between this Franchise and any ordinance or resolution that directly affects or changes the material terms outlined under section 3.5.B of Grantee under this Franchise, this Franchise will govern. Nothing herein will be interpreted to prevent Grantor or Grantee from challenging the lawfulness of enforceability of any provision of applicable law.

- C. Grantee promises and guarantees as a condition of exercising the privileges granted by this Franchise, that any Affiliate or joint venture partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Franchise and any Federal, State or City law, rule, or regulation.

- D. No rights will pass from Grantor to Grantee by implication. Without limiting the forgoing, by way of example and not limitation, the Franchise will not include or be a substitute for:
 - I. Any other permit or authorizations required for the privilege of transaction and carrying on a business within the City that may be required under generally applicable ordinances and laws of the Grantor;
 - II. Any permit, agreement of authorization required under generally applicable ordinances and laws of the Grantor in connection with operations on or in the Right of Way, including by way example and not limitation, street cut permits; or
 - III. Any permits or agreement for occupying any other property of the Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreement for placing devices on or in poles or wires, conduits, other structures or railroad easements, whether owned by the Grantor or a private entity. This provision should not be interpreted to restrict Grantee's general franchise rights under 47 U.S.C. Section 541(a).

 - IV. Grantor agrees to use best efforts in its working relationship with Grantee in the permitting processes associated with Grantee's permit requests.

3.2 Use of Public Streets and Rights of Way

For the purpose of constructing, operating and maintaining a Wireline Cable System for the provision of Wireline Cable Services in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Streets and Public Ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Wireline Cable System. Prior to construction or alteration within City Streets and Public Ways, the Grantee will in each case request all required permits, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this Section will relieve the Grantee of the obligations of Section 4.6 regarding the trimming of trees and other vegetation.

3.3 Duration and Effective Date of Franchise/Franchise Review

[COMMON FRANCHISE TERMS ARE BETWEEN 5-10 YEARS. HOWEVER, SOME CITIES MAY WANT A LONGER TERM TO SPREAD OUT THE COST OF NEGOTIATING A FRANCHISE. ADDITIONALLY, SOME CITIES MAY CHOOSE TO ALIGN MULTIPLE CABLE FRANCHISES SO THAT THE TERMS EXPIRE AROUND THE SAME TIME IN ORDER TO NEGOTIATE RENEWALS WITH PROVIDERS AT SIMILAR TIMES.]

[NOTE: UNDER LAW, IF A CABLE PROVIDER HAS AN EXPIRED FRANCHISE WITH THE CITY AND IS STILL PROVIDING CABLE SERVICES, THEN THE TERMS OF THE FRANCHISE ARE STILL IN EFFECT UNTIL A RENEWED FRANCHISE IS IN PLACE. A CITY DOES NOT HAVE TO EXTEND THE FRANCHISE TEMPORARILY FOR IT TO APPLY, THOUGH SOME CITIES MAY CHOSE TO TAKE CEREMONIOUS ACTION RELATED TO THE FRANCHISE DURING A PUBLIC MEETING]

Except as otherwise provided herein for revocation, the Term of this Franchise and all rights, privileges, obligations, and restrictions pertaining thereto will be as described in Section 3, at the end of which time the Franchise will expire and be of no force and effect. The Effective Date of the Franchise is specified in 3.1.A, (“Effective Date”) unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise will be null and void.

- A. **Renewal [NOTE: BECAUSE NEGOTIATING FRANCHISES CAN BE COSTLY AND TIME CONSUMING, CITIES SHOULD CONSIDER WHETHER AN AUTOMATIC RENEWAL OF THE FRANCHISE WOULD BE APPROPRIATE.]**

The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of this Franchise will be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein will be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

3.4 Franchise Not Exclusive

The Franchise granted herein is not exclusive. This Franchise will not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets and Public Ways by franchise, permit, or otherwise subject to the provisions of Section 3.5 herein.

3.5 Grant of Other Franchises **[NOTE: THIS SECTION CONTAINS MATERIAL PROVISIONS, SOMETIMES REFERRED TO AS “COMPETITIVE EQUITY” BY CABLE OPERATORS. MATERIAL PROVISIONS ARE MEANT TO ENSURE NONDISCRIMINATION ACROSS SIMILARLY SITUATED PROVIDERS OR SIMILAR SERVICE. THIS MODEL FRANCHISE IS INTENDED FOR WIRELINE CABLE SERVICE OPERATORS WHO ARE PROVIDING WIRELINE CABLE SERVICES OVER A CABLE SYSTEM. SOME CABLE OPERATORS MAY PROVIDE OTHER SERVICES SO IT IS IMPORTANT TO BE VERY SPECIFIC ON WHAT THE FRANCHISE DOES AND DOES NOT COVER. CITIES SHOULD CROSS CHECK MATERIAL PROVISIONS THAT ARE SPELLED OUT IN OTHER WIRELINE CABLE FRANCHISES AND INCLUDE THEM IN THIS SECTION.]**

- A. The Grantor reserves the right to grant additional Franchises or similar authorizations to provide video programming services via Cable Systems or similar wireline systems located in the Public

Rights of Way. Grantor intends to treat cable operators provisioning wireline cable service competitors in a nondiscriminatory manner in keeping with federal law. If the Grantor grants such an additional Franchise or authorization to use the Public Rights of Way to provide such services and Grantee believes the Grantor has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this Section 3.5 will apply.

- B. As part of this Franchise, the Grantor and Grantee have mutually agreed that the following material Franchise terms may be used to compare Grantee's Franchise to a wireline cable service provider competitor: a 5% (five percent) Franchise fee, PEG funding, PEG Access Channels, and customer service obligations (hereinafter "Material Obligations"). Grantor and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a wireline cable service provider competitor and as such can reasonably be expected to be applied fairly across all wireline cable service competitors.
- C. Within one (1) year of the adoption of an agreement with another Cable Operator for the provision of wireline cable service, Grantee must notify the Grantor in writing of the Material Obligations in this Franchise that Grantee believes exceed the Material Obligations of the wireline cable service competitor's Franchise or similar authorization. The Grantor will have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the wireline cable service competitor, or dispute that the Material Obligations are different. In the event the Grantor disputes the Material Obligations are different, Grantee may bring an action in a competent court of law for a determination as to whether the Material Obligations are different and as to what Franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the Grantor that it elects to immediately commence the renewal process under 47 USC§ 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.
- D. Nothing in this Section 3.5 is intended to alter the rights or obligations of either party under applicable federal or state law, and it will only apply to the extent permitted under applicable law and FCC orders. In no event will the Grantor be required to refund or to offset against future amounts due the value of benefits already received.
- E. This provision does not apply if the Grantor is ordered or required to issue an agreement or Franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Wireline Cable Service Provider actually commencing provision of service in the market to its first customer. Should the new Wireline Cable Service Provider fail to continuously provide service for a period of six (6) months, the Grantor has the right to implement this Franchise with its original terms upon ninety (90) days' notice to Grantee.
- F. This Section does not apply to open video systems, nor does it apply to common carrier systems exempted from Franchise requirements pursuant to 47 U.S.C. Section 571; or to Systems that serve less than 5% (five percent) of the geographic area of the Grantor; or to Systems that only provide video programming, as defined by 47 U.S.C. 522(20) via the public Internet; or to wireless networks that deliver multichannel video programming services, unless the state or FCC has determined that any or all of these are subject to City/County franchising authority.

3.6 Franchise Transfer

Subject to Section 617 of the Cable Act (47 U.S.C. Section 537), no transfer of the Franchise or change in control of Grantee will occur without the prior written consent of Grantor, provided that such consent will not be unreasonably withheld.

No such consent will be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness, and no such consent will be required for a change in control or transfer of an ownership interest or other interest in Grantee to the parent of Grantee or transfer of an interest in the Franchise to the parent of Grantee, or any action which is the result of a merger of the parent of Grantee or any action which is the result of a merger of another Affiliate of Grantee. Grantee will provide written notice to Grantor of any transaction as described in this paragraph within sixty (60) days of such transaction.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor will proceed pursuant to Section 617 of the Cable Act and related rule makings of the FCC. Grantee will give Grantor written notice of the proposed transfer and will request consent of the transfer by the Grantor. Grantee will furnish all information required by law and/or reasonably requested by Grantor, at no cost to Grantor, with respect to the consideration of the transfer. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the legal, financial and technical qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. The Grantee will assist Grantor in any such inquiry.

In cases where the Grantor finds it inappropriate to give unconditional consent to the proposed transfer, the Grantor may condition its consent upon terms and conditions related to the legal, financial, and technical qualifications of the proposed transferee and to the resolution of outstanding and unresolved issues of Grantee's noncompliance with material terms and conditions of this Franchise. Grantee reserves the right to challenge Grantor's conditional consent as outside the scope of its authority under this Franchise or federal law. Any transfer of ownership affected without the written consent of the Grantor will render this Franchise subject to revocation, provided that any such consent will not be unreasonably withheld. The Grantor will have one hundred twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within one hundred twenty (120) days, the request will be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, will within sixty (60) days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described will be deemed void and of no effect unless Grantee will, within sixty (60) days after the same will have been made, file such certified copy as is required.

3.7 Relation to Other Provisions of Law

This Franchise and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Term of this Franchise. This Franchise is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Franchise and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance will govern. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising out of contract or at law. The Franchise issued, and the fees paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

3.8 Effect of Execution

By executing the Franchise, the Grantee;

- A. Acknowledges and accepts the Grantor's legal right to issue and enforce this Franchise,
- B. Agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System,
- C. Accepts and agrees to comply with each and every provision of this Franchise,
- D. Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and
- E. Agrees to not raise any claim to the contrary.

4. FRANCHISE REGULATION

4.1 Intent

It is the intent of the Grantor to administer and enforce the provisions of this Franchise. Grantor may lawfully delegate all or a part of its administrative and regulatory authority under this Franchise to an agency designated by the Grantor.

4.2 Areas of Regulation and Administration

The Grantor (or its designee) has authority for regulation in the following areas:

- A. Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility.
- B. Coordination of the operation of Public, Educational and Government Access Channels (PEG).
- C. Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as City departments, Schools and health care institutions.
- D. Formulating long-range cable communications policy of Grantor for the City.
- E. Disbursing and utilizing franchise revenues paid to the Grantor.
- F. Regulating rates, to the extent permitted by law.
- G. Customer service, to the extent permitted by law.
- H. Planning and facilitating development of public, education and government access programming, both within the City and through interconnection with adjacent systems.
- I. All other areas as provided by the Cable Act.

Nothing in this Section 4.2 is intended or will be interpreted to expand or diminish Grantee's scope of authority authorized by applicable law.

4.3 Administration and Regulation

- A. Authority. Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part

thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

- B. Rates and Charges. All of Grantee's rates and charges related to or regarding Cable Service will be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.
- C. Rate Discrimination. All of Grantee's rates and charges will be published (in the form of a publicly available rate card) and will be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee will apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status or physical or mental disability, or geographic location in the Franchise Area to the extent required by applicable law.
- D. Rate Discrimination Prohibited. Grantee will apply non-discriminatory rates and charges to all Subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, or sexual preference, except as otherwise provided herein. Nothing in this Franchise will prevent the Grantee from establishing discounted rates and charges for low-income Subscribers or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.
- E. Filing of Rates and Charges. Throughout the Term of this Franchise, Grantee will maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Franchise.
- F. The provisions of this Section 4.3 will be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Act), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor and Grantee in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights will be deemed superseded by those provisions of the Act.

4.4 Remedies for Franchise Violations/Revocation

- A. Authority. If the Grantor believes that the Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, and Grantor wishes to impose damages as afforded under applicable law or seek revocation under this Section 4, Grantor will notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee will have a thirty (30) day period following receipt of such notice to:
 - I. Response to the Grantor, contesting Grantor's assertion that a violation has occurred and request a hearing in accordance with Section 4.4.D; **[NOTE: A CITY MAY CHOOSE TO HAVE AN INFORMAL ADMINISTRATIVE PROCESS IN PLACE TO TRY TO REMEDY VIOLATIONS PRIOR TO A HEARING.]**
 - II. Cure the violation; or
 - III. Notify the Grantor, in writing that Grantee cannot cure the violation within the Cure Period due to the nature of the violation and notify the Grantor, in writing what steps the Grantee will take to cure the violation including the Grantee's projected completion date for such cure. In such case, the Grantor will within thirty (30) days of receipt of such response either:
 - a. Accept Grantee's plan and schedule for curing the violation; or
 - b. Set a hearing in accordance with 4.4.B.

If a Grantee fails to demonstrate to the reasonable satisfaction of Grantor that no violation exists, or if Grantee fails to correct the violation within the time prescribed, or if a Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee will then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council, pursuant to Section 4.4.E. of this Franchise. Said notice will indicate with reasonable specificity the violation alleged to have occurred.

- B. Plan for Cure. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the 30-day period and proposes a plan and schedule cure for which is not acceptable by the Grantor, Grantor may, within thirty (30) days of Grantee's receipt of such notice, set a hearing before the City Council. At the hearing, Grantor will review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by Grantor, who may waive all or part of the applicable damages for such extended 30-day period in accordance with the criteria set forth in 4.4.F.
- C. Imposition of Applicable Penalties. In the event that the Grantee fails to cure the violation within the 30-day, or within an extended 30-day period approved by the Grantor pursuant to 4.4.B., the Grantor may impose applicable penalties or revoke this Franchise in accordance with this Section 4.4, but may do so only in accordance with the requirements of this Section 4.4, and only after it holds a hearing before City Council to determine what damages, if any, or revocation, will be applied. Any such applicable penalties will not begin to accrue until after the initial 30-day period has expired. Failure to comply with provisions of this Agreement may result in injury to Grantor. Grantor and Grantee recognize it will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this Agreement are intended as a reasonable forecast of compensation to the Grantors collectively for the harm caused by violation of this Agreement, including but not limited to administrative expense, legal fees, publication of notices, and holding of a hearing or hearings as provided herein. For violating aggregate performance telephone answering standards for a Quarterly measurement period:
- (a) \$ _____ for the first such violation;
 - (b) \$ _____ for the second such violation, unless the violation has been cured;
 - (c) \$ _____ for any and all subsequent violations, unless the violation has been cured;

A cure is defined as meeting the Subscriber telephone answering standards for two (2) consecutive Quarterly measurement periods.

For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: \$ _____ per violation, per day. For all other violations of this Agreement, except as otherwise provided herein, (for example, but not limited to, Record submissions under Section 7); \$ _____ per day for each violation for each day the violation continues.

The fines set forth herein may be reduced at the sole discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of violation as reflected by one or more of the following factors:

- (a) whether the violation was unintentional;
- (b) the nature of the harm which resulted;
- (c) whether there is a history of prior violations of the same or other requirements;
- (d) whether there is a history of overall compliance, and/or;
- (e) whether the violation was voluntarily disclosed, admitted or cured.

The collection of any fines by the Grantor shall in no respect affect:

- (1) Compensation owed to Subscribers; or
- (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law, or
- (3) Other remedies available to the Grantors provided, however, that collection of fines shall be the exclusive remedy for the Grantors for the particular incident or for the particular time period for which it is imposed other than reasonable attorney fees and costs, if applicable. If the violation continues beyond the particular time period, Grantor shall have the right to pursue other remedies under this Agreement.

- D. **Contest of Violation.** In the event that the Grantee contests the Grantor's assertion that a violation has occurred and requests a hearing in accordance with Section 4.4.A.1 above, the Grantor will set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found to have occurred, what remedies under this Section 4, will be applied.
- E. **Opportunity to Be Heard.** In the case of any hearing pursuant to this Section 4.4, Grantor will notify Grantee of the hearing in writing at least thirty (30) days prior to the hearing date. At the hearing, Grantee will be provided an opportunity to be heard, examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject and may provide additional hearing procedures as Grantor deems appropriate. After the hearing is closed, Grantor will issue written findings and a decision based on the evidence presented.
- F. **Nature of Remedies.** If, after the hearing, Grantor determines that a violation exists, Grantor may impose one or more of the following remedies:
- I. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor will determine;
 - II. Revoke this Franchise;
 - III. Pursue other legal or equitable remedies available under this Franchise or other applicable law.
- G. **Revocation.** Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 4.4, above, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, 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.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to provide relevant testimony, and to rebut other evidence and testimony provided. A complete verbatim record and transcript, or a recording, shall be made of such hearing.

Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor 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 Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly

provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor. Grantor may, at its sole discretion, take any other lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

Nothing contained in this Section 4.4 will be deemed to prevent either party from appealing the decision to a court of competent jurisdiction.

4.5 Remedies Not Exclusive

Except as provided in Section 4.4, Grantor has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section 4, and may without limitation pursue any rights, remedies or actions that it may have in law or equity regardless of whether they are specifically mentioned in this Franchise.

5. PROVISION OF SERVICE

A. It is the Grantor's general policy that all residences in the Grantee's franchise area should have equivalent availability of service from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee will not arbitrarily refuse to provide Cable Services to any Person within the Franchise Area subject to Section 5.B below.

B.1 Except as otherwise provided in Section 5.F Grantee will provide Cable Service to every residential dwelling unit within the Franchise Area where the average density is equal to or greater than ten (10) dwelling units per one thousand twenty feet (1,020) cable mile:

B.1.I With no line extension charge; and

B.1.II At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting from the nearest point on Grantee's Cable System to an outside wall for residential Subscribers with additional charges for non-standard installations computed on a time plus material basis to be calculated on that portion of the installation that exceeds the standard one hundred twenty-five (125) foot drop. In all new subdivisions or other areas where undergrounding is required, cable plant and drops will be placed underground; in other areas, new or replacement cable plant and drops will be placed underground whenever feasible. Grantee will provide Cable Service to potential Subscribers that do not meet the density requirement set forth in Section 5.B under the following circumstances, through agreement between the Grantee and the person requesting service for payment of line extension construction costs:

a. Grantee will provide service at its normal, published installation charge for the initial one hundred twenty-five (125) feet of extension.

b. The subscriber will pay the actual cost of the extension for the distance over one hundred twenty-five (125) feet.

B.2 **[NOTE: THE FOLLOWING LANGUAGE MAY BE USED AS AN ALTERNATIVE TO SECTION 5.B.1—THIS MAY BE MOST APPROPRIATE IN LESS DENSE RESIDENTIAL AREAS.]** Except as otherwise provided in Section 5.F Grantee will provide Cable Service to every residential dwelling unit within the Franchise Area where the average density is equal to or greater than ten (10) dwelling units per one thousand twenty feet (1,020) cable mile:

B.2.I With no line extension charge; and

B.2.II At a non-discriminatory installation charge for a standard installation, consisting of a one

hundred twenty-five (125) foot drop connecting from the nearest point on Grantee's Cable System to an outside wall for residential Subscribers with additional charges for non-standard installations computed on a time plus material basis to be calculated on that portion of the installation that exceeds the standard one hundred twenty-five (125) foot drop.

- III. In all new subdivisions or other areas where undergrounding is required, cable plant and drops will be placed underground; in other areas, new or replacement cable plant and drops will be placed underground whenever feasible.
- IV. Grantee shall provide Cable Service to potential Subscribers that do not meet the density requirement set forth in Section 5.B under the following circumstances, through agreement between the Grantee and the person requesting service for payment of line extension construction costs:
 - a. Grantee shall provide service at its normal, published installation charge for the initial one hundred twenty-five (125) feet of extension.
 - b. The subscriber and the Grantee shall share equally the actual cost of the extension for the distance over one hundred twenty-five (125) feet but less than five hundred (500) feet.
 - c. The subscriber shall pay all costs for the extension for the distance greater than five hundred (500) feet.
- C. Notwithstanding Section 5.A, Grantee may establish different and non-discriminatory rates and charges and classes of services for Commercial Subscribers, as well as different and non-discriminatory monthly rates for classes of Commercial Subscribers. For the purposes of this Section 5.C, "Commercial Subscribers" means any other Subscriber other than Residential Subscribers in single family or multifamily dwellings.
- D. As areas are annexed into the City, Grantee will provide Cable Services to all residences within the annexed area on the same terms as provided for in Section 5.C, unless otherwise authorized by the City.
- E. In new subdivisions, Cable Service will be made available under the terms of 5.A through 5.C above either (i) contemporaneously with other utility services; or (ii) no more than sixty (60) days from first occupancy, whichever is first.
- F. Notwithstanding any other provision in this Franchise, Grantee will not be required to extend its Cable television service to any area of the City that already receives Cable television service from a provider that is not commonly owned to any degree with Grantee, unless the density meets or exceeds 60 dwelling units per linear cable mile from Grantee's nearest cable plant.

6. CONSTRUCTION AND SERVICE REQUIREMENTS

6.1 General

The Grantee will maintain on its cable system a minimum capacity of activated channels, defined under the Cable Act as those channels engineered at the headend of the Cable System for the provision of services generally available to residential subscribers of the Cable Services, regardless of whether such services actually are provided.

6.2 Construction [NOTE: MAKE SURE THIS SECTION IS CONSISTENT AND IN LINE WITH OTHER ROW CODES AND CONSTRUCTION REGULATIONS WITHIN YOUR JURISDICTION.]

In all its construction and service provision activities, Grantee will meet or exceed the construction, extension and service requirements set forth in this Franchise.

Prior to beginning any construction other than routine installations or repairs for individual subscribers, Grantee will provide Grantor with a construction schedule for work in the Streets. All construction will be performed in compliance with this Franchise and all applicable Grantor ordinances, codes, resolutions, rules and regulations heretofore or hereafter adopted or established during the Term of the Franchise. When obtaining a permit, Grantee will inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts. Grantee will work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of street cuts and disruption to the public.

- A. Open Trench. The Grantee agrees that in the event that Grantee is conducting a project, Grantor requests Grantee provide means to discuss any open trench opportunities associated with Grantee's project to the extent consistent with applicable law and provide reasonable access to the open trench. Notwithstanding the foregoing, Grantor will not be required to utilize any open trench nor will failure of Grantee to contact Grantor under this section be considered a violation of this Franchise. **[NOTE: THIS IS OPTIONAL LANGUAGE. CHECK TO SEE IF YOUR JURISDICTION HAS ANY JOINT TRENCHING, OPEN TRENCH, AND/OR DIG ONCE POLICIES ALREADY IN PLACE. CITIES MAY SEE REQUESTS THAT ARE THE OPPOSITE AND THAT IT MAY CREATE AN ADMINISTRATIVE BURDEN. ALTERNATIVELY, CITIES MAY AGREE TO SIT DOWN WITH PROVIDERS ANNUALLY TO DISCUSS THE POTENTIAL FOR JOINT PROJECTS.]**

6.3 Right of Inspection of Construction

Grantor will have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it finds necessary to ensure compliance with construction or installation standards of this Franchise, other applicable City codes and ordinances, and other pertinent provisions of law. Grantee will fully cooperate in facilitating such inspections or tests and will be subject to any fees or charges applicable under ordinance or other laws or regulations.

6.4 Erection of Poles [CITIES SHOULD CHECK IF THERE ARE ANY POLE POLICIES IN PLACE WITHIN THEIR JURISDICTION AND WHETHER THE CITY PREFERS UNDERGROUNDING FOR FACILITIES.]

Grantee may not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor. The Grantee will make all reasonable efforts to lease pole space from the existing pole owners for all aerial constructions, under mutually acceptable terms and conditions, and will comply with all applicable ordinances, resolutions, rules and regulations of the Grantor, heretofore or hereafter adopted or established during the Term of the Franchise.

6.5 Undergrounding [NOTE: WHILE NOT ALL UTILITIES CAN BE UNDERGROUNDED, CABLE LINES CAN. CITIES SHOULD CONSIDER HOLDING SIMILAR SITUATED PROVIDERS (E.G. CABLE OPERATOR 1 AND CABLE OPERATOR 2) TO THE SAME REQUIREMENTS. WHEN IT COMES TO UNDERGROUNDING, CITIES MAY WANT TO BE SPECIFIC ABOUT WHAT ZONED AREAS ARE A PRIORITY FOR UNDERGROUNDING WHEN DRAFTING

THIS SECTION OF THE FRANCHISE.]

- A. Cable must be installed underground where:
 - I. All existing wireline utilities are placed underground, other than high voltage electric facilities;
 - II. Statute, ordinance, policy or other regulation of Grantor lawfully requires utilities to be placed underground;
 - III. All overhead utility lines are placed underground, other than high voltage electric facilities (Grantee will bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise);
 - IV. Grantee is unable to get pole clearance;
 - V. Underground easements are obtained from developers of new residential areas; or
 - VI. Utilities are overhead but Residents prefer underground (undergrounding to be provided at Residents' cost).
- B. Cable may be installed above ground where:
 - I. Existing Wireline Cable Providers lines are above ground, excluding high voltage electric facilities; or
 - II. Grantee obtains written permission from Grantor
- C. Grantee will use conduit or its functional equivalent on 100% of undergrounding, except for drops from poles, pedestals or vaults to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit will be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee will use, in conjunction with utility companies or providers, common trenches for underground construction wherever available.

Nothing in this Section will be construed to prohibit Grantee from constructing, operating, or maintaining aboveground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment provided that these are placed in a manner consistent with applicable laws, codes, rules and regulations, heretofore or hereafter adopted.

6.6 Trimming of Trees or other Vegetation

[NOTE: SIMILAR LANGUAGE MAY BE ADDRESSED IN CODES AND/OR ORDINANCES. CONSIDERING CROSS REFERENCING OR MIRRORING LANGUAGE HERE.] In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Tree or vegetation trimming will be done only in accordance with the codes and other rules and regulations of Grantor, heretofore or hereafter adopted or established during the Term of the Franchise, and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands. Nothing contained in this Franchise will be deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

6.7 Repair and Restoration Public Right-of-Way

Whenever the Grantee disturbs the surface or otherwise damages any Public Right-of-Way, Grantee shall comply with ORS 757.542 to 757.562, Oregon Administrative Rules Chapter 952, Division 1, and all requirements of the Oregon Utility Notification Center. Grantee will repair and restore the same to at least the prior condition or the legally required standard. In the case of a hard surface opening, Grantee will

promptly refill the opening and restore the pavement to at least its original condition or the legally required standard. Grantor shall notify Grantee if any opening made by Grantee requires further restoration and, after an eight-hour period for Grantee to affect the repairs, Grantor may refill and/or pave. All costs thereof, including but not limited to, inspection, supervision, and administration will be paid by Grantee. All excavations made by the Grantee will be properly safeguarded for the prevention of accidents. Any work required will be done in compliance with the Construction Requirements. **[NOTE: THE FOLLOWING LANGUAGE MAY BE INCLUDED AS AN ADDED CONSUMER PROTECTION: *Unless otherwise provided for in a written legal agreement with the owner or real property, Grantee will repair and restore any real property it disturbs in the same manner required by the Franchise with respect to public property. The requirement under this Section for the Grantor to notify the Grantee and to allow a minimum time period for repairs is effective except in the case of emergency, as determined under this Franchise.***]

6.8 Construction Codes [NOTE: THAT CONSTRUCTION PERMITS MAY REQUIRE BONDING FROM THE PROVIDER. CONSTRUCTION BONDING IS SEPARATE AND DISTINCT FROM THE BONDING REQUIREMENTS IN SECTION 10.2]

When working on property not within the Public Right-of-Way, Grantee will strictly adhere to all applicable building, zoning or other laws, codes, regulations and rules of Grantor in effect at the time of Grantee's work, including but not limited to obtaining all applicable permit(s). Grantee shall also comply with ORS 757.542 to 757.562, Oregon Administrative Rules Chapter 952, Division 1, and all requirements of the Oregon Utility Notification Center. Unless otherwise provided for in a written legal agreement with the owner of the real property, Grantee will repair and restore any real property it disturbs in the same manner required by the Franchise with respect to the Public Right-of-Way.

6.9 Reservations of Street Rights

Nothing in this Franchise will be construed to prevent any public work of the Grantor, including without limitation constructing sanitary or stormwater sewers, grading, paving, repairing and/or altering any Streets and Public Ways, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public infrastructure or improvements. Grantee will arrange its poles, wires, conduits or other facilities in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of the Public Right-of-Way by any person. In the event of such interference, Grantor may require the removal of Grantee's poles, wires, conduits or other facilities from the Public Right-of-Way at the sole expense of the Grantee. If any property of the Grantee will interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sanitary or stormwater sewer or water main, the improvement of a street or any other public improvement, then upon reasonable written notice from the Grantor, all such property including poles, wires, conduits or other facilities will be removed, replaced or relocated in a timely manner as will be directed by the Grantor, so that the same will not interfere with the said public work of the Grantor, and such removal, replacement or relocation will be at the sole expense of the Grantee. In the event of failure, neglect or refusal of the Grantee to relocate its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure. Notwithstanding, if a public emergency exists, at the sole determination of the Grantor, Grantor may effect immediate repairs. All costs incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, will be paid by the Grantee.

6.10 Street Vacation and Facilities Abandonment [NOTE: CITIES SHOULD CONSIDER BALANCING THE NEED FOR ADDITIONAL SPACE AND THE AMOUNT OF ROAD DAMAGE WHEN DRAFTING PROVISIONS RELATED TO VACATION AND ABANDONMENT OF FACILITIES. SOME JURISDICTIONS MAY PREFER THAT CABLE OPERATORS ABANDON THEIR UNDERGROUND FACILITIES AND NOTE THEIR

LOCATION, AS THIS WILL DO LESS DAMAGE TO THE ROW. HOWEVER, OTHER JURISDICTIONS MAY NEED MORE SPACE BOTH UNDERGROUND AND ABOVE GROUND AND REQUIRE ALL FACILITIES TO BE REMOVED BY THE CABLE OPERATOR. IF YOUR JURISDICTION HAS A PREFERENCE TO TREAT FACILITY ABANDONMENT AND STREET VACATION SEPARATELY, CONSIDER SPLITTING SECTION 6.10 INTO TWO SEPARATE AND DISTINCT SUBSECTIONS.]

In the event any street, alley, public highway or portion thereof used by the Grantee will be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the Term of this Franchise, the Grantee may abandon its Cable System facilities if Grantor grants Grantee the right to do so in writing. If cable facilities removal is required by Grantor, at the time of removal thereof the Grantee will, at no cost to Grantor, restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor and/or the new controlling jurisdiction. In the event of failure, neglect or refusal of the Grantee to remove its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. All costs incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, will be paid by the Grantee.

6.11 Movement and Location of Facilities

- A. Movement and location of Grantee's facilities will follow all applicable regulations, heretofore or hereafter amended, unless otherwise provided within this Franchise.
- B. Unless otherwise agreed to in writing by the Grantor, Grantee will, at no cost to the Grantor, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the ROW, including relocation of aerial facilities underground where all Wireline Cable Service Providers are being asked to relocate underground, when requested to do so in writing by the Grantor.
- C. In the event of failure, neglect or refusal of the Grantee to move its facilities, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. All costs incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, will be paid by the Grantee. Grantor will bear no responsibility nor be liable for any costs, associated with Grantee's movement or alternate locations of Grantee's facilities.

6.12 Maps

- A. **Strand Maps.** Grantee will maintain updated strand map drawings of the Cable System and make them available to the Grantor for inspection upon request. Strand drawings or their functional equivalent will be updated as changes occur in the Cable System. The Grantee will provide to the Grantor, upon request but at least once per year, at no cost to the Grantor, a copy of the updated strand maps showing the location of the Grantee's facilities in the Streets and Public Ways within the Franchise Area. **[NOTE: THESE TYPES OF MAPS MAY BE MORE HELPFUL FOR ABOVE GROUND FACILITIES AND FOR CITIES WHO OWN THEIR OWN POLES. THESE MAPS MAY ALSO BE PREFERRED BY ENGINEERING STAFF.]**
- B. **GIS Maps.** Grantee will provide, upon request but at least once per calendar year, at no cost the Grantor, a GIS map in a format acceptable to the Grantor of all its facilities, including but not limited to active, inactive, and abandoned, located with the Grantor's rights-of-way or Grantor's property. The

map shall indicate status of facilities as active, inactive, and abandoned. Grantor will not request such map more than once per calendar year. **[NOTE: IF CITIES ONLY REQUIRE GIS MAPS AND NOT STRAND MAPS, THEY MAY REQUIRE A GIS LAYER THAT SHOWS THE NUMBER OF STRANDS.]**

6.13 Emergency

In the event of an emergency situation or circumstance that creates or is contributing to an imminent danger to health, safety, or property, as determined by Grantor in its sole discretion, the Grantor may remove or relocate Grantee's Cable System without prior notice. All costs incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, will be paid by the Grantee. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify, and hold Grantee harmless for any negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 6.13.

6.14 Emergency Repairs

In the event that emergency repairs are necessary, Grantee will immediately notify the Grantor of the need for such repairs. Grantee may initiate such emergency repairs and will apply for appropriate permits as soon as reasonably practicable but in no event not later than two business days after discovery of the emergency. Grantee will comply with all applicable Grantor regulations relating to such repairs, including the payment of permit or license fees.

7. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

7.1 Equal and Uniform Service

Reasonable efforts will be made to provide equal and uniform access, Cable Service and rates to Subscribers and potential Subscribers within the Franchise Area.

7.2 System Configuration

The Cable System will have the bidirectional communications capacity for subscriber interaction if any, required for selection or use of Cable Service such as pay-per-view, video-on-demand ("VOD") and other interactive cable services requiring addressability.

7.3 Channel Capacity

The Grantee will maintain on its Cable System a minimum capacity of activated analog and/or digital Channels. The System will throughout the Term of this Franchise carry reverse signals in the upstream direction. The system performance, capacity and services offered may be reviewed to assure the system keeps pace with changes in technology and is at least comparable to other systems in the area. **[NOTE: CITIES SHOULD CHECK OTHER CABLE FRANCHISES AND CONSIDER MATCHING AT LEAST THE NUMBER OF CHANNELS.]**

7.4 Emergency Alert Capability

A. Grantee will provide emergency alert capability in full compliance with applicable FCC requirements. Grantee will establish procedures to override video and audio on all channels of the Cable System to provide emergency messages consistent with the FCC's directives.

B. Grantee will allow Grantor to transmit an emergency alert message from locations designated by the Grantor to all subscribers.

- C. In times of emergency, the Grantor will permit only appropriately trained and authorized persons to operate the EAS equipment and, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, will indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from Grantor's use of the cable system or the EAS. Additionally, subject to limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold harmless the Grantee for the negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 7.4.
- D. In non-emergency situations, only the Grantee is authorized to operate the EAS equipment. Upon request, the Grantor will be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, then Grantee will make any necessary adjustment to the EAS and the EAS will be retested.

7.5 Standby Power

Grantee will provide standby power generating capacity at the Cable System headend and all hubs and any fiber optic nodes capable of providing emergency operations for at least forty-eight (48) hours. Grantee will maintain standby power system supplies, rated at least at two (2) hours duration, throughout the trunk and distribution networks. In addition, Grantee will have in place throughout the Term of this Franchise, a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours. Upon request, Grantee will provide a copy of the plan to the Grantor.

7.6 Cable System

Grantee's Cable System will be able to deliver high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted.

7.7 Parental Control Lock

Grantee will provide Subscribers (by sale, lease or otherwise), upon request, with a manual or electronic parental control locking device or digital code that permits inhibiting the viewing of any channel, consistent with applicable regulations. Any charge for such device will be consistent with applicable rate regulations. Subscribers will be notified by Grantee of the availability of the locking device no less frequently than annually.

7.8 Technical Standards

Grantee will meet all the requirements of The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K.

7.9 Performance Testing

Grantee will perform all system tests required by the FCC, and all other tests reasonably necessary for the Grantor to easily determine compliance with technical standards required by this Franchise.

Upon request, Grantee will advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of this Franchise and applicable FCC technical standards. Written records of all system test results performed by or for the Grantee will be maintained and copies of written tests will be made available to Grantor upon request, at no cost to Grantor. Tests may be witnessed by representatives of Grantor.

The Grantor may conduct independent tests of the system for which the Grantee will give its fullest cooperation. If one or more of the locations tested fails to meet the performance standards, the Grantee will be required to take corrective measures, inform Grantor of those actions, and the entire test will be

repeated at the locations which failed, and at least five (5) additional randomly chosen locations. If results of a second test indicate failure of the system to meet the technical performance requirements of this Franchise then the Grantor may apply such remedies as it deems appropriate, unless the circumstances of the failure are caused by conditions which are beyond the Grantee's control, as determined, acknowledged and verified by the Grantor.

7.10 FCC Compliance

It is the responsibility of the Grantee to document that the system and its operation are in compliance with FCC technical specifications and performance requirements. If the Grantor has received subscriber complaints regarding the performance of the Cable System, and the Grantor determines that the most efficient or only reasonable way to determine a question of Cable System compliance with FCC technical specifications is through a specific testing of the system in addition to test required by the FCC; Grantee will, upon written notice by the Grantor, perform such testing at a reasonable time, and Grantee will give the Grantor an opportunity to witness the testing and provide the Grantor with documentation of the testing results. The FCC's technical standards will govern the protocols for all such testing.

In any case where the system testing reveals non-compliance with FCC standards, the Grantee will repair the system or make whatever modifications are required and necessary to bring the system performance into compliance with FCC standards within sixty (60) days of a non-complaint test.

8. SERVICES AND PROGRAMMING

8.1 Programming Categories

To the extent Grantor has regulatory authority under federal law, the Grantee will provide video programming services in at least the following broad categories:

1. News & Information
2. Sports
3. General Entertainment
4. Arts, Culture, Performing Arts
5. Children / Family
6. Science
7. Travel Information
8. Weather Information
9. Governmental and Educational Programming
10. Movies
11. Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
12. Foreign language

The identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable System, except for PEG Access programming, as further described herein.

8.2 Changes in Video Programming Services

Subject to the provision of the Cable Act, no category of services as referred to in Section 8.1 may be deleted, or so limited as to be effectively deleted by the Grantee without Grantor approval, which will not be unreasonably withheld. In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories described in Section 8.1, then the Grantee will be obligated to carry such programming.

8.3 Leased Channel Service

The Grantee will offer leased channel service to the extent required by 47 U.S.C. Section 532 (Section 612 of the Cable Act), or regulations adopted thereunder.

8.4 Obscenity

The Grantee agrees that it will not transmit over the Cable System programming, which is obscene or otherwise unprotected by applicable law, provided, however, Grantee will in no way be responsible for programming over which it has no editorial control, including but not limited to, Public, Educational and Governmental Access programming.

8.5 Public, Educational and Government Programming [NOTE: NOT ALL CITIES MAY OPERATE OR WISH TO OPERATE PEG CHANNELS OR PROGRAMMING. IF YOUR CITY DOES NOT HAVE ANY PEG CHANNELS, CONSIDER LEAVING SECTIONS 8.5.A-C OUT OF YOUR FRANCHISE. HOWEVER, LEAVE IN SECTION 8.5.D-G.]

[IF YOUR CITY DOES OPERATE PEG CHANNELS, CROSS REFERENCE THIS SECTION WITH OTHER CABLE FRANCHISES.]

A. Channels

The Grantor and Grantee agree that the Grantor is not operating a PEG channel at the time this Franchise is executed. It is further agreed that the obligations in Section 8.5 are contingent upon Grantor's decision to initiate a PEG channel with all wireline cable providers.

- I. Upon one hundred twenty (120) days advance written notice by Grantor, Grantee will provide to the Grantor, for independent administration by the Grantor or its Designated Access Provider (DAP) throughout the Term of this Franchise, at least one (1) PEG Access Channel to be cablecast throughout the Franchise Area.
- II. In the event Grantor requests the activation of the one (1) or more PEG Access Channel as set forth in this subsection, Grantor will provide suitable video signals for the PEG Access Channels to Grantee at Grantor's PEG Access Headend located at [ADDRESS OF PEG HEAD END]. Upon receipt of a suitable video signal, Grantee will, at its own expense provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. The cost to provide, install and maintain the necessary equipment will be paid by the Grantee.
- III. Grantor shall have the right to relocate the PEG Access Headend one time during the term of this Franchise as follows: Grantor may relocate the PEG Access Headend to a new location within the Service Area and within five hundred (500) feet of one of Grantee's active, video-enabled trunk or feeder lines; provided that Grantor shall provide to Grantee at the new location: (1) suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and cooperation of Grantor as is reasonably necessary; (2) access to such space at least ninety (90) days prior to anticipated use of the new PEG Access Headend; and (3) reimbursement of up to _____ Dollars (\$_____) for costs associated with the relocation of the equipment necessary for transmitting the PEG signal.
- IV. Live Origination Points: To facilitate the Grantor's transmission of live video/audio and other PEG programming from certain remote sites, the Grantee, at its own expense, will provide and maintain fiber connections and the related transmission/receive equipment necessary between the Grantor's PEG Access Headend and the Origination Points: LIST OF LOCATIONS. Grantor agrees it will not use these fiber connections for other purposes.

B. Triggers for Additional Access Channels

- I. After the initial Access Channel(s) has been made available for PEG Access use, Grantee will, if

directed by the Grantor, provide an additional activated Access Channel for PEG use to a maximum total of two Access Channels as required in this subsection. The Grantor will give Grantee at least 120 days prior written notice of the required additional Access Channels. Such written notice will include information verifying that the trigger criteria have been met.

- II. The one (1) additional Access Channel will be made available to the Grantor at such time that the existing Access Channels is in use for locally scheduled video programming (not to include character-generated programming, non-video transmissions, or repetitions of programs beyond three (3) repetitions an average of 80% of the time, seven days per week for any consecutive five-hour block during the hours from 10:00 a.m. to 10:00 p.m. for 10 consecutive weeks. Provided, however, that if the usage ratio of any additionally designated channel should at any time fall below 30% of the level of usage required above for the addition of a channel, then the use of that channel will revert back to the Grantee, upon 120 days' after Grantee's notice to Grantor.
- III. Grantee will make PEG Access Channel(s) available to all Subscribers without any additional or extra costs to subscribers. Grantee may deliver such PEG Channels in a digital format, at Grantee's sole and absolute discretion. The Access Channels must be receivable by Subscribers without special expense, other than the expense required to receive Basic Service. Designated Access Providers have no obligation to provide a signal to Grantee in a digital format.
- IV. The Grantee will provide all PEG Channels on the Basic Service tier throughout the life of the Franchise, consistent with the requirements of federal law. If there is no Basic Service tier, Grantee will provide the PEG Channels at no additional charge to any Person who subscribes to the lowest general level of cable video programming service and otherwise in accordance with federal and state law. If channels are selected through a menu system that is under the control of Grantee, the PEG Channels will be displayed in the same manner as other channels. Grantor or its Designated Access Provider will be responsible for the costs associated with specific program listings for the PEG Channels on Cable System program guides and menus.
- V. Grantee will include up to 25 hours, at any given time, of high definition (HD) format Access programming on its video on-demand ("VOD") platform to be accessible free of charge to Cable Services Subscribers on the same basis as commercially offered VOD content. Grantee shall downconvert HD format Access programming to a standard definition format when necessary to provide VOD Access programming to Subscribers without access to HD format VOD programming. Grantee agrees to work in good faith with the Designated Access Providers to establish a mutually agreeable process for placing Access programming on the VOD platform, including but not limited to, an efficient online, electronic method for provision of HD format programming to Grantee including encoding specifications for programming format. Grantee shall include Access VOD program information in its VOD program guides. Designated Access Providers are responsible for selecting the Access programming and providing it to Grantee in a high definition (HD) format. Grantee and the Grantor recognize that future development of VOD technology may allow for the Designated Access Providers and Grantee to agree on a mutually acceptable alternative to including Access programming on Grantee's VOD platform and increasing the amount of Access programming available to Subscribers.
- VI. If Grantee modifies its Cable System in a manner that has the effect of requiring modifications to PEG facilities and equipment, in order to deliver PEG signals, Grantee will bear any cost that the Designated Access Providers must incur as a result, subject to applicable law. If, for example, Grantee requires high-definition signals, Grantee will bear the costs any Designated Access Providers incur to provide high-definition signals.

C. Support for Access Costs

- I. At any time during the Term of this Franchise once Grantee's cable system is operational, within one hundred twenty (120) days of written notice from the Grantor per Section 8.5.A.1, Grantee will pay a PEG Support fee in the amount of one dollar, (\$1.00) per subscriber per month, which

funds will be used in accordance with applicable federal law. Nothing in this Section 8.5 will be viewed as a waiver of Grantor's rights to use the funds provided for any lawful purpose permitted under applicable federal law. Grantee will make such payments in conjunction with and at the same frequency as franchise fees. **[NOTE: CITIES SHOULD CROSS REFERENCE OTHER CABLE FRANCHISES THEY HAVE AND OTHER CABLE FRANCHISES IN THE AREA WHEN DECIDING THE PEG SUPPORT FEE IN THIS SUBSECTION.]**

- a. PEG support payments to the Grantor will be accompanied by such information allowing the Grantor to easily verify compliance with this Section, including monthly subscriber numbers, and if needed or requested any such information Grantor reasonably deems required to verify compliance. Grantee will provide information to the Grantor within 30 (thirty) days without any cost to Grantor.
 - b. Both parties agree that Support for Access Costs is a material provision and subject to the terms specified in Section 3.5.B.
- II. Both parties agree that the PEG Access fee and the Additional Financial Support for PEG Access, if allowed by law, may be passed through to Subscribers. However, Grantee will not reduce or alter payments to the Grantor based on passed through amounts or amounts collected from subscribers. Payments will be calculated on the number of subscribers multiplied by the amount per subscriber, without reduction or off-set of any kind.
 - III. If at any time after twelve (12) months of the PEG fee being paid to Grantor, the Grantor fails to operate the PEG Access Channel, Grantee may, after providing at least one hundred twenty (120) days written notice to Grantor, discontinue the PEG Access fee unless the Grantor operates the PEG Access channel within the one hundred twenty (120) day notice period.
 - IV. Grantor agrees that the sections of any network infrastructure developed using PEG support funds that are used to transport PEG programming shall be readily identifiable, for their exclusive use for internal, institutional purposes only and shall not be made available to any other public or private entity.
 - V. Should Grantee continue to provide Cable Services after the expiration of this Franchise and Grantor has activated a PEG channel, Grantee will continue to provide support of PEG Access as detailed in this Section 8.5.

D. Additional Financial Support for PEG Access

[NOTE: THIS SECTION WAS CREATED AND INTENDED FOR A CITY WHO DOES NOT HAVE A PEG STATION BUT NEEDS SUPPORT IN THE CREATION OF ONE.]

The commitments outlined in Subsections I-II below will be contingent upon Grantor's decision to initiate PEG Channel(s) with all wireline cable providers in the community and Grantee's cable system is operational. If that happens, then Grantor will provide Grantee with written notice of its intent to activate PEG channel(s), consistent with the terms of this Franchise. Once that occurs, Grantee will pay the below obligations no later than One Hundred Twenty (120) days from the time of notice by Grantor.

After the Grantor has established the operation of a PEG access channel, if the Grantor fails to provide six (6) months of continuous broadcasting of the PEG Access channel, Grantee may discontinue paying all Support in this Subsection D upon one hundred twenty (120) days written notice.

- I. Grantee will pay a one-time fee in the amount of _____ Dollars (\$ _____) to contribute towards legally allowable PEG costs.
- II. Grantee will pay a quarterly fee in the amount of \$_____ per quarter. The payments will be remitted on the same schedule and subject to the same conditions as the franchise fees. Grantor's access channel(s) will air sponsorship announcements over the Access channel(s). Sponsorship announcements will not be produced or edited by Grantor. However, the announcements must be approved by Grantor and will conform to the FCC rules and regulations

for noncommercial use.

- III. Grantee will pay its pro rata share of studio/office space for any PEG Access Provider(s) as long as such space is not located within a building owned by Grantee. Such cost(s) will be equally shared among all wireline cable operators with a valid franchise.

E. Access Support not Franchise Fees

So long as PEG support funds are used in a manner consistent with applicable federal law, the Grantee agrees that financial support for Access arising from or relating to the obligations set forth in Section 8.5 will in no way modify or otherwise affect the Grantee's obligations to pay Franchise fees to the Grantor. To the extent not prohibited under federal law, the Grantee agrees that although the sum of Franchise fees and the payments set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, the additional PEG support commitments in this Section 8.5, will not be offset or otherwise credited in any way against Franchise fee payments under this Franchise.

F. Change in Technology

- I. In the event Grantee makes any changes in the Cable System and related equipment and facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access Programming, Grantee will, at Grantee's sole expense take necessary technical steps or provide necessary equipment at its facilities to ensure that the capabilities of Access Providers or Access Programmers are not diminished, or adversely affected by such change. Grantor or its Designated Access providers will be responsible for acquisition of necessary equipment at their respective facilities.
- II. In accordance with this Section 8.5, the Grantee, in the event of connecting PEG for Grantor, will be required to provide connections as described herein to its headend wherever the headend may be located or relocated. Without limiting the foregoing, in the event Grantee alters its Cable System (including by relocating its headend), Grantee will be responsible for replacing or restoring all connections at Grantee's sole cost consistent with applicable law so that all the functions and capacity remain available, operate reliably, and satisfy all applicable technical standards without additional cost to the Grantor or Designated Access

G. Technical Quality

- I. Grantee will maintain all upstream and downstream Access Channels and interconnections of Access Channels at the same or better level of technical quality and reliability provided for its Residential Network and required by this Franchise and all other applicable laws, rules, and regulations for Residential Subscriber Channels.
- II. Grantee will have no responsibility for the technical production quality of the Access Programming distributed on the Access Channels.
- III. The Grantee will not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Grantor, its Designated Access provider or other duly appointed designee.

8.6 Complimentary Cable Service to Public Buildings/Schools

The Parties agree that at the effective date of this Franchise Grantee will not have service available to residential, commercial, schools, or government agencies; due to the time needed for Grantee to build out its cable system. Consequently, the Parties agree that complimentary cable service accounts are not an immediate condition of this Franchise. **[NOTE: THIS SECTION IS FOR A FRANCHISE FOR A NEW ENTRANT. IF YOU ARE RENEWING A FRANCHISE CROSS REFERENCE PREVIOUS FRANCHISE PROVISIONS.]**

A. The Parties agree that when Grantee's Cable System is operational, and to the extent not prohibited by applicable law, Grantee will provide, at no cost to Grantor: One (1) outlet of basic and digital economy tier (or its functional equivalent) programming and any equipment necessary to receive such services, to each and every public use building, as designated by Grantor, including all Emergency Operation Centers, Libraries and Public Schools, passed by Grantee's system. Those portions of buildings that house prison and/or jail populations will be excluded from receiving complimentary services.

B. Grantee and Grantor agree that should Grantee, as provided for by applicable law, be required to deduct the value of such services from franchise fees, such value shall be calculated at Grantee's marginal cost for providing such services or, in the alternative Grantor can elect to pay for services at their "marginal cost" value:

- I. Grantee will give Grantor one hundred twenty (120) days' notice of its intent to off-set franchise fees by the marginal cost value of such services. Grantor may opt to keep services and accept the off-set, pay for the services, or cancel services.
- II. Grantee and Grantor hereby agree, acknowledge and understand that services will be valued at the marginal cost to the Grantee. **[NOTE: THE SIXTH CIRCUIT DECISION FINDS THAT NON-MONETARY, CABLE-RELATED FRANCHISE PROVISIONS SHOULD BE VALUED AT THE MARGINAL COST TO THE CABLE PROVIDER, NOT FAIR MARKET VALUE.]**

[Alternative language for Section 8.6.B.II, "Grantee and Grantor agree that services will be valued at the lowest rate available. For illustration and not limitation the lowest rate could be the bulk rate, municipal price, or other.]

9. CUSTOMER SERVICE STANDARDS

[NOTE: SOME OF THE PROVISIONS WITHIN THIS SECTION MAY BE CONSIDERED MATERIAL PROVISIONS. IF THEY ARE MATERIAL PROVISIONS, DOUBLE CHECK OTHER CABLE FRANCHISES AND MAKE CONSISTENT.]

9.1 Customer Service Standards

Grantee will comply with all applicable customer service standards established in the Cable Act or federal rules and regulations, including but not limited to FCC Rules and Regulations, Part 76, Subpart H and Subpart T, and Grantor has the authority to enforce such standards. Nothing in this Section will limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations.

9.2 Customer Service and Telephone Responsiveness

A.1 Customer Service and Telephone Availability **[NOTE: NOT ALL CABLE PROVIDERS WILL HAVE A STORE WITHIN CITY LIMITS. IN THIS CASE A CITY MAY CHOOSE TO NEGOTIATE A STORE WITHIN X MILES OF THE CITY.]**

A.1.I Grantee will maintain a store within City limits. The office must be staffed forty (40) hours per week, and Grantee will be able to respond to subscribers and the public not less than forty (40) hours per week during normal business hours, plus at least eight (8) weekend or evening hours.

- a. During the hours the office is open, Grantee's staff will be able to respond in at least, but not limited to
 - i. Accept payments (in cash, by check, or card),

- ii. Exchange or accept returned equipment, and
- iii. Respond to inquiries.

A.2 *Alternate Language for Small Cities*: Customer Service and Telephone Availability

[NOTE: NOT ALL CABLE PROVIDERS WILL HAVE A STORE WITHIN CITY LIMITS. IN THIS CASE A CITY MAY CHOOSE TO NEGOTIATE A STORE WITHIN X MILES OF THE CITY.]

A.2.I Grantee will maintain a store within City limits.

- a. During the hours the office is open, Grantee's staff will be able to respond in at least, but not limited to
 - i. Accept payments (in cash, by check, or card),
 - ii. Exchange or accept returned equipment, and
 - iii. Respond to inquiries.

A.2.II Grantee will maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Grantee 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.

A.2.III Grantee 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.

[NOTE: DEPENDING ON WHICH LANGUAGE ABOVE IS SELECTED, REVISE NUMERALS ACCORDINGLY]

- II. Grantee will maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Grantee 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 will 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. Grantee representatives will identify themselves by name when answering this number.
- III. Grantee 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.
- IV. As described in 9.2.A.II, calls received by the Grantee will be answered within thirty (30) seconds during Normal Business Hours. The Grantee will meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Franchise Area Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard will include all calls received by the Grantee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after thirty (30) seconds of call waiting. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds.
- V. Callers to the Grantee will receive a busy signal no more than three (3%) percent of the time during any calendar quarter.
- VI. Upon written request during a given calendar quarter, forty-five (45) days following the end of each quarter, the Grantee will report to Grantor, the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:
 - a. Percentage of calls answered within thirty (30) seconds as set forth in 9.2.A.IV; and
 - b. Percentage of time Subscribers received a busy signal when calling the Grantee's service center as set forth in Section 9.2.A.V.

At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the Term of this Franchise. Grantee will notify Grantor of such a change not less than thirty (30) days in advance.

A. Installations and Service Appointments

- I. All installations will be in accordance with FCC rules and applicable law, including but not limited to, appropriate grounding/bonding, 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 Grantee-supplied equipment and Cable Service.
- II. The standard installation will be performed within seven (7) business days of Subscriber request. Grantee will 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 Subscriber outside of the seven (7) day period.
- III. Upon written request during a given calendar quarter, Grantee will provide Grantor with a report 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 for that quarter. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request.
- IV. At Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the Term of this Franchise. Grantee will notify Grantor of such a change not less than thirty (30) days in advance.
- V. Grantee 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 Grantee's discretion, Grantee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.
- VI. Grantee must provide for the pickup or drop off of equipment free of charge in one of the following manners: (i) by having a Grantee representative go to the Subscriber's residence, (ii) by using a pre-paid mailer. If requested by a mobility-limited Subscriber, the Grantee will arrange for pickup and/or replacement of converters or other Grantee equipment at Subscriber's address, at no cost to Subscriber, or by a satisfactory equivalent.

B. Service Interruptions and Outages

Grantee will promptly notify Grantor of any Significant Outage of the Cable Service.

- I. Grantee will 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, Grantee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after Grantor and each affected Subscriber in the Service Area have been given at least three (3) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Grantee may perform modifications, repairs and upgrades to the System preferably between 12:01 a.m. and 6 a.m., so as to minimize service disruption to Customers.
- II. Grantee 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.
- III. Grantee must respond to a call from a Subscriber regarding a service interruption or other service problems within the following time frames:

- a. Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about service interruptions in the Service Area.
 - b. Grantee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or Grantor of a Cable Service problem.
- IV. Grantee will complete Service Calls within seventy-two (72) hours of the time Grantee 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.
 - V. Grantee will meet the standard in this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.
 - VI. Grantee will provide Grantor with a report within forty-five (45) days following the end of each calendar quarter, 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 Grantor for review upon reasonable request.
 - VII. Grantee will 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 will 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 Grantee to verify the problem if requested by Grantee. 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.
 - VIII. If a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Grantee will automatically issue a 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 Grantee, provided such determination is non-discriminatory. Such credit will be reflected on Subscriber billing statements within the next available billing cycle following the outage. **[NOTE: THIS IS AN AUTOMATIC CREDIT TO CUSTOMERS DURING SIGNIFICANT OUTAGES. CITIES MAY SEE LANGUAGE THAT REQUIRES SUBSCRIBERS TO REQUEST CREDIT AFTER AN OUTAGE.]**

C. Subscriber Complaints Referred by Grantor

Grantee will begin investigating Subscriber complaints referred by Grantor within twenty-four (24) hours. Grantee will notify Grantor of those matters that require more than seventy-two (72) hours to resolve, but Grantee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. Grantor may require Grantee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Grantee will inform Grantor 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 Grantee will perform those actions, which, in the normal course of business, are necessary to investigate the Subscriber’s complaint and advise the Subscriber of the results of that investigation.

D. Billing

- I. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills will clearly delineate activity during the billing period, including optional

charges, rebates, credits, and aggregate late charges. Grantee will without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes, PEG fees, and/or other governmental-imposed fees. Grantee will maintain records of the date and place of mailing of bills. Grantee will provide an example of subscribers' invoice monthly to Grantor. Confidential information may be redacted.

- II. Grantee will provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Grantee.
- III. Grantee will provide 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 Grantor.

F. Deposits, Refunds and Credits

- I. Refund checks to subscribers 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).
- II. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle. Such approval and processing will not be unreasonably delayed.
- III. Bills will be considered paid when appropriate payment is received by Grantee or its authorized representative. Appropriate time considerations will be included in Grantee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.
 - a. If subscribers accidentally remit a payment to Grantor, Grantor will notify Grantee and forward payment to Grantee. If such notice is received by Grantor before the due date, such payment will be considered on time.

G. Rates, Fees and Charges

- I. Grantee will 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 Grantee 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 Grantee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Grantee's equipment (for example, a dog chew).
- II. Grantee will 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.

H. Disconnection/Denial of Service

- I. 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 will be automatically issued to the Subscriber.
- II. Nothing in these standards will limit the right of Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Grantee's equipment, abusive and/or threatening behavior toward Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.
- III. 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. Equipment charges after the termination of service may only be applied with separate mailed notice to the former Subscriber. Equipment charges are capped at the cost of the equipment. No period of notice prior to requested termination of service can be required of Subscribers by Grantee. No charge will 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 Grantee 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 will not

be responsible for Cable Services received after the day following the date the disconnect request is received by Grantee. For purposes of this subsection, the term “disconnect” will include Subscribers who elect to cease receiving Cable Service from Grantee and to receive Cable Service or other multi-channel video service from another Person or entity.

- IV. If by reason of force majeure the Grantee is unable to provide service to the subscriber, or the subscriber is unable to utilize wireline cable services, charges for such services will be discontinued at the time of the force majeure event.

I. Communications with Subscribers

- I. Grantee will comply with federal regulations including, but not limited to:

- a. 47 C.F.R. §76.952(a). Providing Grantor’s information to Subscribers.
- b. 47 U.S.C. §551. Privacy rights of Subscribers.

- II. Grantee will provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers or in hard copy format to Grantor, at any time upon request, and, subject to this Section 9, at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Grantee:

- a. Products and Cable Service offered;
- b. Prices and options for Cable Services and condition of subscription to Cable Services. Prices will include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Grantee related to Cable Service;
- c. Installation and maintenance policies including, when applicable, information regarding the Subscriber’s in-home wiring rights during the period Cable Service is being provided;
- d. Channel positions of Cable Services offered on the Cable System;
- e. Complaint procedures, including the name, address, and telephone number of Grantor, but with a notice advising the Subscriber to initially contact Grantee about all complaints and questions;
- f. Procedures for requesting Cable Service credit;
- g. The availability of a parental control device;
- h. Grantee practices and procedures for protecting against invasion of privacy; and
- i. The address and telephone number of Grantee’s office to which complaints may be reported.

All information in Section 9.2.I.II shall be readily available on Grantee’s public website and a link to the information on Subscriber’s monthly billing statement.

- III. All Grantee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Grantee will wear a clearly visible identification card bearing their name and photograph. Grantee will make reasonable efforts to account for all identification cards at all times. Every service vehicle of Grantee and its contractors or subcontractors will be clearly identified as such to the public. Specifically, Grantee vehicles will have Grantee’s logo plainly visible. The vehicles of those contractors and subcontractors working for Grantee will have the contractor’s / subcontractor’s name plus markings (such as a magnetic door sign) indicating they are under contract to Grantee.
- IV. All notices identified in this Section to subscribers will be by either:
- a. 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
 - b. A separate electronic notification.
- V. Grantee will provide reasonable notice to Subscribers and Grantor 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 Grantee. If the

change is not within Grantee's control, Grantee will provide an explanation to Grantor of the reason and expected length of delay. Grantee will provide a copy of the notice to Grantor including how and where the notice was given to Subscribers.

- VI. Notices of changes in rates will indicate the Cable Service new rates and old rates, if applicable.
- VII. Notices of changes of Cable Services and/or channel locations will 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.
- VIII. Every notice of termination of Cable Service will include the following information:
 - a. The name and address of the Subscriber whose account is delinquent;
 - b. The amount of the delinquency for all services billed;
 - c. The date by which payment is required in order to avoid termination of Cable Service; and
 - d. The telephone number for Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.

10. GENERAL FINANCIAL AND INSURANCE PROVISIONS

10.1 Compensation

- A. Franchise Fee [**NOTE: FEDERAL LAW CAPS FRANCHISE FEES AT FIVE PERCENT OF GROSS REVENUES, THOUGH SOME CITIES MAY CHOOSE TO CHARGE LESS THAN THE FIVE PERCENT CAP. THEREFORE, CITIES SHOULD CROSS REFERENCE OTHER CABLE FRANCHISES BEFORE DETERMINING THE FRANCHISE FEE. CABLE OPERATORS SHOULD BE TREATED SIMILARLY IF THEY ARE SIMILARLY SITUATED.**]

As compensation for the Franchise to be granted, and in consideration of permission to use the Streets and Public Ways of the Grantor for the construction, operation, and maintenance of a Cable System providing Cable Services, within the Franchise Area and to defray the costs of Franchise regulation, the Grantee will pay to Grantor an amount equal to _____ percent (___%) of Gross Revenues. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below or above the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and will pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to limit a higher or lower permissible amount, then Grantee will pay the higher or lower amount up to the maximum allowable by law.

Grantor and Grantee agree that the sum of Franchise fee and additional commitment set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenue in any twelve (12) month period. If allowed under Federal Law and with written 60 (sixty) day notice to Grantor, Grantee may offset or deduct the amount allowed by law from Grantee's payment of franchise fees. Grantee's notice to Grantor will provide Grantor detailed and specific information on amounts claimed as credits or offsets.

Within thirty (30) days of a request from Grantor, Grantee will make available an up-to-date list of all Affiliates receiving Gross Revenues as such revenues are defined in this Franchise.

- B. Bundling
To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services, as defined herein, and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue

on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components at the published standalone retail rate card pricing before discounts are applied. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review, approve and/or modify Grantee's calculations.

Example: Prior to any bundle-related price reduction, if Cable Service is valued at 50% of the total of the services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than fifty percent (50%) of the price of the bundled service total.

C. Payment of Franchise Fees

- I. Payments due under this Section will be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment will be due and payable no later than thirty (30) days after the dates listed in the previous sentence. At the time of quarterly payment, the Grantee will submit a report to the Grantor, verified by an officer of Grantee, which will contain an accurate statement of all Gross Revenues related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments. Grantee will provide additional information requested by Grantor within 15 days, if so requested by Grantor, at no cost to Grantor.
- II. No acceptance of any payment will be construed as accord that the amount paid is in fact the correct amount, nor will such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid will be subject to audit and re-computation by Grantor.
- III. Payments received after the due date specified in this Section 10.1.C will be subject to Late Payment Charges and Penalties as specified in [INSERT REFERENCE TO APPLICABLE CODE OR ORDINANCE], heretofore or hereafter amended.

[ALTERNATIVE LANGUAGE IF NO APPLICABLE ORDINANCE]: Payments received after the due date specified in this Section 10.1.C will be subject to Late Payment Charges and Penalties as follows:

- a. *First occurrence during any one calendar year; Ten percent (10%) of the amount owed, or _____ dollars (\$____), whichever is greater.*
- b. *Second occurrence during any one calendar year; Fifteen percent (15%) of the amount owed, or _____ dollars (\$____), whichever is greater.*
- c. *Third occurrence during any one calendar year; Twenty percent (20%) of the amount owed, or _____ dollars (\$____), whichever is greater.*
- d. *Fourth occurrence during any one calendar year; Twenty-five percent (25%) of the amount owed, or _____ dollars (\$____), whichever is greater.*

If the City determines that the nonpayment of any remittance due under this section is due to fraud or intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars (\$500.00), whichever is greater, will be added thereto in addition to other penalties stated in section 10.

In addition to the penalties imposed, any person who fails to remit any fee when due as provided in Section 10 will pay a late payment charge at the rate of 1.5% per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the City.

Every penalty imposed, and such a late payment charge as accrues under the provision of this Section, will be merged with, and become part of, the fee required to be paid.

The Grantor or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and late payment charges due under this Section.]

- IV. Payment of the franchise fees under this Franchise will not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee in connection with the operation of the Cable System that may be imposed by Grantor.

10.2 Faithful Performance Bond [NOTE: SMALLER CITIES MAY WANT TO REQUIRE A HIGHER BOND THAN LARGER CITIES TO ENSURE THEIR COMMUNITY NEEDS ARE BEING MET BY THE REQUIREMENTS WITHIN THE FRANCHISE, ESPECIALLY IF THERE IS LESS COMPETITION IN YOUR AREA.]

- A. Within sixty (60) days after the Effective Date of this Franchise, in addition to any other bonds as required by the Grantor, the Grantee will furnish proof of the posting of a faithful performance bond running to the Grantor, with good and sufficient surety approved by the Grantor in the penal sum of _____ thousand dollars (\$ _____), conditioned that the Grantee will well and truly observe, fulfill, and perform each term and condition of this Franchise. Such bond will be in a form acceptable to the Grantor and maintained by the Grantee throughout the Term of this Franchise.
- B. Grantee will pay all premiums charged for any bond required under Section 10.2.A, and unless the Grantor specifically directs otherwise, will keep the same in full force and effect at all times through the later of either:
- I. The remaining Term of this Franchise; or
 - II. If required by the Grantor, the removal of all of Grantee's system installed in Grantor's Streets and Public Ways.
- C. The bond will contain a provision that it will not be terminated or otherwise allowed to expire without thirty (30) days written notice first given to the Grantor. The bond will be subject to the approval of the Grantor as to its adequacy under the requirements of Section 10.2. During the term of the bond, Grantee will file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond will not expire or be terminated without thirty (30) days prior written notice to the Grantor.
- D. In a form approved by the Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance will give the Grantor substantially the same rights and guarantees provided by a faithful performance bond.

10.3 Indemnification

- A. The Grantee agrees and covenants to defend, indemnify and hold harmless the Grantor, and its officers, agents, employees and representatives, from and against any and all claims, damages, loss, liability, cost or expense, including expert witness and other consultants, court and appeal costs and penalties, including but not limited to attorney fees or expenses, including without limitation, copyright infringement, defamation and all other damages, arising out of any reason of any

construction, excavation, operation, maintenance, reconstruction or any other act done by the Grantee within the Franchise Area, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, except to the extent such claims, damages and penalties are caused by the negligent or grossly negligent acts or omissions of the Grantor, its officers, agents and employees. Grantor will give Grantee prompt written notice of any claim which Grantee will defend with counsel of its own choosing and no settlements or compromise of any such claim will be done without the prior written approval of the Grantor. Grantee will consult and cooperate with the Grantor while conducting its defense of the Grantor and the Grantor will fully cooperate with Grantee and Grantee's counsel. Nothing in this Section 10.3 will be deemed to limit the Grantors' option to hire its own counsel.

- B. If the Grantee fails to defend as required in Section 10.3.A., then the Grantee agrees to and will pay all expenses incurred by Grantor, and its officers, agents, employees, and representatives, in defending itself with regard to all claims, damages and penalties mentioned in Section 10.3.A. These expenses will include all out-of-pocket expenses, such as attorney fees, witness fees and costs at trial and appeal, and will also include the value of any services rendered by any employees or contractors of the Grantor.

10.4 Liability Insurance [NOTE: CITIES SHOULD WORK WITH THEIR INSURER WHILE DRAFTING APPROPRIATE LANGUAGE FOR THIS SECTION OF THE FRANCHISE.]

- A. The Grantee will maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows.
- B. The insurance will provide coverage at all times for not less than \$2,000,000 for personal injury to each person, \$2,000,000 aggregate for each occurrence, and \$1,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence, plus costs of defense. The insurance will be equal to or better than commercial general liability insurance.

The minimum amounts of insurance set out in this Section 10.4.B will be subject to change from time to time to the extent necessary to provide coverage at least as great as the limits on the Grantor's liability under the Oregon Tort Claims Act.

The evidence of coverage for Workers' Compensation will show that it includes State of Oregon statutory limits, and employer's liability limits of at least \$2,000,000.

Any insurance carrier will have an A.M. Best rating of "A" or better, or a Best Financial Performance Rating of "7" or better and be authorized to do business in the State of Oregon.

- C. The insurance will be without prejudice to coverage otherwise existing and will name as additional insureds the Grantor and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance will protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

- D. The insurance will provide that the insurance will not be canceled or materially altered so as to be out of compliance with the requirements of this Section 10.4 without thirty (30) days written notice first being given to the Grantor. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 10.4 during the Term of this Franchise, Grantee will provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.
- E. Grantee will maintain on file with the Grantor a certificate of insurance certifying the coverage required above, which certificate will be subject to the approval of the Grantor as to the adequacy of the certificate and of the insurance certified under the requirements of this Section 10.4.

The certificate will show that the general liability portion of the insurance includes:

- I. Broad form property damage;
 - II. Products and completed operations;
 - III. Explosion, collapse, and underground exposures;
 - IV. Contractual liability; and
 - V. Owners and contractors protective coverage.
- F. Failure to maintain adequate insurance as required under this Section 10.4 will be cause for immediate termination of this Franchise by the Grantor subject to Grantee's right to cure as provided in this Agreement.
 - G. The Grantee will also indemnify, defend and hold harmless the Grantor and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section arising from operations of the Grantee within the Franchise area.

11. RIGHTS RESERVED TO GRANTOR

11.1 Grantor Acquisition of the Cable System

The parties will be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Franchise diminish the rights of either the Grantor or the Grantee under Section 627 of the Act, and any provision of this Franchise that purports to diminish such rights will be deemed superseded by the Act.

11.2 Right to Perform Franchise Audit or Review [NOTE: JURISDICTIONS SHOULD COMMUNICATE WITH OTHER JURISDICTIONS IF THEY ARE EXPERIENCING ISSUES WITH FRANCHISEES. IF THERE ARE MULTIPLE JURISDICTIONS WITH ISSUES, CITIES SHOULD CONSIDER DOING A JOINT AUDIT OF A SPECIFIC FRANCHISEE. THE LANGUAGE IN SECTION 11.2 ALLOWS FOR JOINT AUDITS.]

The Grantor will have the right to perform, or cause to have performed, on its own or with other jurisdictions, a formal and/or informal audit or review of the Grantee's books and records and, for the specific purposes of Franchise enforcement effort, the books and records of any parent or affiliate company, for the purpose of determining the Gross Revenues of the Grantee generated in any manner through the operation of the Cable System under this Franchise and the accuracy of amounts paid as franchise and PEG fees to the Grantor by the Grantee for the provision of Cable Services within the Franchise Area. The cost of any such audit will be borne by the Grantor, except that if through the audit or review it is established that the Grantee has made underpayment of two percent (2%) or more in fees that are required by this Franchise, then the Grantee will, within thirty (30) days of being requested to do

so by the Grantor, reimburse the Grantor for all expenses of performing the audit or review.

Grantee will provide, at Grantee's sole expense any records requested by the Grantor for the purposes of an audit or review.

Nothing in this Section implies or will be interpreted to limit or waive any rights of the Grantor or its legal recourse through the courts to obtain records necessary to the enforcement of this franchise.

11.3 Right of Inspection of Construction

The Grantor will have the rights granted in Section 6.3 of this Franchise.

11.4 Intervention

The Grantee will not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is a party which may have a direct adverse effect upon the construction, upgrade, maintenance, or operation of the Cable System.

11.5 Right to Require Removal of Property

At the expiration of the Term of this Franchise, providing no renewal is granted, or upon its revocation, as provided for herein, and subject to Grantee's rights under Section 626 of the Cable Act, the Grantor will have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the Cable System from all Streets and Public Ways within the Franchise Area. If the Grantee fails to do so within one hundred twenty (120) days of Grantor's request, or within a longer period of time as agreed to in writing by both parties, then the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, will be a lien upon all facilities and property of the Grantee effective upon placement in the lien books of the Grantor. Notwithstanding the other provisions of this section, the Grantee, by written notice to the Grantor, may request that Grantor allow the Cable System to remain in place. Grantor may deny Grantee's request and require Grantee to remove the above ground Cable System facilities from the Streets and Public Ways or otherwise modify the Cable System to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest.

11.6 Inspection of Facilities

Grantor may inspect any of the Grantee's facilities and equipment to confirm compliance with this Franchise at any time.

12. RIGHTS OF INDIVIDUALS PROTECTED

12.1 Discriminatory Practices Prohibited

- A. The Grantee will not deny service, deny access, or otherwise unlawfully discriminate against Subscribers or persons on the basis of race, color, religion, national origin, sexual orientation, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee will comply at all times with all applicable federal, state, or local laws, rules and regulations relating to nondiscrimination.
- B. The Grantee will use best efforts to assure maximum practical availability of Grantee's services and facilities to all Subscribers, regardless of disability, including the provision of a remote-control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.

- C. For hearing impaired customers, the Grantee, upon request, will provide information concerning the cost and availability of equipment to facilitate the reception of basic service for the hearing impaired. In addition, the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- D. Upon request by a Subscriber or potential Subscriber, the Grantee will make a reasonable effort to provide information required under this franchise, or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- E. Nothing in this Section 12.1 will be construed to prohibit: (1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or (2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged residents.

12.2 Unauthorized Monitoring or Cable Tapping Prohibited

The Grantee will not, nor will Grantee allow any other person, agency, or entity to tap, or arrange for the tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose whatsoever, without the Subscriber's written consent or a valid court order or a valid request from a law enforcement agency permitting the tapping.

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

12.3 Privacy and Other Rights

The Grantee and the Grantor will maintain constant vigilance with regard to possible abuses of the right of privacy and any other civil right of any Subscriber or Person resulting from any device or signal associated with Cable Service. The Grantee will not utilize two-way communication capability of the Cable System for unauthorized or illegal Subscriber surveillance of any kind.

12.4 Permission of Property Owner Required

No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee will be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved except where there is an existing utility easement or other easement reserved by plat or other conveyance. If such permission or easement is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee will remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee will perform all installations and removals in a workmanlike manner and will be responsible for any damage to residences or other property caused by the installation.

12.5 Sale of Subscriber Lists and Personalized Data Prohibited

The Grantee is subject to 47 U.S.C. Section 551 (Section 631 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.

13. TERMINATION AND EXPIRATION

13.1 Grantor's Rights in Lieu of Revocation

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

The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. § 555a, as may be amended, is applicable to this Franchise.

13.2 Expiration

Upon expiration of this Franchise, the parties will abide by the renewal provisions of the Cable Act, as amended from time to time.

13.3 Continuity of Service Mandatory

It will be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the Cable System the Grantee will make its best effort to ensure that all Subscribers receive continuous uninterrupted service.

14. OPERATION AND MAINTENANCE

14.1 Open Books and Records

The Grantor will have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time upon reasonable notice all records of the Grantee which relate to the operation of the Cable System, provision of Cable Service, or the Grantee's performance under this Franchise. Access to such records will be maintained or made available at no cost to the Grantor within the Franchise Area during normal business hours if maintained locally, or, if not available locally, provided within ten (10) days of notice from the Grantor requesting such records at an agreed upon location within the Franchise Area [*or within __ miles of the Franchise Area*]. Access to the aforementioned records will not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary information," nor on the basis that they contain trade secrets. To the extent allowed under Oregon law, the Grantor will protect proprietary information including trade secrets of the Grantee from disclosure.

The Grantee will also provide, upon request and reasonable notice, in the manner set forth in this Section the following information: (a) for the specific purpose of a bona fide audit or enforcement effort being conducted by the Grantor, the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this franchise; the true and entire cost of the maintenance, administration and operation of the cable system, including any operations or revenue generated from the cable system by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee from the provision of Cable Services within the Franchise Area; and (b) the amount collected by the Grantee from Subscribers of Cable Services of the Grantee's Cable System under this Franchise and other information necessary to verify compliance with this Franchise or other ordinances of the Grantor.

Within 45 (forty-five) days of written request, Grantee will provide to Grantor, at no cost to Grantor, any information that allows Grantor to easily and sufficiently verify compliance with all the requirements of this Franchise.

14.2 Communication with Regulatory Agencies

A list and copies of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any Affiliate, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Cable Services or the Cable System in the Franchise Area pursuant to this Franchise, will be submitted to the Grantor upon request. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting Cable Services or the Cable System within the Franchise Area, will be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an Affiliate.

14.3 Reports

- A. Quarterly Reports. Upon written request by the Grantor, within thirty (30) days after the end of each fiscal quarter, Grantee will provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee. Grantee will not be required to maintain any reports, regarding this Section 14.3.A, for a period longer than 24 months.
- B. Annual Report. No later than ninety (90) days following the end of the Grantee's fiscal year each year, Grantee will present, upon request, a written report to the Grantor which will include:
 - I. Financial reports that are normally prepared for the Grantee for the previous calendar year, including gross revenues from all sources, gross Subscriber revenues from each category of service, as well as an income statement, statement of cash flow, and a balance sheet.
 - II. A summary of the previous year's activities including, but not limited to, monthly Subscriber totals in each category and new services.

All financial reports required under this subsection will be presented to the Grantor accompanied by such notes and explanations as are required or requested by Grantor to **fully and easily understand the reports**. Such notes and explanations will include, but not be limited to, an explanation of any and all deductions made from Gross Revenues for the calculation of franchise fees to be paid to the Grantor. Upon Grantor's request, Grantee will provide any supplemental information to make reports understandable.

- C. Monitoring and Compliance Reports. Upon request written, the Grantee will provide a written report of technical performance tests for the Cable System required by applicable FCC rules and regulations as now or hereinafter constituted. In addition, the Grantee will upon request provide reports of the test and compliance procedures established by this Franchise, Grantee will not be required to maintain any reports, regarding this Section 14.3.C, for a period longer than twenty-four (24) months.
- D. All reports and records required under this or any other Section will be furnished to Grantor at the sole expense of Grantee.

14.4 Safety

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

- B. The Grantee will install and maintain its wires, cable, fixtures, and other equipment, including the drop to the Subscriber's premise, in accordance with the requirements of the National Electrical Safety Code, American with Disabilities Act, industry standards, applicable local standards and in such manner that they will not interfere with the installations of any public utility or use of the Right-of-way
- C. All lines, equipment and connections in, over, under, and upon either the Streets and Public Ways of Grantor or private property within boundaries of Grantor, wherever situated or located, will at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

15. MISCELLANEOUS PROVISIONS

15.1 Compliance with Laws

The Grantee will comply with all federal and state laws and regulations, including regulations, rules and orders of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the Term of this Franchise. **[ADDITIONAL OPTIONAL LANGUAGE: *If, any such federal or state laws, rules or regulations; or ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established be in conflict or interfere with the existing rights of the Grantee or Grantor under this Franchise, the City Council shall provide a final interpretation.*]**

15.2 Severability and Preemption

Notwithstanding the provisions of Section 15.7 below, if any section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Franchise is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Franchise will not be affected thereby but will be deemed as a separate, distinct and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Franchise will be valid and enforceable to the fullest extent permitted by law.

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision will be read to be preempted 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 will thereupon return to full force and effect, and will thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments to this Franchise negotiated pursuant to this Section as a result of such provision being preempted will no longer be of any force or effect.

15.3 Captions

The captions to Sections throughout this Franchise are intended solely to facilitate reading and reference to the Sections and provisions contained herein. Such captions will not affect the meaning or interpretation of this Franchise.

15.4 No Recourse Against the Grantor

Grantee's recourse against the Grantor, its officers, agents and employees, for any claim arising from any provision or requirement of this Franchise, will be limited as prescribed by applicable laws, rules and

regulations as in effect from time to time including without limitation the restrictions set forth in 47 USC & 555a, the Local Government Antitrust Immunity Act and sovereign immunity. Except as provided under applicable law, the Grantee will have no recourse whatsoever against the Grantor or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Franchise or any part thereof is determined to be invalid.

15.5 Nonenforcement by Grantor

The Grantee will not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the Grantor to enforce prompt compliance.

15.6 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee will not be deemed in violation or default during the continuance of such inability. The term “force majeure” as used herein will include the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee’s facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and similar occurrences outside the control of the Grantee. The Grantee agrees, however, to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise.

15.7 Entire Agreement

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

15.8 Consent

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this Franchise, such consent or approval will not be unreasonably withheld.

15.9 Notices and Time Limit for Grantee Communications

Grantee will provide any written communication required by this Franchise within thirty (30) days of being requested to do so by the Grantor, in each case in which no other specific minimum time limit for a communication is identified in the Franchise.

15.10 Consistency of Franchise with Cable Act

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Act.

15.11 Notice

Any notice provided for under this Franchise will be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

If to the Grantor: City of _____

If to the Grantee: _____

15.12 Public Disclosure

Subject to the Oregon Public Records Law, whenever pursuant to this Franchise, Grantee will make available for inspection by the Grantor or submit to the Grantor reports containing information considered confidential and/or proprietary by the Grantee, the Grantor will not disclose or release such reports or information to the public without Grantee’s written consent, provided that each page of such report or information is clearly marked as confidential and/or proprietary.

15.13 Time is of the Essence

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time will be deemed to be of the essence.

15.14 Reservation of Rights

Notwithstanding any provision to the contrary, the parties reserve any and all rights at law or in equity regarding any enforcement proceeding or other matters hereunder.

Grantee accepts and ask Council's to adopt this franchise with the effective date of _____.

[INSERT GRANTEE’S LEGAL NAME]

SIGNATURE: _____

PRINT NAME: _____

TITLE: _____

DATE: _____

IN WITNESS WHEREOF, the City has executed this Franchise on the date set forth below and Grantee has executed this Franchise as required.

CONSIDERED and APPROVED this ____ day of _____, 20__.

CITY OF *****

By: _____

Title: _____