RESOLUTION NO. 963
CITY OF CANBY

A RESOLUTION APPROVING ASSIGNMENT OF A CABLE FRANCHISE FROM WILLAMETTE BROADBAND, LLC TO WAVEDIVISION VII, LLC

The City Council of the City of Canby resolves:

Section 1. Findings.

A. The City of Canby (City) and Willamette Broadband, LLC, a Delaware limited liability company, and an affiliate of WBB Communications, LLC, a Delaware limited liability company (collectively WB), are parties to a Cable Franchise Agreement passed April 8, 1999, and accepted May 4, 1999, as amended by an assignment with City Council's consent from North Willamette Telecom to Willamette Broadband, LLC in 2001 (collectively Franchise), pursuant to which the City granted a cable television franchise to construct, maintain and operate a cable television system throughout the City (System).

B. On June 22, 2007, WB entered an Asset Purchase Agreement (APA) in which WB agreed to sell and WaveDivision VII, LLC, a Washington limited liability company, doing business as Wave Broadband (collectively Wave) agreed to purchase substantially all of the assets of WB including the assignment to Wave of the System and the Franchise (Assignment). The Assignment will occur on the date of the closing of the transactions contemplated by the APA (Closing). Wave and WB anticipate Closing will occur on or about November 15, 2007.

C. Section 3.6 of the Franchise provides that neither a cable franchise nor a cable system may be transferred to another person without the approval of the City.

D. On July 11, 2007, WB and Wave submitted an application on FCC Form 394 (Application) in compliance with federal law and in accordance with the requirements of the Franchise and the laws of the City for the assignment of WB franchise to Wave. WB and Wave have requested that the City consent to the Assignment.

E. Wave and WB have agreed to enter into an Assignment of Cable Franchise Consent Agreement in substantially the form set forth as Exhibit A attached and made a part of this Resolution (Consent Agreement) that requires Wave to comply with the terms of the Franchise from and after Closing and to continue to operate the cable system in a manner that benefits residents of City.

Section 2. Qualifications. The Application demonstrates to the satisfaction of the City that Wave has the legal, technical, and financial qualifications to perform under the Franchise.

Section 3. Consent. The City Council accepts the Application and consents to the Assignment effective upon the Closing, subject to Wave and WB executing the Consent

Agreement. The City consent to this Assignment is not a waiver or release of any rights the City may have under the Franchise or any separate written agreement with WB for any act or omission arising or accruing prior to Closing.

Section 4. Conditions. The consent to the Assignment granted by this Resolution is effective only on the satisfaction of the following conditions:

a. Wave and WB must execute the Consent Agreement; and

b. the Closing must occur before January 31, 2008.

Section 5. Inter-Company Transfers and Financing-Related Actions. Wave may, without obtaining prior consent of the City from time to time: (a) assign or transfer its assets, including the Franchise, provided any assignment or transfer is to a parent or subsidiary of Wave or another entity under direct or indirect control of the parent of Wave; (b) restructure its debt or change the ownership interests among its equity participants or its affiliates; (c) pledge or grant a security interest in its assets, including but not limited to the Franchise, or the equity or other ownership interests in Wave to any lender to secure indebtedness.

Section 6. Compliance with City Requirements. The Franchise, the Consent Agreement and this Resolution were approved and adopted in accordance with all applicable notice and procedure requirements under all laws applicable to the City, and with all applicable notice requirements. They do not conflict with the ordinances, resolutions or other requirements of the City that are presently or previously in effect.

Section 7. Notice of Closing. Wave must notify the City in writing of the effective date of the Closing.

Section 8. Authorization. The Mayor and City Administrator are authorized to execute the Consent Agreement and to take any further action needed to implement the Consent Agreement.

Section 9. Effective Date. This Resolution takes effect immediately upon adoption.

Approved and adopted by the City Council this 7th day of November, 2007.

Melody Thompson
Mayor

ATTEST:

Kimberly Scheafer
City Recorder

EXHIBIT A TO RESOLUTION NO. 963
ASSIGNMENT OF CABLE FRANCHISE CONSENT AGREEMENT

This Assignment of Cable Franchise Consent Agreement (Agreement) is entered by Willamette Broadband LLC, a Delaware limited liability company, and an affiliate of WBB Communications, LLC, a Delaware limited liability company, (collectively WB), WaveDivision VII, LLC, a Washington limited liability company, doing business as Wave Broadband (Wave) and the City of Canby, an Oregon municipal corporation (City).

1. **Consent.** Subject to the terms and conditions of this Agreement, the City consents to the Assignment. Wave and WB each agree that the City acted on the Application in a timely manner under federal law.

2. **Reservation of Rights.** The City reserves all rights not expressly granted in this Agreement. In particular, and without limitation:

2.1. Except as permitted under the Franchise or this Agreement, no action or omission by the City at or before the execution of this Agreement, grants City consent to any future transfer of the Franchise or the System, or change in ownership or control of Wave.

2.2. As a result of the Assignment, the City does not waive any right to compliance by WB with the terms, conditions, requirements and obligations of the Franchise that arose or accrued prior to the Closing.

3. **Compliance with Franchise.**

3.1. Wave accepts, acknowledges, and agrees to be bound by all terms and conditions of the Franchise and to assume all the duties, liabilities and obligations of the franchisee that arise or accrue after the Closing. Wave further agrees that neither the Assignment nor City consent increase, diminish or otherwise effect Wave's commitments, duties, liabilities and obligations embodied in the Franchise, except as otherwise expressly provided by this Agreement. The foregoing obligations include the obligation under the Franchise for Wave to make its books and records available to the City for inspection in accordance with the terms of the Franchise.

3.2. Wave agrees to comply with all provisions of the Franchise and all provisions of the City Municipal Code and federal and state law to the maximum extent required by law.

3.3. The City is not aware of any breach or default under the Franchise, or any event that could become a default with the passage of time.

4. **Obligations of Wave and WB.** In consideration of City consent to the Assignment, Wave absolutely, irrevocably and unconditionally agrees that from the Closing and thereafter it will fully and faithfully perform all of the terms, covenants, conditions and

agreements contained in the Franchise subject to Applicable Law. For purposes of this Agreement, "Applicable Law" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction, judgment, decree or other order that has been issued, executed, entered and applicable to the City, either specifically or by reference to a class including the City, by any court of competent jurisdiction or other federal or state department, commission, board or agency. The City releases WB, effective upon the Closing, from all obligations and liabilities (including any guarantee or surety) under the Franchise after Closing.

5. Representations and Warranties.

5.1. Each party represents and warrants that:

A. It has investigated fully whether any benefit or advance will inure to it from the execution of this Agreement, and each party has determined that benefits will inure to it from this Agreement.

B. This Agreement is legal, valid and binding and enforceable in accordance with its terms.

C. It has full right, power and authority to execute and deliver this Agreement, and to perform its obligations, and all corporate or other action necessary to authorize the execution and delivery of this Agreement.

D. No approval, consent, exemption or other action, notice or filing with any governmental body or authority is required in connection with the execution, delivery, performance and enforcement of this Agreement.

5.2. Wave represents and warrants that:

A. Its audited financial statements for the 12 months ended December 31, 2006 delivered to the City as part of the Application are true and correct in all respects, and fairly present the financial position or results of operations, and no material adverse change has occurred in the financial condition of Wave since that date.

B. The Franchise is legal, valid and binding and enforceable in accordance with its terms, subject to Applicable Law.

C. Wave acknowledges and agrees that City consent to the Assignment is made in reliance upon the written information provided by Wave in the Application. The information concerning Wave in the Application is true and accurate, and omits no material information the absence of which would cause the information provided to be materially misleading.

D. At the time of execution of this Agreement Wave is duly organized, validly existing and in good standing under the laws of the state of Washington, and is qualified to do business within the State of Oregon.

5.3. The City represents and warrants that:

A. The Franchise was duly issued to WB, is legal, valid and binding and enforceable in accordance with its terms, subject to Applicable Law, and is in full force and effect.

B. Other than as set forth in this Agreement or the Resolution adopted by the City that incorporates this Agreement there have been no amendments or modifications to the Franchise.

C. It has knowledge of no defaults under the Franchise, and no event has occurred and is continuing that with notice or passage of time could constitute a default under the Franchise.

D. Upon the Closing, the duly authorized franchisee under the Franchise will be Wave.

6. **Renewal.** Except as specifically provided, this Agreement does not effect City authority to enforce the Franchise. This Agreement has no effect on City authority to review, conditionally approve or deny the renewal of the franchise granted to Wave. This includes City authority to review any noncompliance or violation of the Franchise by Wave after Closing or the failure to meet community needs by Wave after Closing, and to conditionally approve or deny a renewal based on any such failure, noncompliance or violation.

7. **Rates.** Wave agrees that the Assignment will not result in an increase in the rate for basic cable service. This does not effect rate increases made in the ordinary course of business in compliance with local, state and federal law that are not caused by the Assignment.

8. **PEG Access Financial Support and Uses of Funds.** Wave agrees that it will continue to make Periodic PEG Access Capital Payments to the extent provided in Section 6.5(c) of the Franchise and consistent with federal law. Wave agrees that the Periodic PEG Access Capital Payments (PEG Payments) are under the direction and control of the City, and may be used for PEG access purposes, including PEG access equipment (studio and portable production equipment, editing equipment and program playback equipment) or for renovation or construction of PEG access facilities. The City will exercise its sole discretion as to the allocation of such resources among and within the public, educational and governmental functions. Wave agrees that the PEG Payments will not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such obligations will not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Wave under this Agreement or (ii) part of the Franchise Fees to be paid to the City by Wave under this Agreement.

9. **Franchise Fees.** Wave agrees that it will properly calculate franchise fees in accordance with the Franchise and state and federal law.

10. Transfer Costs. Wave and WB agree to reimburse the City for its reasonable legal costs in reviewing the Application to verify the legal, technical and financial qualifications of Wave to perform under the Franchise, and to prepare the legal documents for approval of the transfer.

11. Enforcement. Any violation of this Agreement is a violation of the Franchise subject to the remedies provided by law or in equity. Any action to interpret or enforce any provision in this Agreement or the Franchise must be brought in a state or federal court of competent jurisdiction in Oregon. The parties agree to be subject to the jurisdiction of Oregon state and federal courts for such purposes. This Agreement is governed by the laws of the State of Oregon.

12. Authority. The persons executing this Agreement certify that they are authorized by the respective party to execute this Agreement and to bind that party.

13. Notices. All notices required or permitted under the Franchise must be delivered in the manner provided in the Franchise, except that the address for the Franchisee is changed to the following:

Wave Broadband
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attention: Steve Weed and Jim Penney

14. Insurance and Performance Guarantees. No later than 30 days after Closing, Wave must provide the City with (1) certificates of insurance and original endorsements evidencing the insurance coverage required under the Franchise, and (2) the performance bond required by the Franchise.

15. Effect on Franchise. This Agreement has no effect on the Franchise except as specifically provided in this Agreement.

16. Counterparts. This Agreement may be executed in several counterparts each of which when so executed is an original copy, and all together constitute on agreement binding on all parties, notwithstanding that all parties may not have signed the same counterpart.

17. Binding Agreement. This Agreement binds and benefits the parties and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. Any purported assignment of this Agreement is void without the express written consent of both other parties.

18. Reliance on Own Judgment. Each party represents that in executing this Agreement it relied solely on its own judgment, belief and knowledge, and upon the advice and recommendations of its own independently selected counsel, concerning the nature, extent and duration of its rights and claims, and that it has not been influenced in executing this Agreement

by any other party or representative. This Agreement was not drafted by any one party and will not be construed against any party.

19. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the matters addressed. This Agreement may be modified only by written amendments signed by all parties.

20. Severability. If any provision of this Agreement is found invalid by a court, then the remainder of the Agreement remains in effect.

City:

CITY OF CANBY

By: Melody Thompson
Name Printed: Melody Thompson
Title: Mayor
Date: 11/7/07

REVEWED BY:

Special Legal Counsel
Name Printed: John Hammond
Date: 10/24/2007

WB:

WILLAMETTE BROADBAND LLC

By: _____
Name Printed: _____
Title: _____
Date: _____

Wave:

WAVEDIVISION VII, LLC

By: _____
Name Printed: _____
Title: _____
Date: _____

by any other party or representative. This Agreement was not drafted by any one party and will not be construed against any party.

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City:

CITY OF CANBY

By: _____
Name Printed: _____
Title: _____
Date: _____

REVEWED BY:

_____
Special Legal Counsel
Name Printed: John Hammond
Date: 10/24/2007

WB:

WILLAMETTE BROADBAND LLC

By: _____
Name Printed: WAYNE VESTAL
Title: President
Date: 10/24/2007

Wave:

WAVEDIVISION VII, LLC

By: _____
Name Printed: _____
Title: _____
Date: _____

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City:

CITY OF CANBY

By: _____
Name Printed: _____
Title: _____
Date: _____

REVEWED BY:

_____
Special Legal Counsel
Name Printed: John Hammond
Date: 10/24/2007

WB:

WILLAMETTE BROADBAND LLC

By: _____
Name Printed: _____
Title: _____
Date: _____

Wave:

WAVEDIVISION VII, LLC

By: David Hankin
Name Printed: David Hankin
Title: Vice President and Regulatory Counsel
Date: 10/31/07

CABLE TELEVISION
FRANCHISE AGREEMENT
between
CANBY, OREGON
and
NORTH WILLAMETTE TELECOM

MARCH, 1999

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1. PURPOSE AND INTENT.

1.1 The City of Canby, Oregon (hereafter Grantor) is authorized to and by this Franchise agreement does grant to North Willamette Telecom (hereafter Grantee) a non-exclusive 12-year Franchise, revocable as provided herein, to construct, operate and maintain a cable communications system in the City.

1.2 The purpose of this Franchise agreement is to create a binding, enforceable contract between Grantor and Grantee.

2. DEFINITIONS.

For the purposes of this Franchise agreement, the following words, terms, phrases, and their derivations shall 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. Words used in this Franchise which are not defined hereunder but are 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) shall 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 by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, and distribute non-commercial Programming not under the Grantee's editorial control.

b. "Access Channel" or "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.

"Educational Access Channel" means any channel or portion of a channel available for educational programming by individuals or institutions.

"Government Access Channel" means any channel or portion of a channel available for programming by government agencies.

"Public Access Channel" means any channel or portion of a channel where any member of the general public may be a programmer on a non-discriminatory basis.

Nothing in this Franchise shall prevent the Grantor or its designee from carrying out fundraising activities to supplement access capital or operating funds, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities and equipment.

c. "Addressability" means the capability of the cable communications system to provide programming to specific subscribers on a per program, program package, and premium channel basis without the need for a major system upgrade to activate the capability. An upgrade that requires only the installation of a piece or pieces of equipment between the point at which a subscriber's drop line connects to the

system and the point at which the drop connects to the subscriber's television receiver shall not be considered a major system upgrade.

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. "Availability of Service" means the ability of a subscriber to obtain a service within 60 days by requesting the service and paying applicable installation and/or usage charges.

f. "Basic Cable Service" means that tier of cable service which is required as a condition of access to all other video services and which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels.

g. "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.

h. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.

i. "Cable Operator" 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 operation of such a Cable System.

j. "Cable Service" means a) the one-way transmission to subscribers of video programming or other programming service; and b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

k. "Cablecast Signal" means a non-broadcast signal that originates within the facilities of the cable communications system.

l. "Cable Communications System" or "Cable System" or "System" shall 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 shall refer to the cable system constructed and operated by the Grantee in Canby under this Franchise.

m. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering video signal whether in an analog or digital or digital format. This definition does not restrict the use of any channel to the transmission of analog video signals.

n. "City" means the City of Canby, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

o. "City Council" means the Council of the City of Canby.

p. "Commercial Subscriber" means a subscriber receiving cable services in a business or other commercial enterprise, where the services are to be used primarily in conjunction with the enterprise and the rates for services are individually negotiated with the subscriber.

q. "Converter" means an electronic device for changing the frequency of a television signal. A set-top converter changes the frequency of the mid-band, superband, or hyperband signals to a suitable channel which the television receiver is able to tune.

r. "FCC" means the Federal Communications Commission.

s. "Franchise" or "Franchise Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. Unless otherwise specified, "Franchise" shall designate this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.

t. "Franchise Area" means all territory within of the City of Canby, at present or in the future.

u. "Grantee" or "Franchisee" means North Willamette Telecom, an Oregon Corporation, and the lawful successors, transferees, or assignees thereof.

v. "Grantor" means Canby, a municipal corporation in the State of Oregon.

w. "Gross Receipts" means gross revenues less any bad debts related to the operation of the System authorized by this Franchise.

x. "Gross Revenues" means all amounts received by the Grantee, or any entity that constitutes a "cable operator" under the Cable Act definition, in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide cable services within the Franchise Area. "Gross Revenues" shall include, without limitation, amounts for all Cable Services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home shopping networks), installations, leasing, renting or selling of system capacity, and all other revenues derived from the operation of Grantee's Cable System to provide cable services, regardless of whether initially recorded to another entity and however characterized.

"Gross Revenues" shall also include any amounts received or earned by any Affiliate of the Grantee in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide cable services within the Franchise Area, including amounts for Cable services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home shopping networks), installations, leasing, renting, or selling of system capacity and all other revenues derived from the operation of Grantee's Cable System.

Any sales, excise or other taxes or fees levied directly upon subscribers by a local, state or federal government and collected by the Grantee for direct pass-through to such government shall not be included in "Gross Revenues".

Subject to the limits and restrictions of federal and state law copyright fees paid by the Grantee shall be excluded from gross revenues.

"Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute "Gross Revenues" of both the Grantee and the Affiliate, shall be counted only once for purposes of determining "Gross Revenues".

Revenues derived from an institutional network shall not be considered "Gross Revenues" for purposes of this Franchise, but shall be the subject of future and separate negotiations in the event an institutional network is built and/or operated by Grantee, subject to state and federal law.

The definition of "Gross Revenues" includes those revenues collected as franchise fees and paid to a local government.

y. "Institutional Service" means video, audio, data and other services provided to institutional subscribers on an individual application, private channel basis. These services may include, but are not limited to, two-way video, audio or digital signals among institutions, or between institutions and residential subscribers.

z. "Institutional Network" means that part of a cable communications network designed principally for the provision of non-entertainment, interactive services to schools, public agencies or other non-profit agencies for use in connection with the ongoing operations of such institutions.

aa. "Institutional Subscriber" means a place of business, public agency, school or non-profit corporation receiving institutional services on the institutional subscriber network.

bb. "Interactive Services" means services provided to subscribers where the subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under the subscriber's control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose.

cc. "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.

dd. "Local Origination Channel" means any channel or portion of a channel where the Grantee is the only designated programmer, or has delegated programming to a third party, and which is used to provide television programs to subscribers.

ee. "Monitoring" means observing a one way communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

ff. "Non-Broadcast Signal" means a signal that is transmitted by the cable communications system and that is not involved in an over-the-air broadcast transmission path.

gg. "Open Channel" means any channel that can be received by all subscribers having

cable-ready television sets, without the necessity of special descrambling equipment.

hh. "Pay Channel" or "Premium Channel" means a channel on which television signals are delivered to subscribers for a special fee or charge over and above the regular charges for standard subscriber service, on a per program, per channel, or other subscription basis.

ii. "Person" means any corporation, partnership, proprietorship, individual, organization, or other entity doing business in the State of Oregon, or any natural person.

jj. "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 communications system.

kk. "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.

ll. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, 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 experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, and photographs to the extent related to the enforcement or administration of this Franchise.

mm. "Resident" means any natural person residing within the Franchise Area.

nn. "Residential Service" means services delivered on the residential subscriber network.

oo. "Residential Subscriber" means a subscriber who receives services on the residential subscriber network.

pp. "Residential Network" means a cable communications network designed principally for the delivery of entertainment, community access or interactive services to individual dwelling units.

qq. "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies, and which serve a minimum of twenty (20) students.

rr. "Section" means any section, subsection or provision of this Franchise agreement.

ss. "Streets and Public Ways" means the surface of and the space above and below any public street, 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.

tt. "Subscriber" means any person who elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the cable communications system whether or not a fee is paid for such service.

uu. "Tapping" means observing a two-way communications 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.

vv. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year".

3. GRANT OF FRANCHISE

3.1 Grant.

Grantor hereby grants to the Grantee a non-exclusive, revocable Franchise for a 12-year period from and after the effective date hereof, revocable as provided herein, to construct, operate and maintain a cable communications system within the Franchise Area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the facilities of the Cable System as required by the provisions of this Franchise agreement.

This Franchise is subject to the laws of the United States and the State of Oregon, and to the general ordinances of the Grantor affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. In particular this Franchise supersedes any of Grantor's Ordinances in any matter in which the Franchise and the Ordinance are in conflict. The Grantor shall make a good faith effort to notify the Grantee of any City proceedings which would substantially affect the Grantee's operations, and shall upon request supply the Grantee with copies of any City laws or regulations affecting Grantee's operations.

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

3.2 Use of Streets and Public Ways.

For the purpose of constructing, operating and maintaining a cable communications system 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 public streets and 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 cable communications system. Prior to construction or alteration, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this section shall relieve the Grantor of the obligations of Section 4.5 regarding the trimming of trees and other vegetation.

Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement.

3.3 Duration and Effective Date of Franchise/Franchise Review.

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be 12 years from the effective date of this agreement, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be MAY 7th 1999, unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise shall be null and void.

During the six-month period beginning seven (7) years after the effective date of this franchise, the Grantor and Grantee shall undertake a review of Grantee's system and performance to date, in order to determine whether the franchise should continue in effect for the full twelve (12) year term or should terminate early at the end of nine (9) years from the effective date. The Grantor may terminate the franchise early if the Grantee has been guilty of a pattern of material violations of the franchise; refuses by the end of the six-month period to make provision for the effective resolution of any evident patterns of customer service problems unanticipated in provisions of the franchise; or, if requested by ordinance of the Grantor's City Council, declines to agree within 180 days thereafter to complete, by the end of the ninth (9th) year of the franchise, an upgrade or rebuild of the system such that the system as upgraded or rebuilt will be reflective of:

(a) The non-experimental state of the art of cable communications systems, in technical capacity and proven performance; and

(b) general parity of overall cable service with the most advanced non-experimental cable service provided in the Portland metropolitan area.

Any proposal by the Grantor to terminate the franchise early shall be subject to the same procedural requirements as for a revocation under Section 11.1 hereof. If the Grantor does not terminate the franchise early as provided herein, the franchise shall continue for its full twelve (12) year term.

3.4 Franchise Not Exclusive.

The Franchise granted herein is not exclusive. This Franchise shall 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 or public places by franchise, permit or otherwise, subject to the provisions of Section 13.11 herein.

3.5 Franchise Non-Transferable.

This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rulemakings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise agreement. The Grantee shall assist Grantor in any such inquiry, and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed transfer. The Grantor may condition its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. Consent to the transfer shall not be unreasonably withheld. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The Grantor shall have one hundred and 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 said 120 days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

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The Grantee, upon any transfer as heretofore described, shall within thirty (30) 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, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall within thirty (30) days after the same shall have been made, file such certified copy as is required.

The requirements of this section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a cable communications system of the Grantee or any affiliate of the Grantee. However, the cable communications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

The requirements of this section shall not be deemed to prohibit sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is cable system operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

3.6 Change in Control.

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee. If ownership of 25% percent of the stock of the Grantee, or of the majority of the stock of any parent company of the Grantee immediate or otherwise, or of any entity now owning or later acquiring such an interest is acquired by a single entity or by several entities under common control, if such entity or agent of common control is other than an organization with a majority of its ownership held by the Grantee or a parent of the Grantee, then a change in control will be deemed to have taken place unless the Grantor, upon request of the Grantee, finds otherwise. Such change in control shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

If the Grantee wishes to operate the Franchise under a change of control, the Grantee shall give the Grantor written notice of the proposed change, and shall request approval of the change by the Grantor. The Grantor shall have one

hundred and twenty (120) days to act upon the request, following the receipt of the request and of all information required in accordance with FCC regulations, as well as all information required in writing by the Grantor prior to or subsequent to the request for approval. If the Grantor fails to render a final decision on the request within said one hundred and twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective controlling party to perform the obligations of the Grantee under this Franchise agreement. The Grantee shall assist Grantor in any such inquiry. Consent to the change of control shall not be unreasonably withheld.

3.7 Franchise Acceptance.

a. The Grantee, within sixty (60) days after the tender by the Grantor to Grantee of the Franchise agreement adopted by the Grantor shall file in the office of the City Manager a written acceptance executed by Grantee, in the form attached hereto as Exhibit B.

In the event Grantee fails to file the acceptance as required herein, then this Franchise shall be null and void.

4. CONSTRUCTION AND SERVICE REQUIREMENTS

4.1 General.

The Grantee shall maintain on its cable system a minimum practical capacity of sixty (60) activated Channels, defined under the Cable Act of 1992 as those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided. In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension and service requirements set forth in this Franchise agreement.

Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Agreement and all applicable Grantor Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.

4.2 Right of Inspection of Construction.

Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with construction or installation standards of this Franchise agreement and other pertinent provisions of law.

4.3 Provision of Residential Service.

a. In general. It is the City's general policy that all potential Residential Subscribers in the Grantee's Franchise Area should have equivalent Service Availability from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. Except as otherwise provided in this section, Grantee shall provide Cable Service within 60 days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified oral

request.

Except as otherwise provided in Section 10.1(e), Grantee shall provide such service:

i. At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an outside wall for Residential Subscribers and a 125 foot drop for Commercial Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by the Grantee and provided in writing to the City;

ii. At non-discriminatory monthly rates for Residential Subscribers; and

iii. Notwithstanding Section 4.3(a), Grantee may establish different and nondiscriminatory rates and charges and classes of services for Commercial Subscribers, as well as different, nondiscriminatory monthly rates for classes of Commercial Subscribers. For the purposes of Section 4.3.a, "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

b. Newly Annexed Areas. As areas are annexed to the City, Grantee shall provide Service Availability to all residences within the annexed area on the same terms as provided for in Section 4.3.a unless otherwise authorized by the City.

c. Transferred Franchising Jurisdiction. In the event that cable franchising jurisdiction is transferred to the City from another jurisdiction, then the terms of this Franchise shall apply within the area in which the transfer of cable franchising jurisdiction applies, so long as the application of this Franchise in that area is acknowledged in the governmental actions which implement the transfer of franchising authority.

d. New Subdivisions. In new subdivisions, service will be made available no more than 60 days from first occupancy or from the date of completion of final construction grading, whichever comes first.

4.4 Erection of Poles.

If additional poles in an existing aerial utility system route are required, Grantee shall negotiate with the utility company or provider for the installation of the needed poles. Grantee shall 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 shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions, and shall comply with all applicable ordinances, resolutions, rules and regulations of the Grantor.

4.5 Trimming of Trees or other Vegetation.

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 shall be done only in accordance with the ordinances and other rules and regulations of Grantor 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 agreement shall be deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

4.6 Repair and Restoration of Streets and Public Ways.

Whenever the Grantee shall disturb the surface or otherwise damage any street, alley, public highway, or other public way for any purpose mentioned herein, it shall repair and restore the same to the condition in which it was prior to the opening or other damage thereof. When any opening is made by the Grantee in any hard surface pavement, in any street, alley, public highway or other way, the Grantee shall promptly refill the opening and restore the pavement to its original condition. The Grantor may refill and/or repave in case of neglect of the Grantee. The cost thereof, including the cost of inspection, supervision and administration shall be paid by the Grantee. All excavations made by the Grantee in the streets, alleys, public highways or other ways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the rules, regulations and ordinances of Grantor as now or hereafter in effect.

4.7 Construction Codes.

The Grantee shall strictly adhere to all applicable building, zoning or other laws and codes currently or hereafter in force in Grantor's jurisdiction. The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the removal of Grantee's lines, cables and appurtenances from the property in question.

4.8 Reservations of Street Rights.

Nothing in this Franchise agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on reasonable notice from the Grantor all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.9 Street Vacation and Abandonment.

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall 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. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof

to the Grantor shall be paid by the Grantee.

4.10 Movement of Facilities.

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense, paid in advance, of the person requesting the temporary removal such of its facilities as may be required to facilitate such movements; provided that, if the Grantor is the party requesting the removal, for movement of buildings or structures or other public purposes of the Grantor, then the removal shall be done at the expense of the Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee.

4.11 Easements.

When Grantee secures easements in its own name, as in the case of construction in multiple dwelling units, it shall use a standard easement form that has been provided to the Grantor upon request or, if not a standard form, shall provide a copy of the easement document to the Grantor, upon request.

4.12 Undergrounding.

a. Cable must be installed underground where:

i. all existing utilities are placed underground,

ii. statute, ordinance, policy or other regulation of Grantor requires utilities to be placed underground,

iii. overhead utility lines are moved underground (Grantee shall 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 (service to be provided at cost to resident).

b. Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from pedestals to subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

4.13 As Builts.

Grantee shall maintain strand map drawings of the system, and make them available to the Grantor for inspection upon request. Strand maps shall be updated as changes occur in the system. The Grantee shall provide the Grantor, on request, a copy of as-builts or CAD maps showing the location and nature of Grantee's facilities in the streets and public ways.

4.14 Emergency.

In the event of an emergency, or when the cable system creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's cable system without prior notice.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

5.1 System Configuration.

a. Initial Configuration.

The communications system shall consist, at a minimum, of a residential network with addressability in its initial configuration.

b. System upgrade.

Grantee has determined that an appropriate design plan for System upgrade in the Franchise Area will include the following requirements, which Grantee will provide and construct:

i. The upgraded Cable System will be equivalent to or comparable to the most advanced non-experimental state of the art cable systems provided in the Portland metropolitan area.

ii. The upgraded Cable System shall be two-way capable and able to support two-way high speed Internet Access via the Cable System.

c. As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed FCC technical quality standards regardless of the particular manner in which the signal is transmitted. The upgrade shall commence within six (6) months of the effective date of this Agreement and be completed on or before December 21, 2001. The upgraded Cable System will be capable of supporting addressable equipment throughout the System and shall enable the provision of digitally compressed video services. Grantee's upgraded Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

5.2 Channel Capacity.

The residential cable system shall be installed with a minimum channel capacity of sixty (60) Channels outbound.

5.3 Satellite Earth Stations.

Grantee shall provide a sufficient number of earth stations to receive signals from enough operational communications satellites that carry cable television services accessible to the Grantee throughout the life of the Franchise to enable Grantee to carry out its obligations under this Franchise.

5.4 Interconnection.

a. Grantee shall continue without limitation all Interconnections in effect on the effective date of this Franchise, including the interconnections listed in Exhibit C.

b. Initially, Grantee shall Interconnect the Cable System with all other major, contiguous cable systems in Clackamas County, specifically including but not limited to Oregon City and Clackamas County and specifically Clackamas Community College. The system shall provide the capability to transmit Upstream Channels and Downstream Channels, in each direction, together with data, telemetry, audio, and other non-video signals. The Interconnection shall be capable of receiving and delivering, among other things: selected Local Origination Programming produced by Grantee and other major, contiguous cable systems in Clackamas County; selected Access Programming carried on those cable systems; and the exchange of selected Institutional Network video and data communications applications by local and state public and nonprofit organizations, including forward and reverse applications between and among the Grantee and contiguous cable systems as shall in the future have significant institutional network capacity or services determined by the Grantor through an ascertainment of community needs and interests to warrant interconnection.

c. Grantee shall ensure that all interconnections on its own property are securely housed and maintained, and shall establish and continue in effect a routing system satisfactory to the Grantor for carriage of signals for Institutional Network and PEG access signals.

With respect to installing the capacity required under this Section, the Grantor understands that interconnection requires cooperation from other cable system operators as to engineering, design, and technical operation issues. In addition, Grantee's interconnection obligation, with respect to equipment and construction, shall be limited to providing equipment needed, and performing construction work required, within Grantee's Franchise Area in order to enable the required interconnections to occur.

In order to actually establish the interconnections, it may be necessary for the operators of cable systems interconnecting with the Grantee's system to provide equipment needed, and perform construction work required, within their respective Franchise Areas; and the provision of such equipment and performance of such construction work shall be the obligation of Grantee only within its own Franchise Area. Therefore Grantor shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable system operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder shall be subject to such cooperation being obtained.

All interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this Franchise on all interconnected channels.

d. Grantee's interconnect obligation is conditioned upon the consent of the cable operators in the affected neighboring jurisdictions.

5.5 Emergency Alert Capability.

a. In accordance with the provisions of FCC Regulations Par 11, subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notification (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the local primary, state primary, and/or the state Emergency Operations Center, as those authorities are identified and defined within FCC Reg Section 11.51 and other applicable state and local laws.

b. The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from use of the cable system or the EAS equipment by the Grantor, its employees, authorized representatives, or designees, including, but not limited to, reasonable attorneys' fees. Additionally, the Grantor shall indemnify, save and hold harmless the Grantee against damage, loss or inappropriate use of the equipment and shall agree to use due care and to take reasonable precautions against such damage, loss or inappropriate use of the EAS equipment or other cable system equipment which may be used during a declared emergency.

5.6 Standby Power.

Grantee shall provide standby power generating capacity at the cable communications system control center. Grantee shall maintain standby power system supplies, rated at least at two (2) hours duration at each node. In addition, Grantee shall have in place and have filed with the Grantor throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours.

Standby power to those portions of the Cable System serving city-owned facilities will be provided within one hour of notice from the City to Grantee of the need for such standby power.

5.7 Parental Control Lock.

Grantee shall provide subscribers (by sale or lease or otherwise), upon request, with a manual or electronic parental control locking device that permits inhibiting the viewing of any channel. Any charge for such device shall be consistent with applicable rate regulations.

5.8 Technical Standards.

The Grantee shall install all aerial and underground cables and wires in a manner consistent with City requirements and in compliance with all applicable laws, ordinances, and safety requirements including but not limited to the Federal Communications Commission, Federal Aviation Administration, National Electric Code, National Electric Safety Code, National Cable Television Association Standards of Good Engineering Practices. The Cable System shall meet or exceed all applicable technical and performance standards of the Federal Communications Commission or its successor agency, and any and all other applicable technical and performance standards.

5.9 Performance Testing.

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

Written records of all system test results performed by or for the Grantee shall be maintained, and shall be available for Grantor inspection upon request.

6. SERVICES AND PROGRAMMING

6.1 Programming Categories.

The Grantee shall provide video programming services in at least the following broad categories:

a. News & Information

b. Sports

c. General Entertainment

d. Arts, Culture, Performing Arts

e. Children / Family

f. Science

g. Travel Information

h. Weather Information

i. Governmental and Educational Programming

j. Movies

k. Religious Programming

l. Foreign language / Ethnic Programming

The Grantor acknowledges that 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 Communications System.

6.2 Changes in Video Programming Services.

Subject to the provisions of the Cable Act, no category of services as referred to in section 6.1 may be deleted, or so limited as effectively to be deleted by the Grantee without Grantor approval, which approval shall 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 6.1, then the Grantee shall be obligated to carry such programming only upon reasonable terms and conditions.

6.3 Interactive Residential Services

The Grantee shall make interactive services available to residential subscribers not later than on or about the date on which any other cable system in the Portland metropolitan area provides interactive services on a non-experimental basis.

6.4 Leased Channel Service.

The Grantee shall 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.

6.5 Community Access and Local Programming.

a. Designated PEG Access Providers.

i. The City may designate Public, Educational and Government "PEG" Access Providers, including itself for Government Access purposes, to control and manage the use of any or all Access Facilities provided by the Grantee under this Franchise, including, without limitation, the operation of Interconnected Access Channels. To the extent of such designation by the City, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities. The Grantor or its designee may formulate rules for the operation of the Public Access Channel, consistent with this Franchise; such rules shall not be designed to control the content of public access programming.

ii. Grantee shall cooperate with Designated PEG Access providers in the use of the Cable System and Access Facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with designated PEG Access providers as may be necessary to facilitate and coordinate the provision of PEG Access, provided that all such operating agreements shall not be inconsistent with the terms of this Franchise.

iii. Except as provided in this Franchise, the City shall allocate Access

Resources to Designated Access Providers only. Grantee shall cooperate with the City in such allocations, in such manner as the City shall direct.

iv. For the purpose of Section 6.5:

1. "Access Facilities" means the Channel capacity (and portions thereof), services, facilities, equipment, and/or technical components used or useable by PEG Access; and

2. "Access Resources" means all operating support and other financial means by which PEG Access is exercised, including, but not limited to, Access Capital Cost support under Section 6.5.

v. The requirements of this Section 6.5 shall be subject to the Franchise Review provided for in Section 13.12.

b. Channel Capacity

i. Downstream Channels. Grantee shall provide 3 Downstream Standard Video Channels for distribution of PEG Access programming to all Residential Subscribers.

ii. Closed Channels. Following the system upgrade in this agreement, Grantee shall provide operating Closed Channels sufficient to enable character-generated, prerecorded and live cablecasts from the Hardwired Programming Origination Points as described in Exhibit A and Access centers, and to and from all Interconnection points on the Cable System, and to enable the distribution of PEG Access to Residential Subscribers on Access Channels and to all Interconnection points on the Cable System. For the purposes of this Section, "Closed Channel" means an upstream Channel which is not available for Residential Subscribers.

c. Support for Access Costs

i. Grantee Financial Support

Beginning with the effective date of this Agreement, and continuing throughout its term, Grantee shall provide four and one half percent (4½%) of its gross revenues earned providing cable services within

the City as support for PEG access. This contribution shall be payable to Grantor or its designated access provider after notice to Grantee's Subscribers of the contribution. The content of such notice shall be provided to the Grantor for review.

Grantee shall make such payments monthly. Each payment shall be due and payable no later than thirty (30) days after the end of each month. The Grantor recognizes that these commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Agreement, and that the Grantee has the right to include these costs on the bills of cable customers.

ii. Studio Facility

In addition to the payment noted above, Grantee shall continue to make available the current facility occupied by Grantor's Designated Access Provider, and to keep such facility in good order and repair. Such facility shall be provided at Grantee's sole expense. In the event Grantor and Grantee mutually agree to relocate the current access facility to a facility owned or controlled by the Grantee, Grantee shall make available at least 1,200 square feet and up to 1,800 square feet at Grantee's sole expense. Such facilities shall include office, storage facilities, restroom, lounge, editing suite and common areas. Such space shall have heating, electricity, water, air-conditioning and telephone and be an appropriate space for the Designated Access Provider. Such facilities shall be subject to the prior approval of the Grantor. Grantor and Grantee shall mutually agree on the relocation of the access facility to a facility not owned or controlled by Grantee; provided, however, that such facilities will be suitable for the Designated Access Provider and at least equivalent to those initially provided.

iii. PEG Access Support Not Franchise Fees

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 Grantee's Gross Revenue in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any franchise fee payments due under this Franchise.

d. **Hardwired Origination Points**

Grantor shall install and maintain a hardwired programming origination point for each facility listed in Exhibit A, to the extent such origination points do not already exist.

e. **Access Interconnections.**

i. The Grantee shall install and maintain all access interconnections of PEG access channels in accord with the requirements of Section 5.4.

ii. In addition, Grantee shall, in a timely manner considering the technical and operational issues involved, cooperate with the Grantor, other cable franchisees, and Designated Access Providers to establish an interconnection point at Clackamas Community College, to allow for the receipt and delivery of programming from participating access centers. Grantor shall coordinate with the Designated Access Provider for distribution on the existing access channel.

f. **Change in technology.**

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

g. **Technical quality.**

i. Grantee shall maintain all Upstream and Downstream Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for Residential Subscriber Channels.

ii. Grantee shall have no responsibility for the technical production

quality of the Access Programming distributed on the Access Channels.

iii. The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider.

7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS

7.1 Intent.

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

7.2 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 agreement, including the adoption of administrative rules and regulations to carry out this responsibility.

b. Coordination of the operation of public, government and educational access channels.

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 and recommending long-range cable communications policy for the Franchise Area;

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 uses of the cable system on the residential and institutional networks, both within the City and through interconnection with adjacent systems;

7.3 Rate regulation.

a. Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the

Franchise; and to establish rate regulation policies and guidelines for carrying out its authority.

b. Rate Discrimination Prohibited. Grantee shall 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, sexual preference, or neighborhood of residence, except as otherwise provided herein; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income or elderly subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.

c. The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Policy Act of 1984), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor 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 shall be deemed superseded by those provisions of the Act.

7.4 Remedies for Franchise Violations.

a. In addition to any other remedies as specified in this Franchise, the Grantor has the right to and may impose penalties not to exceed $1,000, per day or per incident, not to exceed a total of $50,000, in the event Grantee violates any other material provision of this Franchise agreement, subject to Section 7.4(c), below.

b. If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

The date of the violation will be the date of the event and not the date Grantee receives notice of the violation except in cases where Grantee did not know and could not reasonably have been expected to know that a violation occurred, in which case penalties shall accrue from the date Grantee knew or should have known of the violation. Without limiting the foregoing, Grantee is presumed to know whether it violated a customer service standard that is measured based upon aggregate performance.

Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:

i. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (e) below, or;

ii. Cure the violation, or;

iii. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (c) below.

c. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (f) of this section. Following the hearing, Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.

d. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (c), the Grantor shall set a hearing to determine what penalties, if any, shall be applied.

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

f. In the case of any hearing pursuant to this section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee may be provided and opportunity to be heard 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.

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

   i. Whether the violation was unintentional;

   ii. The nature of any harm which resulted;

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

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

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

   i. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;

   ii. Establish the amount of penalties, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;

   iii. Revoke this Agreement, and/or

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

i. The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor, and shall be reviewable only consistent with the dispute resolution provisions of this Agreement.

j. Notwithstanding other language to the contrary in this agreement:

   i. In cases where either intermittent or repeated violations of any single franchise standard occur, Grantor may in its discretion give one initial thirty (30) day notice and opportunity to cure and no subsequent notices of each individual violation; and

ii. Grantor may in its sole discretion establish lesser or no cure periods for violations of Section 12 (Reports and Records) or Section 5 (System Upgrade).

7.5 Remedies Not Exclusive

The 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 7, 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.

7.6 Consumer Protection Standards

The following customer service and consumer protection standards shall apply. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations.

a. Customer Service and Telephone Responsiveness.

i. The Grantee shall maintain an office within the City of Canby. The office must be adequately staffed and able to respond to subscribers and the public not less than 50 hours per week, with a minimum of nine (9) hours per day on weekdays and 4 hours on Saturdays, excluding holidays consistent with federal law.

ii. As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.

iii. Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational 24 hours a day, including weekends and holidays.

iv. The Grantee shall maintain:

1. Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers. Under normal operating conditions, the

customer will receive a busy signal less than 3% of the time.

2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

b. Service and Repair Calls.

i. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, requests from subscribers for repair and maintenance service must be acknowledged by the Grantee within 24 hours or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises work must be completed within 24 hours under normal circumstances. All other repairs should be completed within 72 hours under normal circumstances.

ii. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, as a normal operating procedure, upon subscriber request the Grantee shall offer either a specific appointment time or else a pre-designated block of time (not to exceed four hours) for subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, or, during daylight savings time, after 5:00 p.m (repair only).

The Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

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

iii. As a normal operating procedure, and with particular regard to the needs of working or mobility-limited customers, upon subscriber request the Grantee shall arrange for pickup and/or replacement of converters or other company equipment at the subscriber's address,

or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

iv. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, where the service requested is installation of service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed. "Standard" installations, for the purposes of this section, shall mean those that are located up to 125 feet from the existing distribution system.

c. Disconnection

i. The Grantee may disconnect a subscriber if:

1. At least 30 days have elapsed without payment after the due date for payment of the bill of the affected subscriber; and

2. The Grantee has provided at least five (5) days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.

ii. Regardless of subsection 1. hereof, the Grantee may disconnect a subscriber for cause at any time if the Grantee in good faith determines that the subscriber has tampered with or abused company equipment, or is or may be engaged unlawfully in theft of cable services, or is causing a system violation of FCC rules or regulations.

iii. The Grantee shall promptly disconnect any subscriber who so requests from the Grantee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by the Grantee. No charge may be imposed by the Grantee for any cable services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, at least 95% of the time measured on a quarterly basis, within thirty working days return to such subscriber the amount of the deposit, if any, collected by Grantee from such subscriber, less any undisputed amounts owed to Grantee for cable services or charges prior to the date of disconnection.

d. **Credits Upon Outage.**

Except for planned outages where subscribers are provided reasonable notification in advance, power outages, acts of God and vehicular damage to facilities, upon a subscriber's request the Grantee shall provide a pro-rated 24-hour credit to the subscriber's account for any period of four hours or more during which that subscriber experienced the effective loss or substantial impairment of video or audio service on the system.

e. **Downgrade Charges.**

Grantee may impose Downgrade Charges only if:

i. The Subscriber has been notified, at the time of initiating Cable Services, of Grantee's Downgrade Charges; and

ii. The Downgrade Charge does not exceed the Grantee's costs of performing the downgrade as determined under FCC rate regulation rules, subject to applicable law.

f. **Billing Information Required.**

The Grantee bill to subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge therefor. The Grantee shall make its best effort to inform subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

g. **Information to Subscribers.**

i. Upon installing initial service to or reconnecting each customer, and upon request thereafter, the Grantee shall advise the customer, in writing, of:

1. The equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;

2. The amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;

3. The Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;

4. The toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;

5. The company's practices and procedures for protecting against invasions of subscriber privacy; and

6. The notice and referral information, as set forth in subsection 2. hereof.

ii. Notice to Subscribers.

1. The Grantee shall inform the Grantor and subscribers within 30 days, prior to any changes in programming or increases in rates, costs, or charges to subscribers, or any channel repositioning within the control of Grantee.

2. All Grantee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee-prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential customers in advance of taking the order.

3. The Grantee shall, upon request by the Grantor and no more often than annually, send written notice approved by the Grantor to all subscribers that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Grantor or its designee, giving the address and phone number of the appropriate Grantor office. Such notification may be included with a billing statement. The Grantor or its designee shall bear the cost of the printing and production of such notice; the Grantee shall be responsible for inserting

and mailing out the notice.

iii. Written Complaint Acknowledgment

Within ten (10) days following receipt of a formal written complaint as defined in subsection (h)(ii) below from a subscriber which is mailed to and received at the Grantee's primary business address, the Grantee shall provide an acknowledgment to the subscriber of receipt of the complaint and of any action the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than the City, such as the FCC.

h. Complaint Resolution.

i. The Grantor may take all necessary steps to ensure that all subscribers and members of the general public have recourse to a satisfactory hearing of any complaints, where there is evidence that the Grantee has not attempted to reasonably settle the complaint.

ii. For purposes of this section, a "complaint" is a grievance related to the service of the cable communications system within the Franchise Area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services other than grievances regarding broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the customer's problem satisfactorily to the customer.

8. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

8.1 Compensation.

a. Franchise Fee. As compensation for the Franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a cable communications system within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of the gross revenues generated in any manner through the operation of the cable system to provide cable services as defined in this Franchise. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below the five percent (5%) of gross receipts required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

Any bad debts or other accrued amounts deducted from Gross Revenues in the calculation of Gross Receipts shall be included in Gross Receipts at such time as they are actually collected.

The Grantee shall at all times during the term of this Franchise maintain on file with the City Manager an up-to-date list of all entities receiving Gross Revenues as such revenues are defined in this Franchise.

In the event the obligation of Grantee to compensate Grantor through franchise fees is lawfully suspended or eliminated, in whole or in part, then the Grantee shall pay to Grantor compensation equivalent to the compensation paid to Grantor by other similarly situated users of the streets for Grantee's use of the Streets, to the extent Grantor has the legal right to require such compensation.

b. Payment of Franchise Fees.

i. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary

for the Grantor to verify the amounts of franchise fee payments.

ii. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall 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 shall be subject to audit and recomputation by Grantor.

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

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

8.2 Faithful Performance Bond.

a. Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City with good and sufficient surety approved by the City, in the penal sum of One Hundred Thousand Dollars ($100,000.00), conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be maintained by the Grantee throughout the term of this Franchise.

b. Grantee shall pay all premiums charged for any bond required under Section 8.2(a) and unless the City Commission specifically directs otherwise, shall 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 City, the removal of all of Grantee's system installed in the City's Streets and Public Ways.

c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days written notice first being given

to the City. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without 30 days prior written notice to the City.

d. In a form approved by the City, 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 shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

8.3 Damages and Defense.

a. The Grantee shall defend, indemnify and hold harmless Canby, and its officers, agents, and employees, from and against all claims, damages and penalties, including but not limited to attorney fees, as a result of any actions of the Grantee under this Franchise. These claims, damages and penalties shall include, but shall not be limited to: damages arising out of copyright infringement; defamation or anti-trust actions; and all other damages arising out of the Grantee's actions under the Franchise or the construction, operation, maintenance or reconstruction of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

b. If the Grantee fails to defend as required in Section 8.3(a), above, then the Grantee agrees to and shall pay all expenses incurred by the City and its officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in section (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Grantor.

8.4 Liability Insurance and Indemnification.

a. Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the City, 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 shall provide coverage at all times for not less than $1,000,000 for personal injury to each person, $1,000,000 aggregate for each occurrence, and $500,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than $1,000,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be equal to or better than commercial general liability insurance.

The minimum amounts of insurance set out in subsection b of this section shall be increased from time to time to the extent necessary to provide coverage at least as great as the limits on the City's liability under the Oregon Tort Claims Act.

The evidence of coverage for Workers' Compensation shall show that it includes State of Oregon Statutory Limits, and Employer's Liability limits of at least $1,000,000.

Any insurance carrier shall have an A.M. Best rating of A or better, and be authorized to do business in the State of Oregon.

c. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall 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 shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section 13.2 without thirty (30) days written notice first being given to the City. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 13.2 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

e. Grantee shall file prior to the effective date of this Franchise and shall maintain on file with the City a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the City Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of Section 13.2. At a minimum, the certificate shall be signed by a representative with authority to bind the insurance carrier.

The certificate shall 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 Section 13.2 shall be cause for immediate termination of this Franchise by the City.

g. The Grantee shall also indemnify, defend and hold harmless the City 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.

9. RIGHTS RESERVED TO GRANTOR

9.1 Right to Purchase the System.

a. In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise agreement, or in the event of expiration of the initial term of this Franchise agreement without the Franchise being renewed or extended, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise agreement and as required by Section 11 herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor pending the purchase of the whole or part of the system by Grantor or its designee. Within 90 days following the date of forfeiture or revocation or expiration of the initial term, the Grantor may notify the Grantee that it or its designee desires to acquire by purchase all or a portion of the system used by the Grantee in its operation, exclusive of parts of the system essential to Grantee's operation of parts of the system, or of other systems, not acquired, for its fair value. Such notice shall be by resolution or other appropriate writing of the Grantor and shall state a date upon which Grantee shall cease its operations and receive payment as described below.

The fair value of the system for purpose of this subsection shall be determined by mutual agreement between Grantor and the Grantee. If such mutual agreement cannot be reached within sixty (60) days following notification by the Grantor of its desire to purchase the system, then Grantor and Grantee shall submit to a mandatory mediation procedure, as provided for in Section 9.1(b), below.

For purposes of revocation or forfeiture under this subsection (9.1(a)), the fair value of all or part of the system shall be an equitable price for the system or part of the system being acquired, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor may assume.

For any other purpose under this section, the fair value of all or part of this system shall be its fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the Franchise itself, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor may assume.

During any period of continued operation under this section, except as provided in section 3.5 of this Franchise, the Grantee shall not sell, assign,

transfer, or lease to any other persons, firm or corporation, any portion of the system used by it in its operations without the prior written consent of the Grantor.

In the event of the Grantor's acquisition of all or portions of Grantee's cable system, as provided herein, Grantee shall use all best efforts to obtain any needed consent to assignment, to the extent any existing and future rental, lease, and lease-purchase arrangements for Grantee's cable system or any facilities to be acquired require any consent to assignment by third parties; and Grantee shall not unreasonably withhold any consent to assignment of any rental, lease, and lease-purchase arrangements for Grantee's cable system or any facilities to be acquired.

b. If mandatory mediation is initiated pursuant to Section 9.1(a), both the Grantor and the Grantee shall participate in good faith in the mediation, in a manner determined by the mediator chosen for the process. The mediator shall be chosen from a list of five (5) qualified persons obtained from the American Arbitration Association. The choice of a mediator shall if possible be made by mutual agreement by the Grantor and Grantee; however, if such agreement is not possible, then the mediator shall be chosen by having the Grantor and Grantee alternately eliminate one member of the list of qualified mediators until only one name is left, with the party to be first to eliminate a name determined by a coin toss. The cost of mediation under this Section shall be shared equally by the Grantor and the Grantee.

If agreement regarding the valuation of the system cannot be reached through the mediation process described in this Section, then either the Grantor or the Grantee may file such proceeding as is appropriate in an Oregon court of competent jurisdiction to exercise any rights it may have.

Any final determination of system valuation for the purposes of a proposed purchase of the system by the Grantor, whether proceeding pursuant to subsection 9.1(a) or by any other lawful process, shall be subject to: 1) the Grantor's right within sixty (60) days of final determination of valuation to decide by appropriate resolution or other writing not to acquire all or any part of the system subject to the valuation proceeding; and 2) the Grantor's right to decide to acquire through use of proceeds from the sale of bonds, but subject to and conditioned upon any necessary voter approval of the bond funding and, if applicable, the successful sale of the bonds.

c. In the event Grantor purchases, acquires, takes over, or holds all or parts

of the system pursuant to subsection 9.1(a) or through any other lawful process, Grantor shall have the right without limitation to assign, sell, lease, or otherwise transfer its interest in all or parts of the system to any other persons, including any other grantee of a cable communications franchise, on whatever terms Grantor deems appropriate.

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

9.2 Condemnation

To the extent authorized by law, the City may condemn all or any portion of Grantee's Cable System, including real property. Nothing in this Franchise is intended to expand or restrict the City's lawful condemnation authority.

9.3 Right of Inspection of Records.

In order to assist the Grantor in keeping adequate records of the activities of the Grantee under this Franchise, the Grantee shall provide the following information in such form as may be required by the Grantor for its records:

a. With respect to the cable system and its operation to provide cable service, authorized under this Franchise, and to the extent deemed necessary by the Grantor for the enforcement of this Franchise, information pertaining to the operations of the Grantee and, for the specific purpose of a bona fide Franchise enforcement effort the operations of any parent company, and any affiliate or cable operator, including but not limited to: the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this Franchise, and of the maintenance and of the administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in; the number and par value of shares; the amount and character of indebtedness, if any; interest on debt; wear and tear or depreciation; and all amounts and sources of income.

b. The amount collected by the Grantee or any parent or affiliate of the Grantee from users of services of the Grantee's cable communications system under this Franchise and the character and extent of the service rendered therefor to them.

The information, along with any further data which may be required by the Grantor to adequately understand the information, shall be furnished by the Grantee to the Grantor upon request, and at the Grantee's own cost and expense.

9.4 Right to Perform Franchise Fee Audit

In addition to all rights granted under section 9.3, the Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, for the specific purposes of a bona fide Franchise enforcement effort, the books and records of any parent or affiliate company, for the purpose of determining the gross receipts 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 fees to the Grantor by the Grantee, provided that any audit must be commenced not later than three (3) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of two percent (2%) or more in franchise fees than required by this Franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit.

9.5 Right of Inspection of Construction.

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this Franchise agreement.

9.6 Intervention.

The Grantee shall not object to the Grantor's lawful intervention in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the system.

9.7 Right to Require Removal of Property.

At the expiration of the term for which the Franchise is granted providing no renewal is granted, or upon its forfeiture or revocation, as provided for herein, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the cable communications system from all streets and public ways within the Franchise Area. If the Grantee fails to do so, the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant 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 elect to abandon underground cable in place, in which event the Grantee shall have no further obligation hereunder as to the abandoned cable; except that the Grantor may nevertheless, by written notice, require the Grantee to remove cable as deemed necessary by the Grantor to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

9.8 Inspection of Facilities

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

10. RIGHTS OF INDIVIDUALS PROTECTED

10.1 Discriminatory Practices Prohibited.

a. The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, programmers, or persons on the basis or race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall strictly adhere to the equal employment opportunity requirements of the federal government, as expressed in Section 76.13(a)(8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations, as now or hereafter constituted. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to non-discrimination.

b. The Grantee shall use best efforts to assure maximum practical availability of Grantee 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. 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 shall make a reasonable effort to provide information required under Section 7.6(e) and 7.6(f), or otherwise provided in the normal course of business, in both English and the primary language of the requestor.

e. Nothing in this Section shall 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 citizens.

10.2 Unauthorized Monitoring or Cable Tapping Prohibited.

The Grantee shall not, nor shall 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 permitting the tapping.

10.3 Privacy and Other Rights.

The Grantee and the Grantor shall maintain constant vigilance with regard to possible abuses of the right of privacy and any other civil right of any subscriber, programmer, or person resulting from any device or signal associated with the cable communications system. The Grantee shall not place in the building, structure or any facility of any subscriber any equipment capable of two-way communications without the written consent of the subscriber, revocable at the discretion of the subscriber, and shall not utilize the two-way communications capability of the system for unauthorized or illegal subscriber surveillance of any kind. For purposes of this subsection, tenants who occupy premises shall be deemed to be subscribers, regardless of who actually pays for the service. Written consent, as required herein, shall not be required of any subscriber by Grantee as a condition of receiving any other cable service.

10.4 Permission of Property Owner Required.

No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee shall 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 shall remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee shall perform all installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

10.5 Sale of Subscriber Lists and Personalized Data Prohibited.

The Grantee shall be subject to 47 U.S.C Section 631 (Section 551 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.

10.6 Landlord - Tenant.

Grantee shall provide to individual units of a multiple housing facility, such as a duplex, apartment or condominium unit, all services offered to other dwelling units within the Franchise Area, providing the owner of the facility consents in writing, if requested by Grantee, as follows:

a. To Grantee's providing of the services to units of the facility;

b. To reasonable conditions and times for installation, maintenance and inspection of the system on facility premises;

c. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and

d. To not demand payment from Grantee for permitting Grantee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.

e. However, Grantee shall have no obligation to provide service if the cost of installation exceeds $223.00 per unit. To determine unit costs, the total project cost is divided by the number of units. The total project cost shall include only the costs of cable installed on the property including line extension and pre/post wiring of the units.

The $223.00 cost is expressed in 1998 dollars. This figure may be adjusted each year on July 1 to reflect the annual change in the Consumer Price Index for the Portland Metropolitan Region.

11. TERMINATION AND EXPIRATION.

11.1 Revocation.

In addition to any rights set out elsewhere in this document, the Grantor reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

a. the Grantee is in violation of any material provision of the Franchise agreement after application by the Grantor of a remedy lesser than franchise revocation pursuant to this Franchise agreement, and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation;

b. the Grantee or the Guarantor becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;

c. the Grantee is found to have engaged in fraud or deceit upon the Grantor, persons or subscribers;

d. the Grantee fails to obtain and maintain any permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; provided, however, that the Grantee shall be allowed a reasonable time to cure failure to obtain any permit; or

e. the Grantee fails to maintain the full amount of its insurance or to post a performance bond as required under the terms of this Franchise.

Upon the occurrence of one of the events set out above, following 10 days written notice to Grantee of the occurrence and the proposed forfeiture and an opportunity for Grantee to be heard, Grantor may by ordinance declare a forfeiture. In a hearing of the Grantee, the Grantee shall be afforded due process rights as if the hearing were a contested case hearing subject to ORS Chapter 183, including the right to subpoena and cross-examine witnesses, to subpoena documents, and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the Grantor's decision. In the event that the Grantee believes that the Grantor improperly has declared a forfeiture, the Grantee may file such proceeding as is appropriate in a court of competent jurisdiction to determine whether the Grantor properly has declared a forfeiture. If a forfeiture is lawfully declared, all rights of the Grantee shall

immediately be divested without a further act upon the part of the Grantor.

11.2 Receivership.

In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right, subject to federal law, to declare a forfeiture of this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Grantee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

a. Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by a City Commission resolution; and

b. Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the City, duly approved by the City and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

11.3 Expiration.

Upon expiration of the Franchise, Grantor shall abide by the franchise renewal provisions of the Cable Act, as amended from time to time.

11.4 Continuity of Service Mandatory.

It shall 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 overbuild, rebuild, modify, or sell the system, or Grantor revokes or fails to renew the Franchise, the Grantee shall make its best effort to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstances, during the lifetime of the Franchise.

In the event of purchase, lease-purchase, condemnation, acquisition, taking over and holding of plant and equipment, sale, lease or other transfer to any other person, including any other grantee of a cable communications franchise, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise agreement following the date

of the transfer, if such continuation of operations is ordered by the Grantor with a view to maintaining continuity of service to all subscribers.

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

12. OPERATION AND MAINTENANCE

12.1 Open Books and Records.

The Grantee shall maintain a business office within the City for managing the cable system, and, subject to the provisions of Section 10 of this Franchise and, to such privileges as may be established under Oregon law, shall manage all of its operations in accordance with a policy of accessible open books and records to the Grantor. The Grantor shall have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time during normal business hours upon reasonable notice, all records of the Grantee and also of any parent company, affiliate or any cable operator, which relate to the operation of the Franchise. Access to the aforementioned records shall 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 unless the Grantor cannot protect the trade secrets from disclosure under Oregon law. To the extent allowed under Oregon law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure.

Upon ten (10) days written notice from the City, Grantee shall provide the Grantor access to computer files specifically requested by name, approximate date or content, and related to compliance with obligations contained in the Franchise. Such access shall be carried out in a manner that does not violate requirements regarding personally identifiable subscriber information, as referenced in Section 631 of the Cable Act, and shall exclude access to computer files containing no information related to Grantee's Franchise obligations. Computer record access shall be provided in the following manner:

a. Grantee's employee shall access requested computer file from file server or hard drive storage for City to view.

b. Once accessed, Grantee's employee shall move slowly through the file while the City views it on the computer monitor.

c. Grantee's employee shall facilitate the printing of requested file to paper.

12.2 Communications with Regulatory Agencies.

A list of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any affiliate or any cable operator of the system authorized by this Franchise, 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 communications operations authorized pursuant to this Franchise agreement, shall be submitted to the Grantor each year with Grantee's annual report, and copies of any such documents and their replies from respective agencies shall also be made available to the Grantor. 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 operations within the Franchise Area, shall 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 or cable operator of the cable system authorized by this Franchise.

12.3 Reports

a. Quarterly Reports. Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, upon request of the Grantor, submit to the Grantor a report of all trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the specific nature of the complaint, remedial action taken, if any, and the current status of the complaint. Upon request by the Grantor, Grantee shall also provide outage reports and 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.

Within thirty (30) days after the end of each of the Grantee's fiscal quarters, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all gross revenues earned and gross receipts collected by the Grantee or any cable operator, related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments.

b. Annual Report. No later than June 1 following the end of the Grantee's fiscal year each year, Grantee shall present a written report to the Grantor which shall include:

i. Audited financial reports (or if audited reports are not available, then reviewed reports) for the previous fiscal 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; a financial report for the metropolitan area system of which the Franchise is a part with reviewed gross revenues and receipts as well as statements of expenses, balance sheet and capital expenditures reviewed by an independent certified public accountant; and a financial report for the Franchise Area with audited gross revenues and receipts. In the event any audited financial report has not been published by the date due under this section, then the audited financial report and, if the audited financial report is for the Grantee then also the accompanying reviewed report and the audited report for the Franchise Area, shall be deemed presented on time if presented within thirty (30) days after publication.

All financial reports required under this section shall be presented to the Grantor accompanied by such notes and explanations as are required to fully understand the reports. Such notes and explanations shall include, but not be limited to, an explanation of any and all deductions made from Gross Revenues in order to arrive at Gross Receipts for the calculation of franchise fees to be paid to the Grantor.

ii. A summary of the previous year's activities including, but not limited to, subscriber totals in each category and new services.

c. Monitoring and Compliance Reports. No later than April 15 of each year, the Grantee shall provide a written report of any FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall provide reports of the test and compliance procedures established by this Franchise agreement, no later than thirty (30) days after the completion of each series of tests.

d. Additional Reports. The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Grantor in connection with this Franchise.

e. All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee.

12.4 Safety.

a. The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall 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 shall install and maintain its wires, cable, fixtures, and other equipment in accordance with the requirements of the National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) standards, and in such manner that they shall not interfere with the installations of any public utility.

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, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

13. MISCELLANEOUS PROVISIONS

13.1 Compliance with Laws.

The Grantee shall comply with all federal and state laws and regulations, including regulations 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 entire term of this Franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder. The Grantor shall make a good faith effort to provide copies to the Grantee of all general ordinances, resolutions, rules, regulations, and codes, and any amendments thereto, to which the Grantee is subject under this Franchise.

13.2 Severability and Preemption.

Except as provided in Section 13.7 below, if any section, subsection, clause, phrase, term, provision, condition, covenant or portion of this Franchise is for any reason held 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 shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall 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 shall be valid and enforceable to the fullest extent permitted by law.

If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate replacement provisions to fulfill the purpose and intent of the superseded provisions consistent with applicable 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 shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments to this Franchise negotiated pursuant to this section as a result of such provision being preempted

shall no longer be of any force or effect.

13.3 Captions.

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

13.4 No Recourse Against the Grantor.

The Grantee shall 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 agreement or any part thereof is determined to be invalid.

13.5 Nonenforcement by Grantor.

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

13.6 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 shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean 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; 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 agreement.

13.7 Entire Agreement.

This Franchise agreement 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.

13.8 Consent.

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

13.9 Notices and Time Limit for Grantee Communications

All communications with the City by the Grantee referred to in this Franchise shall be made through the Office of the City Manager of Canby, unless otherwise specified in this Franchise. Grantee shall provide any written communication required by this Franchise within sixty (60) 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.

13.10 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 Communications Policy Act of 1984, as amended in 1992 and 1996.

13.11 Comparability of Other Cable Franchises

a. If the Grantor issues a franchise to a cable operator to enter upon the streets and public rights of way for the purpose of operating a Cable System to provide Cable Service to any part of the Franchise Area, the Grantor shall ensure that, considering all the circumstances, including any limitations on its regulatory authority, the material provisions of such other franchise are, taken together, reasonably comparable to the material provisions of this Franchise; providing, however, that the Grantor shall not be prohibited from granting any franchise containing requirements which are, taken together, greater than those of this Franchise, nor from granting any franchise containing individual requirements which are greater or lesser than the requirements of this Franchise.

b. The Grantee agrees that its sole remedy under this provision, other than testimony before the City Council, is to seek injunctive relief to prevent the issuance of a franchise which would violate the first paragraph.

c. No provisions of this section shall be enforceable unless all are enforceable.

13.12 Franchise Review.

At any time during the seventh year of this Franchise, either the Grantor or the Grantee may request the other party to participate in good faith negotiations, for a period not to exceed six (6) months, to consider adoption of amendments to the Franchise. There shall be no obligation for either party to enter negotiations.

If the parties enter negotiations, the subjects of consideration, or areas in which the Franchise may be subject to amendment, shall be limited to the following:

a. Technology;

b. Parity with neighboring systems;

c. PEG Access support by the Grantee; and

d. Franchise term.

Following negotiations, amendments to the Franchise may be presented to the City Council for adoption. Nothing in this section requires either the Grantor or the Grantee to agree to any amendment to the Franchise, and any amendment to the Franchise must be formally accepted by both parties.

13.13 Notice.

Any notice provided for under this Franchise shall 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 City: City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

If to the Grantee: North Willamette Telecom
190 NE 2nd Avenue
P.O. Box 850
Canby, OR 97013

13.14 Public Disclosure.

Subject to the Oregon Public Records Law, whenever, pursuant to this Franchise agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's prior written consent.

13.5 Time is of the Essence

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

EXHIBIT A

HARDWIRED PROGRAMMING ORIGINATION POINTS

Canby City Hall – Council Chambers

Canby High School

Canby Adult Center

Studio Facility - OCTS

EXHIBIT B

ACCEPTANCE

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

This is to advise the City of Canby, Oregon (the "City") that North Willamette Telecom (the "Grantee") hereby accepts the terms and provisions of Ordinance No. _____, passed by the City Council on _____, 199__ (the Franchise) granting a Franchise for twelve (12) years to North Willamette Telecom. The Grantee agrees to abide by each and every term of the Franchise.

NORTH WILLAMETTE TELECOM

BY _____
TITLE_____
DATE_____

EXHIBIT C

Existing 2-Way Active Interconnections

Canby System Interconnected to:	Location of Interconnect
Clackamas Community College	Clackamas Community College