

CABLE TELEVISION FRANCHISE AGREEMENT
between

and
COMCAST OF OREGON II, INC.

Draft Agreement
Revised by Cities ~~August 2009~~ January 2010

TABLE OF CONTENTS

4.3	Provision of Service	9
5.8	Status Monitoring	17
9.1	Grantor Acquisition of the Cable System	37
	Should the Grantor seek to revoke this Franchise after following the due process procedures set forth Section 7.4 of this Franchise, including the public hearing described therein, the Grantor shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from Grantee, it may then seek revocation of the Franchise at a second public hearing. The Grantor shall cause to be served upon the Grantee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.	40
13.14	Time is of the Essence	47

1. PURPOSE AND INTENT

1.1 The City of _____, Oregon (hereafter Grantor) is authorized to and by this Franchise Agreement does grant to Comcast of Oregon II, Inc. (hereafter Grantee) a non-exclusive ten (10) year franchise, revocable as provided herein, to construct, operate and maintain a Cable 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 and all attachments included hereto, 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 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 Grantor and its designees, of designated channels on 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 ~~in analog or digital format~~ 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.
 - i. "Educational Access Channel" means any channel or portion of a channel available for educational programming by individuals or institutions.
 - ii. "Government Access Channel" means any channel or portion of a channel available for programming by government agencies.
 - iii. "Public Access Channel" means any channel or portion of a channel where any member of the general public or any non-commercial organization may be a Programmer on a non-discriminatory basis, subject to operating rules formulated by the Grantor or its designee. Such rules shall not be designed to control the content of public access programming.

Nothing in this Franchise shall prevent the Grantor or its designee from carrying out fundraising activities to supplement access capital or operating funds

consistent with applicable federal law and regulations, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities and equipment.

c. “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.

d. “Basic Cable Service” means any service of tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

~~e.~~ “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.

~~e.f.~~ “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.

~~g.~~ “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 operations of such a Cable System.

~~f.h.~~ “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.

~~g.i.~~ “Cable 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 the City under this Franchise.

~~h.j.~~ “Channel” shall have the meaning specified in the definition of “Channel” in Section 602 of the Cable Act.

~~i.k.~~ “City” means the City of _____, a municipal corporation, and all the territory within its boundaries, as such may change from time to time.

l. “Converter” means an electronic device for changing the frequency of a television

signal.

~~j~~.m. “FCC” means the Federal Communications Commission.

~~k~~.n. “Franchise” or “Franchise Agreement” means the authorization granted by this document for the construction or operation of a cable system.

~~l~~.o. “Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

~~m~~.p. “Grantee” means Comcast of Oregon II, Inc., and its lawful successors, transferees, or assignees thereof.

~~n~~.q. “Grantor” means the City, a municipal corporation in the State of Oregon.

~~o~~.r. “Gross Revenues” means all amounts earned or derived by the Grantee or any Affiliate, in whatever form and from all sources, 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 Service, regardless of whether initially recorded to another entity and however characterized.

“Gross Revenues” shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. However, “Gross Revenues” 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.”

The definition of “Gross Revenues” also includes those revenues collected as franchise fees and paid to the City. “Gross Revenues” shall exclude revenues from high speed cable modem service unless it is determined to be a Cable Service under federal law or regulation, any amounts received for managed I-Net from the City or Institutional Subscriber, bad debt written off by Grantee in the normal course of business, provided, however, that bad debt recoveries shall be included in Gross Revenues during the period collected, and any taxes of general applicability collected from subscribers and paid to a governmental entity.

- s. “Institutional Network” means that part of a cable communications network used for the provision of non-entertainment, ~~interactive-institutional~~ services to Schools, public agencies or other non-profit agencies for use in connection with the ongoing operations of such institutions.
- t. “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 or between institutions.
- u. “Institutional Subscriber” means a place of business, public agency, school or non-profit corporation receiving institutional services on the institutional network.
- ~~q-v.~~ “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.
- ~~q-w.~~ “Person” means any corporation, partnership, proprietorship, individual, organization, or other entity authorized to do business in the State of Oregon, or any natural person.
- ~~r-x.~~ “Programmer” means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to subscribers, by means of the Cable System.
- ~~s-y.~~ “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.
- ~~t-z.~~ “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, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, magnetic and laser disk files, and photographs, to the extent related to the enforcement or administration of this Franchise.
- ~~u-aa.~~ “Resident” means any natural person residing within the Franchise Area.
- ~~v-bb.~~ “Residential Subscriber” means a Resident who receives services on the Cable System.
- ~~w-cc.~~ “School” means any public or private educational institution, including primary ~~and or~~ secondary schools, community colleges, colleges, universities and extension centers, but excluding home schools and all similarly situated

private ~~primary and secondary and parochial educational~~ institutions that are not registered by which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies pursuant to ORS 345.505-.525.

~~x.dd.~~ “Section” means any section, subsection or provision of this Franchise Agreement.

~~y. ee.~~ “Streets and Public Ways” means the surface of and the space above and below any public street, road, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them, and except the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

~~z. ff.~~ “Subscriber” means any person who lawfully receives Cable Service over elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the Cable System whether or not a fee is paid for such service with Grantee’s express permission.

~~aa. gg.~~ “Tap” or “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.

~~bb. hh.~~ “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 and revocable franchise from and after the Effective Date hereof, revocable as provided herein, to construct, operate and maintain a Cable System within the Franchise area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the facilities of the Cable Communications System as required and conditioned 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 codes of the City enacted pursuant thereto affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. The Grantor 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 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 Public Streets and Rights of Way.

For the purpose of constructing, operating and maintaining a Cable 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 Streets and Public Ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Cable System. Prior to construction or alteration within City Streets and Public Ways, the Grantee shall in each case request permits as required by the 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 Grantee of the obligations of Section 4.5 regarding the trimming of trees and other vegetation.

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 ten (10) 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 _____, (“Effective Date”) 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.

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 by franchise, permit or otherwise subject to the provisions of Section 3.5 herein.

3.5 Competitive Equity

The Grantee acknowledges and agrees that the Grantor may be required by federal law,

and reserves the right, to grant one or more additional franchises to provide Cable Service within the Franchise Area. If any additional competitive franchise is granted by the Grantor ~~to a Person~~ to provide Cable Service in the Grantee's Franchise Area pursuant to the Cable Act, which franchise contains material terms and conditions that are more favorable or less burdensome terms or conditions than this Franchise Agreement, then, except to the extent that state or federal laws or regulations permit or require more favorable or less burdensome terms or conditions, the Grantor agrees that it shall amend this Franchise ~~so to ensure that,~~ considering all the circumstances including any limitations on its regulatory authority on the whole, the material provisions of such other franchises and this Franchise are, taken together, regulatory and financial burdens on each entity are materially equivalent to the extent required by law. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; performance bonds or similar instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word identical franchise or authorization for a competitive entity. Video ~~Programming-programming~~ services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

3.6 Franchise Non-Transferable.

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

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

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rule makings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. Grantee shall furnish all information required by law and/or reasonably requested by Grantor with respect to the consideration of the transfer. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the legal, financial and technical -qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. —The Grantee shall assist Grantor in any such inquiry.

In cases where the Grantor finds it inappropriate to give unconditional consent to the proposed transfer, The-the Grantor may condition its consent upon such terms and conditions as it deems appropriate, provided however, any such terms and conditions so attached shall be related to the legal, financial and technical qualifications of the prospective-proposed transferee and to the resolution of outstanding and unresolved issues of Grantee's noncompliance with material terms and conditions of this Franchise. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation, provided that any such consent shall not be unreasonably withheld. The Grantor shall have one hundred twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. Failure by the Grantee or prospective transferee to provide such information, including the information requested by Grantor pursuant to this Section, will automatically toll the one hundred twenty (120) day time period. Subject to the previous sentence, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

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

Every such transfer as heretofore described shall be deemed void and of no effect unless Grantee shall, within sixty (60) 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 sale of tangible assets of the Cable System in the ordinary conduct of the Grantee's business without the consent of the Grantor.~~

3.7 Franchise Acceptance.

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 the Grantee, in the form attached hereto as Exhibit A. 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 one hundred and twenty (120) activated ~~channels~~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. The Grantee shall also provide for the support of Institutional Network uses for public purposes as provided for in Section 6.5. 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.

Comment [NLW1]: FOR DISCUSSION

Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets and Public Ways. 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 cuts in the Street and Public Ways.

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 Service

a. It is the City's general policy that all potential Residential Subscribers in the Grantee's Franchise Area should have equivalent availability of service from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not unreasonably- 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 sixty (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. With no line extension charge;
- ii. At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting to an

outside wall for Residential Subscribers and a one hundred twenty-five (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;

- iii. At non-discriminatory monthly rates for Residential Subscribers; and
 - iv. To every residential dwelling unit within the Franchise Area where the average density is equal to or greater than twenty (20) units per cable mile.
- b. Grantee shall provide Cable Service to Persons that do not meet the density requirement set forth in Section 4.3(a)(iv) under the following circumstances, through agreement between the Grantee and the person requesting service for payment of line extension construction costs:
- i. Grantee shall provide service at its normal, published installation charge for the initial 125 (one-hundred twenty-five) feet of extension.
 - ii. The subscriber and the Grantee shall share equally the actual cost of the extension for the distance over 125 (one-hundred twenty-five) feet but less than five hundred (500) feet.
 - iii. The subscriber shall pay all costs for the extension for the distance greater than five hundred (500) feet.
- c. Notwithstanding Section 4.3(a), Grantee may establish different and non-discriminatory rates and charges and classes of services for Commercial Subscribers, as well as different and non-discriminatory monthly rates for classes of Commercial Subscribers. For the purposes of Section 4.3, "Commercial Subscribers" mean any Subscribers other than Residential Subscribers.
- d. Nothing in this Section shall be construed so as to require Grantee to extend and provide Cable Service to areas already serviced by another provider of cable television services.

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e. _____

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 Streets and 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 codes 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, Public Ways and Grounds.

Whenever the Grantee disturbs the surface or otherwise damages any Streets and Public Ways for any purpose mentioned herein, it shall repair and restore the same in accordance with applicable rules, regulations and codes of Grantor as now or hereafter in effect. If the Grantee fails to promptly repair and restore any Streets and Public Ways, the Grantor may do so, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. The cost incurred by Grantor, -including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee. All excavations made by the Grantee in the Streets and Public 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 codes 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 at the expense of the Grantee.

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 sanitary or stormwater sewers, grading, paving, repairing and/or altering any Streets and Public Ways, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public 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 sanitary or stormwater 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 relocate its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure. The cost incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, 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 immediately 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 remove its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. The cost incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, 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 or relocation such of its facilities as may be required to facilitate such movements. If the Grantor is the party requesting the temporary removal or relocation of Grantee's facilities 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, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. The reasonable cost incurred by Grantor including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee.

~~In the event it is necessary permanently to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to allow the timely completion of public improvements, including but not limited to public streets,~~

~~sidewalks, alleys and highways built or improved by or for the Grantor or pursuant to a private development, Grantee, upon reasonable notice, shall at the expense of Grantee move or remove such of its facilities as may be required to facilitate such improvements. Should Grantee fail to move or remove any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure. The reasonable cost incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee.~~

4.11 Undergrounding.

- a. Cable must be installed underground where (1) all existing utilities are placed underground; (2) statute, ordinance, policy or other regulation of Grantor requires utilities to be placed underground; (3) overhead utility lines are placed 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); (4) Grantee is unable to get or maintain proper clearances; (5) underground easements are obtained from developers of new residential areas; or (6) utilities are overhead but Residents prefer underground (service to be provided undergrounding at Residents' cost).
- b. Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from poles, pedestals or vaults to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with utility companies or providers, common trenches for underground construction wherever available.

~~f.c. Nothing in this Section shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment, provided that these are placed in a manner consistent with applicable laws, codes, rules and regulations.~~

4.12 Strand Maps.

Grantee shall maintain strand map drawings of the Cable System, and make them available to the Grantor for inspection upon request. Strand drawings or their functional equivalent shall be updated as changes occur in the Cable System. The Grantee shall provide to the Grantor, upon request, a copy of strand maps showing the location of the Grantee's facilities in the Streets and Public Ways within the Franchise Area.

4.13 Emergency.

In the event of ~~an emergency~~emergency situation; or circumstance that 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. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold Grantee harmless for ~~claims by third parties for damages or personal injury caused by the~~any negligence~~negligent actions~~ or gross negligence ~~of by~~ Grantor's ~~and its~~ employees ~~and or~~ agents ~~in removing or relocating Grantee's Cable System~~ pursuant to this Section 4.13; ~~provided, however, that the obligations of this sentence shall not apply where Grantor provided Grantee with an opportunity to remove or relocate the Cable System and Grantee did not do so.~~

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

5.1 Equal and Uniform Service

Reasonable efforts shall be made to provide equal and uniform access, Cable Service and rates to customers within the Franchise Area.

5.2 System Configuration.

The Cable System shall consist, at a minimum, of a network with bidirectional communications capacity for subscriber interaction if any, required for selection or use of Cable Service, including but not limited to pay-per-view, VOD and other interactive cable services as determined by Grantee.

5.23 Channel Capacity.

The residential Cable System shall maintain a minimum channel capacity of the equivalent of one hundred and twenty (120) activated ~~standard analog or digital~~ Channels. The System shall throughout the Franchise term carry reverse signals in the upstream direction. In addition, the Cable System shall have capacity for Institutional Network services. The system performance, capacity and services offered may be reviewed to assure the system keeps pace with changes in technology and is at least comparable to other systems in the Portland Metropolitan area.

5.34 Satellite Earth Stations.

Grantee shall provide a sufficient number of earth stations or its equivalent to receive signals from enough operational communications satellites or its equivalent 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.

5.45 Interconnection.

a. Grantee shall continue without limitation all interconnections in effect on the Effective Date of this Franchise.

b. Grantee shall interconnect the Cable System with any cable system in a geographically adjacent system (meaning a cable system that adjoins or overlaps with the Franchise Area), not owned or operated by Grantee or an affiliate of Grantee, upon the directive of the Grantor, for the purpose of permitting the transmission of PEG Access programming signals between the systems, and the carriage of such signals on the PEG Access Channels. Grantee shall not be required to interconnect with the other cable system unless the cable operator of that system is willing to do so and pay for its own costs of constructing and maintaining the interconnect up to the demarcation point, which shall be at a meet point located at or near the border of the neighboring jurisdictions, except as may otherwise be agreed by the parties. Grantee shall use reasonable efforts to agree with the other cable operator upon mutually convenient, cost-effective and technically viable interconnection of the PEG Access Channel signals. Grantee agrees to not object to or impede any connection established by a Grantor designated access provider, whether on the property of the Grantor, a designated access provider, or another cable operator, by means of which another cable operator obtains access to the PEG Access Channels, and not to object or impede the transmission of such signals by any other cable operator. The Grantee shall not charge the other party a fee for PEG programming in connection with transporting PEG signals or programming on Grantee's Cable System to the meet point or other location agreed upon between Grantee and the other cable operator.

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 PEG Access signals.

~~It is Grantee's responsibility to ensure that the signals it transmits by means of any interconnection suffer no material degradation, when compared to the quality of the signals as received from the designated access providers. It is not the Grantee's responsibility to ensure that the signals provided to the interconnect by another interconnecting system meet industry standards.~~

~~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 at Grantee's cost 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 Cable 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 within their respective franchise areas shall be the obligation of the interconnecting operator. Therefore Grantor shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable system~~

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~~operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder shall be subject to such cooperation being obtained.~~

- d. ~~_____~~ Grantee agrees to interconnect the Cable System with any cable system that is in a geographically adjacent community to the Franchise Area that is owned or operated by Grantee or an ~~affiliate~~ Affiliate of Grantee, for the purpose of permitting the transmission of PEG Access programming signals between the systems, and the carriage of such signals on the PEG Access Channels throughout the Franchise Area. The interconnection shall be done at Grantee's sole expense.
- e. In the event the Grantor designated cable operator with authority to construct a cable system to the PEG origination points within the Franchise Area opts not to connect at the origination points and instead requests access to PEG Access Channels through an interconnection with Grantee's facilities within the Franchise Area, including within Grantee's headend or facilities, Grantee shall use reasonable efforts to agree with the other cable operator upon mutually convenient, cost-effective and technically viable interconnection at the PEG Access Channel signals.
- f. Notwithstanding the foregoing, interconnection may be waived by the Grantor if not technically feasible. Grantee may, after written consent from Grantor, terminate an interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.
- g. Nothing in this Section alters Grantee's Channel obligations with respect to Access programming or the number of designated Access Channels delivered to Residential Subscribers on the System. Unless the Grantor directs otherwise, any interconnection shall allow Access Channels to operate without disruption or delay across and within the Franchise Area. Any interconnection may be waived by the Grantor if not technically feasible. Grantee may, after written consent from Grantor, terminate an interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.
- h. It is Grantee's responsibility to ensure that the signals it transmits by means of any interconnection suffer no material degradation, when compared to the quality of the signals as received from the designated access providers. It is not the Grantee's responsibility to ensure that the signals provided to the interconnect by another interconnecting system meet industry standards.
- i. Any equipment and construction costs borne by Grantee in connection with the obligation to provide for PEG Access Channel interconnection shall be considered "external cost" as such term is used in 47 C.F.R. § 76.922 on the date of this Franchise, and as such, the cost is permitted under federal law and regulation to be passed through to Subscribers, to the extent and in a manner provided for in federal regulations governing the same. The costs of interconnection shall be in addition to any PEG capital contribution made by

Grantee pursuant to 6.5(c) hereof, and shall not be deducted from the amount of such contribution.

5.56 Emergency Alert Capability.

- a. Grantee shall provide emergency alert capability in full compliance with applicable FCC requirements. Grantee and the City shall establish procedures to override video and audio on all channels of the Cable System to provide emergency messages consistent with the FCC's directives.
- b. The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from Grantor's use of the cable system or the EAS including, but not limited to, reasonable attorneys' fees. Additionally, subject to limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold harmless the Grantee for the negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 5.6(b).use of the EAS or any negligence or gross negligence of Grantor, its employees, officers and agents arising from Grantor's use of the EAS.

5.67 Standby Power.

Grantee shall provide standby power generating capacity at the Cable System control center and all hubs and any fiber optic nodes. Grantee shall maintain standby power system supplies, rated at least at ~~two-four~~ (24) hours duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place and shall 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.

5.8 Status Monitoring

Grantee shall continue to utilize status monitoring of the cable system which can continually monitor the system for signal quality on the forward and return spectrums of the system. In addition, the Grantee shall maintain status monitoring for all power supplies in its headend(s) and hub(s) as well as the distribution system.

Status monitoring shall be capable of notifying the Grantee, 24/7 of system problems including utility power outages that will negatively affect its customers.

5.79 Parental Control Lock.

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

| **5.810 Technical Standards.**

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply, and may be enforced by the Grantor. The Grantor may establish and enforce higher or additional reasonable technical standards, following consultation with the Grantee, to the extent that applicable law allows the Grantor to do so without the consent of the Grantee.

The Cable System shall be capable of carrying a minimum of one hundred and twenty (120) standard analog or digital Channels. The combined forward trunk and distribution system shall deliver signals to each Subscriber's television receiver that meet or exceed applicable FCC specifications on each and every video channel.

| **5.911 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. These tests shall include, at a minimum:

- Initial proof of performance for any construction
- Semi-annual compliance tests
- Tests in response to Subscriber complaints
- Tests requested by the Grantor to demonstrate Franchise compliance.

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.

System tests shall be performed at intervals of no greater than every six months, at a minimum of five (5) randomly chosen Subscriber television receiver connections in the Franchise Area, or connections to the system which are the equivalent of standard Subscriber connections, including one hundred twenty-five (125) foot drops and converters. Grantor shall be given the opportunity to review and approve test sites in advance. At least one (1) ~~of the test locations shall be the far end of the distribution trunk cables.~~ The tests may be witnessed by representatives of the Grantor, and Grantee shall inform the Grantor of the time and place of each test no less than three (3) weeks prior to the test. Completed written test reports shall be submitted to the Grantor upon request. The Grantor may conduct independent tests of the system for which the Grantee shall give its fullest cooperation. If one or more of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed, and at least five (5) additional randomly chosen locations. If results of a second test indicate failure of the system to meet the technical performance requirements of this Franchise, then the Grantor may apply such remedies as it deems appropriate, unless the circumstances of the failure are caused by conditions which are beyond the Grantee's control, as determined, acknowledged and verified by the Grantor.

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6. SERVICES AND PROGRAMMING.

6.1 Programming Categories.

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

1. News & Information
2. Sports
3. General Entertainment
4. Arts, Culture, Performing Arts
5. Children / Family
6. Science
7. Travel Information
8. Weather Information
9. Governmental and Educational Programming
10. Movies
11. Religious Programming
12. Foreign language / Ethnic Programming

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

6.2 Changes in Video Programming Services.

–Grantee shall provide written notice to the Grantor and to Subscribers for any deletions, additions, or rearrangements of individual programming service at least thirty (30) days in advance. The City reserves the right to regulate to the fullest extent permitted by law to ensure maintenance of the mix, level and quality of service.

6.3 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.

6.4 Obscenity.

The Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States, or the State of Oregon, provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including Public, Educational and Governmental Access programming.

6.5 Public, Educational and Government Programming.

a. Designated Access Providers.

- i. The City may designate Public, Educational and Government Access Providers, including itself, to control and manage the use of any or all Access Channels provided by the Grantee under this Franchise (the “Designated Access Provider”). 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 Channels. The Grantor or its designee may formulate rules for the operation of the Public Access Channels, consistent with this Franchise; such rules shall not be designed to control the content of Public Access programming.
- ii. Grantee shall cooperate with Designated Access Provider(s) in the use of the Cable System for the provision of PEG Access. Grantee shall enter into such operating agreements with Designated Access Provider(s) 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.

b. Channel Capacity

- i. Grantee shall provide to the Grantor, for independent administration by the Grantor or its designee throughout the term of the Franchise, ~~five~~ (5) Access Channels for distribution of PEG Access programming to all Residential Subscribers.
- ii. Throughout the term of the Franchise, Grantee shall provide operating upstream Channels sufficient to enable character-generated, prerecorded and live cablecasts from remote points of the Cable System, including the Origination Points listed in Exhibit ~~EB~~, 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.
- iii. Grantor may require Grantee to provide one (1) additional Access Channel for a particular type of PEG Access under this Section, when a Channel for a particular type of PEG Access programming meets the criteria set forth below. Upon Grantee’s request, a public hearing will be conducted regarding the need for additional capacity, to a maximum total of six (6) Access Channels. The Grantor shall give Grantee at least one hundred twenty (120) days prior notice of the required additional Access Channel.
 - a. Public Access Channels: Grantor must show that during any eight (8) consecutive weeks, the Public Access Channel is in use for

Locally Produced, Locally Scheduled Original Programming eighty percent (80%) of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or

- b. Educational Access Channels: During any eight (8) consecutive weeks, the Educational Access Channel is in use for Locally Scheduled Original Programming eighty percent (80%) of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 AM to 11:00 PM, or
- c. Governmental Access Channels: During any eight (8) consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming eighty percent (80%) of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 AM to 11:00 PM; and,

the applicable PEG Access Channel capacity expansion criteria as set forth in subsections a, b, or c shall have been met, or exceeded, by the Grantor or the Designated Access Provider with responsibility for programming the PEG Access Channel. For the purpose of Section 6.5(b)(iii):

“Locally Produced” means programming produced in the Clackamas, Multnomah, or Washington Counties, or the Vancouver/Clark County, Washington metropolitan areas; and

“Original Programming” means Programming in its initial cablecast on the Cable System or in its first or second repeat; and

“Locally Scheduled” means that the scheduling, selection, and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received over the interconnection, the provider transmitting the programming over the interconnection. However, carriage on any Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as part of its Basic Cable Services or Expanded Basic Cable Services shall not be considered “Locally Scheduled.”

iv. .

c. **Support for Access Capital Costs**

Comment [NLW2]: SEE SEPARATE DOCUMENTS FOR EACH CITY

- ~~i. Throughout the term of this Franchise, Grantee shall provide [____ (\$____) per month, per Residential Subscriber] OR [a one time payment of \$_____, due within sixty (60) days of the effective date of the Franchise] for capital costs related to PEG Access or such lesser amount if authorized in writing by Grantor. Grantee shall provide notice, approved by the Grantor, to the Grantee's Residential Subscribers if Grantee elects to include the PEG support provided under this Section on the bills of Residential Subscribers. The Grantee shall make such payments quarterly, following the Effective Date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty five (45) days following the end of the quarter, concurrent with the franchise fee payment pursuant to Section 8.1.~~
- ~~ii. To the extent permitted by federal law, Grantee may pass through to Subscribers and itemize on Subscriber cable bills the PEG Access contribution set forth in subsection 6.5(e)(i).~~
- ~~iii. The Grantor shall provide a report annually to the Grantee on the use of the funds provided to the Grantor under this. The annual report shall be submitted to Grantee within 120 days of the close of the Grantor's fiscal year, which fiscal year runs for 12 consecutive months from July 1 to and including June 30. Grantee may review records of the Grantor regarding the use of funds described in such report.~~

~~Grantee agrees that financial support or costs arising from or relating to the obligations set forth in this Section 6.5(e) shall in no way modify or otherwise affect the Grantee's obligations to pay franchise fees to the Grantor. Grantee agrees that although the sum of franchise fees and the payments set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenue in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Franchise.~~

d. Origination Points

~~Grantor-Grantee shall, within sixty (60) days of a request from Grantor or the Designated Access Provider, without charge, install and maintain a hardwired programming origination point for each facility listed in Exhibit CB, to the extent such origination points do not already exist. For those origination points that already exist, Grantee shall continue to maintain such origination points throughout the term of this Franchise.~~

e. Access Interconnections

Grantee shall install and maintain all access interconnections of PEG Access Channels in accordance with the requirements of Section 5.4.

- i. ~~In addition, Grantee shall, in a timely manner considering the technical and operational issues involved, cooperate with the City, other cable franchisees, and Designated Access Providers in the establishment and continuance of a regional, interconnected Government Access Channel to be launched on a date to be determined by Grantor or its designees, which determination shall follow good faith efforts by the Grantor and Grantee to find a launch date mutually acceptable to both parties.~~

f. Institutional Network

Comment [NLW3]: FOR DISCUSSION:
Highlighted is Comcast's most recent proposal.

Grantor may enter into a written agreement with Grantee for the provision of an Institutional Network connecting Grantor's government facilities within the Franchise Area on a management network basis.

g. Cable Service to Public Facilities

As a voluntary initiative, Grantee, upon request, shall provide without charge, a Standard Installation and one (1) outlet of Basic Cable, expanded Basic Service, or the equivalent if Grantee moves to an all digital platform, to those administrative buildings owned and occupied by the Grantor, fire station(s), police station(s), and School(s) that are within the Franchise Area and passed by its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations shall be excluded. Such installations shall be provided to the facilities within sixty (60) days of Grantor's request. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlet shall not be located in area accessible to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required (defined for purposes of this subsection as a drop not to exceed one-hundred twenty-five (125) feet), unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation.

h. 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.

i. Technical Quality

- i. Grantee shall maintain all ~~-~~Access Channels and interconnections of Access Channels at the same or better 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 all ~~-~~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 agency 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.

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~~a-b.~~ Notice of Changes in Rates and Charges. Throughout the term of this Franchise, Grantee shall give all subscribers within the Franchise Area at least thirty (30) days notice of proposed rate changes, as required by FCC. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns.

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~~b-c.~~ 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, or 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 Subscribers or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.

~~e-d.~~ 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 Act), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor and Grantee in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights shall be deemed superseded by those provisions of the Act.

7.4 Remedies for Franchise Violations.

- a. In the event the Grantor asserts that Grantee has violated a provision of this Franchise, the Grantor shall give the Grantee written notice of the alleged violation. Within thirty (30) days after receipt of such notice, Grantee may request in writing a hearing before Grantor or its designee on the alleged violation. If the Grantee requests a hearing, then the Grantor or its designee shall provide the Grantee written notice of the time, date, and place of the hearing. Following the hearing, in the event the Grantor finds that a material violation occurred, the Grantor may assess the appropriate remedy against the Grantee, including but not limited to penalties or termination of the Franchise, except as otherwise provided by subsection (c) of this Section. Any determination of violation or assessment of a remedy shall be in writing and shall be subject to review in a court of competent jurisdiction as authorized by law.
- b. In determining which remedy for Grantee's violation is appropriate, the Grantor shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. In the application of remedies for Franchise violations, whether committed by the Grantee or any other cable franchisee regulated by the Grantor or its designee, the Grantor shall apply similar remedies for similar violations.
- c. If within thirty (30) days after receipt of written notice of any asserted violation from the Grantor the Grantee corrects the asserted violation, or if correction is not reasonably possible within the thirty (30) day period, the Grantee initiates good faith efforts satisfactory to the Grantor within the thirty (30) day period to cure the asserted violation and the efforts continue in good faith, then no penalties or other remedy shall be imposed.

Subject to Grantee's right to cure as provided in this Section, in the event that Grantor determines that Grantee has violated any material provision of this Franchise as provided herein, Grantor may assess penalties of up to \$1,000.00 per day or per incident, not to exceed \$50,000.00 per year. Grantee shall pay any penalties assessed by Grantor within 30 days after they are assessed.

7.5 Remedies Not Exclusive.

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 Grantee shall meet minimum Federal Consumer Protection Standards and the customer service standards set forth herein. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations. For purposes of this Section 7.6, the term “normal operating conditions” shall mean those service conditions within the control of Grantee as defined under 47 C.F.R. Section 76.309 (c)(4)(ii).

a. Customer Service and Telephone Responsiveness.

- i. The Grantee shall maintain an office within the Portland, Oregon metropolitan area. The office must be adequately staffed and able to respond to Subscribers and the public not less than fifty (50) hours per week, with a minimum of nine (9) hours per day on weekdays and ~~some~~ five (5) hours during the weekend on Saturdays.

Comment [NLW4]: Clackamas County?

Grantee shall have the option to substitute the office requirement, including but not limited to, by providing for pick up or drop off of equipment free of charge in any one of the following manners: (a) by having Grantee’s representative go to the customer’s residence, or (b) by using a prepaid mailer, ~~or~~.

- 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 twenty-four (24) hours a day, including weekends and holidays.
- iv. The Grantee shall maintain, on average as verifiable by statistical data, sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers, which shall be measured as follows:
 - a. ~~+~~ Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time during any quarter.
 - b. 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 percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

Measurement of this standard shall include all calls received by Grantee from subscribers whether they are answered by a live representative or by an automated attendant. If a call needs to be transferred, transfer time shall not exceed an additional 30 seconds. Grantee may use an Automated Response Unit (“ARU”) or Voice Response Unit (“VRU”) in answering and distributing calls from customers. If a foreign language option is provided, and the subscriber does not enter an option, the menu may default to the first tier menu of English options. After the first tier menu (not including a foreign language rollout) has run through three (3) times, if customers do not select any option, the ARU or VRU may transfer the call to a queue for a live representative, and the transfer time shall not exceed 30 seconds. Grantee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

b. Service and Repair Calls.

- i. Under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, requests from Subscribers for repair and maintenance service must be acknowledged by the Grantee within twenty-four (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 twenty-four (24) hours under normal circumstances. All other repairs should be completed within seventy-two (72) hours under normal circumstances.
- ii. Under normal operating conditions, at least ninety-five percent (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 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, and after 5:00 p.m.

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 ninety-five percent (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 one-hundred twenty-five (125) feet from the existing distribution system.

c. Disconnection.

- i. The Grantee may disconnect a Subscriber if:
 - 1. at least thirty (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 ten (10) 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 7.6(c)(i) 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, is abusive or threatening to Grantee's employees and representatives, is or may be engaged unlawfully in theft of Cable Services, or is causing a system violation of FCC rules or regulations.
- iii. 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, -within thirty (30) days return to such Subscriber the amount of the deposit, if any, collected by Grantee from such Subscriber, less any disputed amounts owed to Grantee for Cable Services or charges prior to the date of disconnection.
- iv. Nothing in these standards shall limit the right of Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Grantee's equipment, abusive and/or threatening behavior towards Grantee's employees and representatives, or, unless prohibited by law, refusal to

provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.

d. Credits Upon Outage.

Except for planned outages where Subscribers are provided reasonable notification in advance, upon a Subscriber's request the Grantee shall provide a pro-rated twenty-four (24) hour credit to the Subscriber's account for any period of four (4) hours or more during which that Subscriber experienced the effective loss or substantial impairment of video or audio service on the Cable 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.

Grantee's bill to Subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge therefore. 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. 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. Grantee's practices and procedures for protecting against invasions of subscriber privacy; ~~and~~

~~5-6.~~ service termination policy;

7. billing procedures shall be clearly explained in a manual and in addition, the company's phone number for information and requesting the manual shall be placed on the part of the bill retained by customers;

8. the notice and referral information, as set forth in subsection 7.6(g)(ii);-

9. liability specifications;

10. converter/subscriber terminal policy; and

11. breach of agreement policy.

ii. Notice to Subscribers.

1. Grantee shall inform the Grantor and Subscribers within thirty (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, at least annually and upon request by Grantor or a Subscriber, send written notice 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. Subject to availability of space on customer bills, such notification may be included as a message on the billing statement and the costs related

to providing the notice shall be borne by Grantee to the extent allowed by federal law. In the event the Grantor wishes to include its own statement with Grantee customer bills, the Grantor or its designee shall bear the cost of the printing and production of such notice, and incremental cost of mailing, if any; the Grantee shall be responsible for inserting and mailing out the notice. Grantee must also provide the name, address and phone number of the Grantor on subscriber's monthly bills unless Grantor in writing requests that such information be omitted.

iii. **Written Complaint Acknowledgment.**

Within ten (10) days following receipt of a written complaint, received at the Grantee's principal business office ~~by first class mail,~~ from a Subscriber or the Grantor, 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. 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 settled the complaint to the satisfaction of the person initiating the complaint.
- ii. For purposes of this Section, a "complaint" is a grievance received by Grantee ~~or Grantor from a Subscriber~~ pursuant to Section 7.6(g)(iii) related to Cable Service provided 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 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 a manner through the operation of the Cable System under 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 Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to 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 Revenue shall be included in Gross Revenue at such time as they are actually collected.~~

~~Within thirty (30) days of a request from Grantor, Grantee will make available shall at all times during the term of this Franchise maintain on file an up-to-date list of all Affiliates receiving Gross Revenues as such revenues are defined in this Franchise, and shall provide such list to Grantor within three (3) business days of a request.~~

b. Bundling.

If Cable Services subject to the Franchise Fee required under this Franchise are provided to Subscribers in conjunction with non-cable services, and the non-Cable Services are included on the same bill as the Cable Services, ~~the Franchise fee shall be applied to Grantee shall proportionately allocate the value revenue between of the Cable Services as reflected on the books and records of Grantee in accordance with applicable FCC or state rules, regulations, standards or orders, and Grantee non-cable services and shall not allocate revenue between Cable Services and non-cable services for the purpose or with the intent of evading or substantially reducing Grantee's Franchise Fee obligations to Grantor.~~

c. Payment of Franchise Fees.

i. Payments due under this Section 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 forty-five (45) days after the dates listed in the previous sentence. ~~A~~ At the time of quarterly payment, the Grantee shall submit a report to the Grantor, verified by an officer of Grantee, shall be made as hereinafter provided which shall contain ~~the relevant facts necessary for an accurate statement of all Gross Revenues related to operation of the cable system franchised hereunder, in sufficient detail to enable~~ the Grantor to verify the ~~amounts accuracy~~ 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. Within 60 days after the Effective Date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor, with good and sufficient surety approved by the Grantor in the ~~penal~~ sum of 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 Grantor 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 Grantor, the removal of all of Grantee's system installed in Grantor's Streets and Public Ways.
- c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first given to the Grantor. 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 Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Grantor.
- d. In a form approved by the Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give

the Grantor 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 the Grantor, and its officers, agents, and employees, from and against all claims, damages and penalties, including but not limited to attorney fees, arising as a result of construction, operation and maintenance of the Cable System within the Franchise Area, the provision of Cable Service or otherwise under this Franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, except to the extent such claims, damages and penalties are caused by the negligent or grossly negligent acts or omissions of the Grantor, its officers, agents and employees. Grantor shall give Grantee prompt written notice of any claim subject to this Section 8.3, and Grantor may retain its own separate counsel at its sole cost and expense.
- b. If the Grantee fails to defend as required in Section 8.3(a), then the Grantee agrees to and shall pay all expenses incurred by Grantor, and its officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in Section 8.3(a). 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.

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8.4 Liability Insurance and Indemnification.

- a. The Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:
- b. The insurance 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 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 8.4 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 8.4 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 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 this Section 8.4.

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 this Section 8.4 shall be cause for immediate termination of this Franchise by the City subject to Grantee's right to cure as provided in Section 7.4.
 - 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 arising from operations under this Franchise or in connection therewith, ~~except to the extent caused by the negligent or grossly negligent acts or omissions of the Grantor, its officers, agents and employees.~~

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9. RIGHTS RESERVED TO GRANTOR

9.1 Grantor Acquisition of the Cable System

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

9.2 [RESERVED]

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:~~

~~With respect to the Cable System and its operation authorized under this Franchise, and to the extent necessary for the enforcement of this Franchise, information pertaining to the operations of the Grantee, and for the specific purposes of a bona fide Franchise enforcement effort the operations of any parent or Affiliate company, 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, administration and operation thereof, including any operations or revenue generated from the Cable System by any parent company or Affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee.~~

~~The amount collected by the Grantee from users of services of the Grantee's Cable System under this Franchise and the character and extent of the service rendered 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.~~

Comment [NLW5]: All of this is covered in Section 11.

~~9.4~~ **Right to Perform Franchise Fee Audit.**

In addition to the 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

Revenues of the Grantee generated in any manner through the operation of the Cable System under this Franchise and the accuracy of amounts paid as franchise 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 three percent (3%) 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 up to \$15,000.

The Grantor agrees to require a third party auditor to execute a nondisclosure agreement with Grantee in connection with any such audit if the auditor will have access to Grantee's confidential or proprietary information.

9.4 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 and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law.

9.5 Intervention.

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

9.6 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 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 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 subsection 9.6, 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.

9.7 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, during regular business hours, 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 of 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 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 nondiscrimination.
- b. The Grantee shall use best efforts to assure maximum practical availability of Grantee’s services and facilities to all Subscribers, regardless of disability, including the provision of a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber’s household is mobility limited.
- c. For hearing impaired customers, the Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of basic service for the hearing impaired. In addition, the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- d. Upon request by a Subscriber or potential Subscriber, the Grantee shall make a reasonable effort as determined by Grantor and as required by the Federal Government to provide information required under Section 7.6(f) and 7.6(g), or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- e. Nothing in this subsection 10.1 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 or a valid request from a law enforcement agency 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 or person resulting from any device or signal associated with Cable Service. 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 Cable 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 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 551 (Section 631 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of subscriber privacy.

11. TERMINATION AND EXPIRATION

11.1 Revocation.

Should the Grantor seek to revoke this Franchise after following the due process procedures set forth Section 7.4 of this Franchise, including the public hearing described therein, the Grantor shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from Grantee, it may then seek ~~termination-revocation~~ of the Franchise at a second public hearing. The Grantor shall cause to be served upon the Grantee, at

least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

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

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

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

The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. § 555a is applicable to this Agreement.

11.2 Expiration.

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

11.3 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 rebuild, modify, or sell the Cable System the Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service.

12. OPERATION AND MAINTENANCE

12.1 Open Books and Records.

~~The Grantor shall have the right as necessary or desirable for effectively administering and enforcing the Franchise, to receive copies or inspect~~ at any time upon reasonable notice all records of the Grantee which relate to the operation of the Cable System or the provision of Cable Service under ~~this Franchise~~. Access to such records shall be maintained or made available at no cost to the Grantor within the Franchise Area or the metropolitan area which includes the Franchise Area during normal business hours ~~upon reasonable notice~~ if maintained locally, or, if not available locally, provided within ten (10) days of notice from the Grantor requesting such records at an agreed upon location within the Franchise Area or the metropolitan area which includes the Franchise Area. 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 Grantor, 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 that do not contain or relate to information related to Grantee's operation of the Cable System or provision of Cable Service under this Franchise. 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 Grantor to view.~~
- ~~b. Once accessed, Grantee's employee shall move slowly through the file while the Grantor views it on the computer monitor.~~
- ~~e.a. Grantee's employee shall facilitate the printing of requested file to paper.~~

The Grantee shall also provide, in the manner set forth in this Section and as provided in Section 13.13, the following information: (a) for the specific purpose of a bona fide audit or enforcement effort being conducted by the Grantor, the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this franchise; the true and entire cost of the maintenance, administration and operation of the cable system, including any operations or revenue generated from the cable system by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee from the provision of Cable Services; and (b) the amount collected by the Grantee from Subscribers of Cable Services of the Grantee's Cable System under this Franchise and the character and extent of the Cable Service rendered therefore to them..

The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years.

12.2 Communication with Regulatory Agencies.

A list and copies of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any Affiliate—, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Cable Services or the Cable System in the Franchise Area pursuant to this Franchise Agreement, shall be submitted to the Grantor upon request. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting Cable Services or the Cable System within the Franchise Area, 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 name, address, and telephone number of the complaining party, 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, 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 forty five (45) 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 or derived 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.~~

Comment [NLW6]: This is required in Section 8.

- b. Annual Report. No later than three and one-half months following the end of the Grantee's fiscal year each year, Grantee shall present a written report upon request to the Grantor which shall include:
 - i. ~~Audited~~ financial reports that are normally prepared for the Grantee 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. ~~In the event any~~

~~audited financial report has not been published by the date due under this Section, then the audited financial report and 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 subsection 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 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. Upon request, the Grantee shall provide a written report of any FCC technical performance tests for the Cable System required by applicable FCC rules and regulations as now or hereinafter constituted. In addition, the Grantee shall upon request 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 determine whether Grantee is in compliance with the terms of 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, including the drop to the Subscriber's premise, in accordance with the requirements of the National Electrical Safety Code, 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, rules and orders of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the 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.

13.2 Severability and Preemption.

Notwithstanding the provisions of Section 13.7 below, if any section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Franchise Agreement is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Franchise 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 only to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, 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.

Except as provided under applicable law, ~~The~~ 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 include the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee’s facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise 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 Grantor by the Grantee referred to in this Franchise shall be made through the Office of the City Manager, 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 Act.

13.11 [RESERVED]

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13.12 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:

If to the Grantee: Comcast Cable
Attention: Government Affairs
9605 SW Nimbus Avenue
Beaverton, OR 97008-7198

13.13 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 confidential and/or proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee’s written consent, provided that each page of such report or information is clearly marked as confidential and/or proprietary.

13.14 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.

13.15 Reservation of Rights

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

EXHIBIT A: ACCEPTANCE

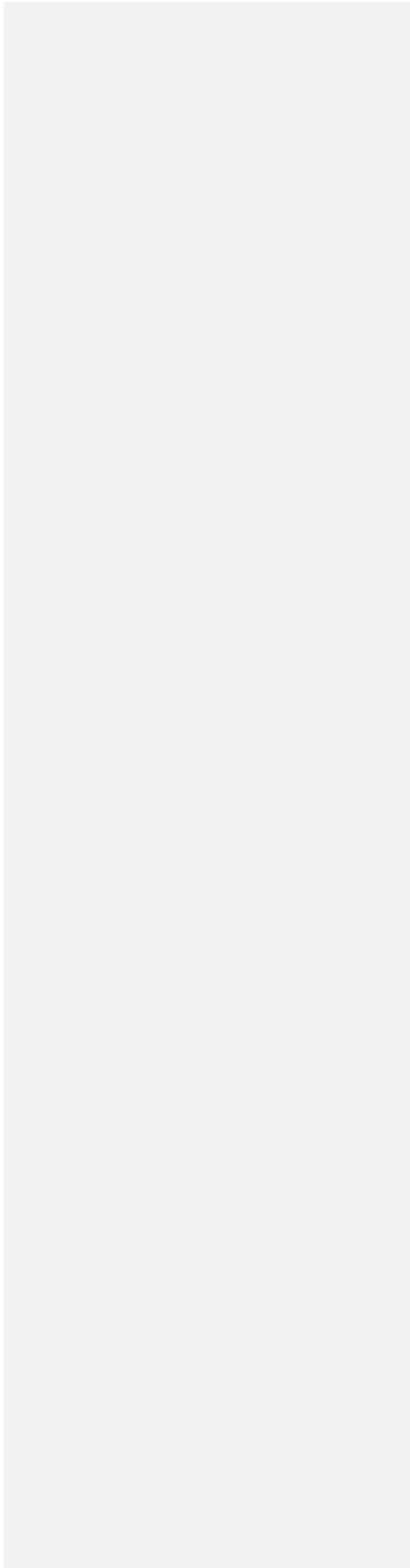
City Manager
City of _____

This is to advise the City of _____ (the "City") that Comcast of Oregon II, Inc. (the "Grantee") hereby accepts the terms and provisions of Ordinance No. _____, passed by the City Council/Commission on _____, ~~2009-2010~~ (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise.

By executing and returning this acceptance form, the Grantee also attests that there are no parent corporations of Grantee apart from _____.

COMCAST OF OREGON II, INC.

BY: _____
TITLE: _____
DATE: _____



| **EXHIBIT CB: ORIGINATION POINTS**

