

**Reply to Lake Oswego Office**

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**LEGAL MEMORANDUM**

TO: Honorable Mayor and City Council

FROM: Bill Monahan, City Attorney's Office

DATE: November 25, 2020

RE: **Comcast Franchise Agreement-Major Revisions in the Proposed 2020 Franchise Agreement**

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The present franchise agreement between the City of St Helens and Comcast was entered into on December 12, 2007. That agreement was for a term of ten years. Since before the expiration of the initial ten-year term, the City and Comcast have continued to honor the agreement under all terms of that agreement while negotiations ensued.

Negotiations have been undertaken between representatives of the City Attorney's Office and Comcast representatives. The original efforts were focused on modifying the format of the agreement to closer resemble that used by Comcast with the Metropolitan Area Communications Commission (MACC) which serves cities within Washington County. The consensus was that the MACC agreement was more up to date and had provisions that were more suitable for the City's use. Since the 2007 franchise agreement, changes to the law at the federal level have taken place.

The format of the draft agreement appears very different from the 2007 agreement. The order of sections has changed, titles have changed, and content has been updated. Comcast is now called "Comcast of Delaware, II, Inc." rather than "Comcast of Oregon II, Inc." Many of the significant terms are proposed to remain the same, for instance the amount of the franchise fee. The fee of five per cent (5%) of all gross revenue is governed by federal law, 47 USC 542(b) and cannot exceed 5%. Other key sections have changed. This memo is an attempt to identify the most significant sections of the agreement where terms either remained as before or were significantly changed. Comcast has reviewed the draft and agrees with the terms as presented.

Significant changes include:

Section 1. Purpose and Intent – the agreement is a non-exclusive ten-year franchise. The term is also stated in Section 3.3. Duration. The term is the same as the present agreement.

Section 2. Definitions – several new definitions have been added, some deleted, and some revised to modernize the agreement. For example: "Gross Revenues" is presented in a manner to better show what gross revenues include and what is not included. This definition drew from various sections of the present agreement.

Section 3.5 Franchise Nonexclusive and 3.6 Grant of Other Franchises – these sections replace former Section 4. Competitive Equity and state that the city reserves the right to grant one or more additional franchises. As stated in Section 3.6, there is no requirement that there be “a word for word identical franchise or authorization for a competitive entity”. Federal law must be followed where applicable.

Section 4.1 Franchise Fees – remain at 5% of gross revenues, as mentioned above.

Section 5.1 Rate Discrimination – all rates and charges shall be published. The city does not negotiate rates.

Section 5.5 Mid-Term Performance Evaluation Session. – this section was added to allow the city to have a mid-term public discussion of performance of the franchise holder regarding the terms and conditions.

Section 6. Financial and Insurance Requirements – the levels of insurance were adjusted with increases to the levels of coverage such as commercial general liability (to \$4 million), auto liability (to \$2 million), and the addition of employer’s liability to \$2 million.

Section 6.4 Performance Bond. – this was increased from \$50,000 (in Section XXX of the existing agreement) to \$100,000.

Section 8.4 Complaint Files and Reports – this requires more reporting of any subscriber complaints received about operation and performance. Section 8.4(A)(1) provides the city with the option of requiring an annual executive summary report of such filings.

Section 9.1 Broad Programming Categories – this has a more specific list of minimum programming options that are provided by Comcast to local subscribers.

Section 10.(B)(1) Channel Capacity – the number of Public, Educational and Government (PEG) access channels is reduced from a maximum of three to two. Section XXVI(1) of the existing agreement allows for up to three, but only two have been required and used in the community. There does not appear to be a need for more than two.

Section 10.(C) Support for Access Costs – the PEG fee of \$.52 per month per residential subscriber is not changed. Funds are provided to the city as eligible facility upgrades are needed. The city historically has been required to justify expenditures from the PEG funds that are collected from subscribers.

Section 11. General Street Use and Construction – the requirements for work performed in the public right of way, restoration of right of way, and other construction standards are all in this section and its various subsections rather than dispersed in several sections as in the existing agreement. The language follows the MACC more complete model.

Section 13. Service Extension, Construction and Interconnection – this section continues the requirement that all residential dwellings have equivalent availability of cable service. Service will be available to all new subdivisions within 30 days following a request from a resident of a new subdivision (as in Section VI of the existing agreement). Please note that this Section 13 does not require the opportunity for an Institutional Network as was allowed in the existing

agreement under Section XXVIII. If the city requested an institutional network, it was required to enter into a separate agreement under terms negotiated for that purpose. None was proposed under the existing agreement.

Section 13.3 Limitation on Free Service – Section XXVII of the existing agreement refers to “Service to Community Facilities”. In 2019 the FCC’s 621 Order revised the rules applicable to cities requiring fee service for public facilities. Under the proposed language, Comcast may choose to charge the city for the service it is now provided. If Comcast proposes charging fees, the city can choose to discontinue receiving complimentary service.

Section 14. Franchise Violations; Revocation of Franchise – this section replaces Section XXIII, Remedies for Franchise Violations. The new provision is based on the MACC model.

Section 16.1 Renewal – states that renewal is governed by the cable Act (47 USC 546). Renewals can be negotiated at any time during the term of the agreement with adequate public notice and opportunity to comment.

Section 16.2 Transfer of Ownership or Control – this section provides the process for transfer of ownership. There is much more detail in this section than is in the existing agreement at Sections XX and XXXI(17).

Section 18.2 Dispute Resolution – this section was added as there is not a process detailed in the existing agreement.

Section 18.7 Venue – this section was added to state that any disputes about the agreement will be resolved in Columbia County.

Attachment A Customer Service – the exhibit is primarily the same as the existing agreement with one major change. Section 1.1 of the existing agreement requires a customer service office be located within the city, open 40 hours a week, with a minimum of eight hours per day on weekdays. However, this section also allows Comcast to relocate the office outside the city within Columbia County upon 60 days’ notice. Within the proposed new agreement, there is no reference to a service office being required. Instead, Section 3.(D) provides for an alternative approach to customer service through a conveniently located facility for pick-up and drop-off of equipment and bill payment. Use of mailers or Comcast representatives dropping off equipment at a subscriber’s residence are proposed.

These are some of the changes proposed in the new agreement. The public, subscribers, and members of the staff certainly have more experience with how the present agreement has been carried out in the city since 2007. Public and staff comments should provide more context for the city council as it considers the proposed agreement.

**CABLE TELEVISION  
FRANCHISE AGREEMENT**

**Between the  
CITY OF ST. HELENS, OREGON**

**AND  
COMCAST OF DELAWARE II, INC.**

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ATTACHMENT A – CUSTOMER SERVICE

## SECTION 1. PURPOSE AND INTENT

The City of St. Helens Oregon is authorized to enter into this Franchise Agreement ("Agreement") and does grant to Comcast of Delaware II, Inc. a non-exclusive ten (10) year franchise, revocable as provided herein, to construct, operate and maintain a Cable System in the City.

## SECTION 2. DEFINITIONS

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

- 2.1 **Access** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video and Signals as permitted under applicable law, including, but not limited to:
- (A) **Public Access** means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary Programmers or users having editorial control over the content;
  - (B) **Educational Access** means Access where Schools and educational institutions are the primary Programmers or users having editorial control over the content;
  - (C) **Governmental Access** means Access where governmental institutions are the primary Programmers or users having editorial control over the content; and
  - (D) **PEG Access** means Public Access, Educational Access, and Governmental Access, collectively.
- 2.2 **Access Center** means a facility or facilities where Public, Education, or Governmental use signals are managed and delivered Upstream to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- 2.3 **Access Channel** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- 2.4 **Affiliate** when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- 2.5 **Basic Service** means any service tier which includes the retransmission of local television broadcast Signals, or as such service tier may be further defined by federal law.

- 2.6** **Cable Act** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996, as amended.
- 2.7** **Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- 2.8** **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 2.9** **Cable System** means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 2.10** **Capacity** means the maximum ability to carry Signals or other information **within** a specified format.
- 2.11** **Capital or Capital Cost** means the expenditure of funds for physical resources whose useful life can be expected to exceed a period of one (1) year or longer as consistent with Generally Accepted Accounting Principles (“GAAP”).
- 2.12** **Channel** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.
- 2.13** **City or Grantor** is the City of St. Helens, Columbia County, Oregon, a municipal corporation of the State of Oregon, and all territory in its boundaries as such may change from time to time.
- 2.14** **City Council** shall mean the governing body of the City.
- 2.15** **Demarcation** means up to and including the device (as of the Effective Date known as the “modulator”) where the DAP Signal is converted into a format to be transmitted over a fiber connection to Grantee.

- 2.16 Designated Access Provider (“DAP”)** means the entity or entities designated by the Grantor to manage or co-manage PEG Access Channels and Access Centers. The Grantor may be a Designated Access Provider; however, any entity designated by the Grantor shall not be a third party beneficiary under this Agreement.
- 2.17 Downstream** means the transport of Signals from the Headend to Subscribers or to Interconnection points served by the Cable System.
- 2.18 Effective Date** means the date defined in Section 3.4 herein.
- 2.19 FCC** means the Federal Communications Commission.
- 2.20 Fiber** means a transmission medium of optical strands of cable capable of carrying Signals by means of lightwave impulses.
- 2.21 Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.
- 2.22 Franchise Area** means the area within the legal jurisdictional boundaries of the City during the term of this Agreement, as defined in Section 2.13.
- 2.23 Grantee** means Comcast of Delaware, II, Inc. or its permitted successors, transferees or assignees.
- 2.24 Gross Revenue** means, and shall be construed broadly to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:
- Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
  - Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with providing Cable Service to Subscriber;
  - Fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a *pro rata* basis using total Cable Service Subscribers within the Franchise Area;
  - Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
  - Payments for pre-paid Cable Services and/or equipment;



- Advertising Revenues as defined herein;
- Fees including, but not limited to: (1) late fees, convenience fees and administrative fees which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; (2) Franchise fees; (3) the FCC user fee and (4) PEG fees if included on Subscriber billing statements;
- Revenues from program guides; and
- Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a *pro rata* basis using total Cable Service Subscribers within the Franchise Area.
- “Gross Revenues” shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. “Gross Revenues”, however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee’s revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. “Gross Revenues” shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee’s Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. “Gross Revenues” shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, “Gross Revenues” shall not include bad debt.

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

- (B) “Gross Revenues” shall **not** include:
- Actual Cable Services bad debt write-offs, except any portion that is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
  - Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee and PEG fee shall not be regarded as such a tax or fee;
  - Launch fees and marketing co-op fees; and,
  - Unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above.
- (C) To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Revenues from late fees shall be allocated as described herein. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee’s calculations.
- Example: Prior to any bundle-related price reduction, if Cable Service is valued at 50% of the total of the services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than fifty percent (50%) of the price of the bundled service total.
- (D) Grantee reserves the right to change the allocation methodologies set forth in paragraph (C) above to meet standards mandated by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange City (“SEC”). Grantor acknowledges and agrees that Grantee shall calculate Gross Revenues in a manner consistent with GAAP where applicable; however, the Grantor reserves its right to challenge Grantee’s calculation of Gross Revenues, including Grantee’s interpretation of GAAP and Grantee’s interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item.
- (E) Grantor agrees and acknowledges that Grantee shall maintain its books and Records in accordance with GAAP.

- 2.25** **Headend** means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the Interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.
- 2.26** **Parent Corporation** means Comcast Communications, Inc. or successors and assigns and includes any other existing or future corporations with greater than fifty percent (50%) ownership or control over Grantee.
- 2.27** **Person** means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization authorized to do business in the State of Oregon, and includes any natural person.
- 2.28** **Programmer** means any Person responsible for PEG Access Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides PEG Access Programming for transmission on the Cable System.
- 2.29** **Programming** means television programs, audio, video or other patterns of Signals 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.
- 2.30** **Streets and Public Rights of Way** means the surface of and the space above and below any public street, road, sidewalk, alley or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them, and except the airwaves above a right of way with regard to cellular or other non-wire communications or broadcast services. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a)(2).
- 2.31** **Record** means written or graphic materials, however produced or reproduced, or any other tangible permanent record, to the extent related to the enforcement or administration of this Agreement.
- 2.32** **Quarterly or Quarter** means the standard calendar periods of January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, unless otherwise specified in this Agreement.
- 2.33** **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools.
- 2.34** **Section** means a provision of this Agreement, unless specified as part of another document.
- 2.35** **Signal** means any electrical or light impulses carried on the Cable System, whether one-way or bi-directional.
- 2.36** **Subscriber** means any Person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of, or in connection with, the Cable System.

2.37 **Upstream** means the transport of Signals to the Headend from remote points on the Cable System.

### SECTION 3. GRANT OF FRANCHISE

#### 3.1 **Grant.**

- (A) Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services for voice, video, and data, subject to the terms and conditions set forth in this Agreement.
- (B) 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.
- (C) This Agreement is intended to convey limited rights and interests only as to those Public Rights of Way, in which the Grantor has an actual interest. It is not a warranty of title or interest in any Public Rights of Way, it does not provide the Grantee any interest in any particular location within the Public Rights of Way, and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Public Rights of Way covered by this Agreement, including without limitation, the right to perform work on its Streets, or appurtenant public works facilities, including constructing, altering, paving, widening, grading, or excavating thereof.
- (D) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This Agreement is not a bar to the provision of non-Cable Service; however, this Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions including additional compensation conditions for use of the Public Rights of Way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.
- (E) Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any agent, Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

3.2 **Use of Public Rights of Way.** Subject to Grantor's supervision and control and the terms of this Agreement, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights of

Way within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from Grantor and any other applicable agencies prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's Public Rights of Way within the Franchise Area in compliance with all applicable Grantor construction codes and procedures, and any other applicable law. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement subject to federal law.

**3.3 Duration.** The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through \_\_\_\_\_, 2030, unless extended or terminated sooner as hereinafter provided.

**3.4 Effective Date.** The Effective Date of this Agreement shall be \_\_\_\_\_, 2020 unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by Section 6.4. Grantee shall accept this Agreement within forty-five (45) days of the Effective Date, unless the time for acceptance is extended by Grantor. In the event acceptance does not take place, this Agreement shall be voidable at the reasonable discretion of Grantor, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under the express terms of this Agreement shall be of no force or effect.

**3.5 Franchise Nonexclusive.** This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, Public Rights of Way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Public Rights of Way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate subject to Section 3.6 below.

**3.6 Grant of Other Franchises.** 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 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 to ensure that, considering all the circumstances including any limitations on its regulatory authority, the material provisions of such other franchises and this Franchise are, taken together, 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, Educational 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 for word identical franchise or authorization for a competitive entity. The parties agree that, notwithstanding any provision of this subsection 3.6, the Grantor shall not be obligated to comply with the provisions of this subsection to the extent doing so would cause the Grantor to violate applicable laws or FCC rules or if Grantee fails to make a written request to the Grantor for an amendment of the Franchise within one (1) Year of the adoption of the additional cable franchise as described in this Section. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

In the event Grantor does not amend the Franchise as provided above, Grantee may elect, prior to the commencement of the Grantee's thirty-six (36) month renewal window provided by 47 USC §546, to file a written notice indicating an election to shorten the term of this Franchise, and thereafter the term of Grantee's Franchise shall, ninety (90) days from the Grantee's written notice, be shortened so that the Franchise shall be deemed to expire on the date thirty-six (36) months from the first day of the month following Grantee's ninety (90) day notice period. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the Grantor required. The Grantor and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The Grantor and Grantee shall have all rights and obligations provided under said Section 626.

- 3.7 Police Powers.** Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor. Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Nothing in this Section shall be deemed a waiver by Grantee or the Grantor of the rights of Grantee or the Grantor under applicable law.
- 3.8 Relations to Other Provisions of Law.** This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its police powers. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Agreement and any ordinance of general application specifically enacted pursuant to the Grantor's police power, the ordinance shall govern. Otherwise, the franchise shall govern over inconsistent ordinances. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising in contract or at law. The Franchise issued, and the Franchise fee paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.
- 3.9 Effect of Acceptance.** By accepting the Franchise the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening or other participation in any proceeding

affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

## **SECTION 4. FRANCHISE FEE AND FINANCIAL CONTROLS**

### **4.1 Franchise Fees.**

- (A) As compensation for the benefits and privileges granted under this Agreement, and in consideration of permission to use Public Rights of Way, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise fees shall commence as of the Effective Date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.
- (B) In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

**4.2 Payments.** Grantee's Franchise fee payments to Grantor shall be computed quarterly. Each Quarterly payment shall be due and delivered to Grantor no later than forty-five (45) days after the last day of the preceding Quarter.

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

**4.4 Quarterly Franchise Fee Reports.** Each payment shall be accompanied by a written report to Grantor, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

**4.5 Annual Franchise Fee Reports.** Grantee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor a statement verified by an authorized representative of the Grantee, stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.

**4.6 Audit/Reviews.** No more frequently than every twenty-four (24) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent

audit or review of Grantee's Records reasonably related to the administration or enforcement of this Agreement. The Grantor may hire an independent third party to audit or review the Grantee's financial Records, in which case the Grantee shall provide all necessary Records to the third party. All such Records shall be made available in the local offices of the Grantee, or provided in electronic format fully compatible with Grantor's software. If the audit or review shows that Franchise fees have been underpaid by four percent (4%) or more, Grantee shall reimburse Grantor the reasonable cost of the audit or review up to fifteen thousand dollars (\$15,000) within thirty (30) days of the Grantor's written demand for same. Records for audit/review purposes shall include without limitation:

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

**4.7 Interest on Late Payments.** Payments not received within forty-five (45) days from the Quarter ending date or are underpaid shall be assessed interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

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

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

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

**4.11 Payment on Termination.** If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year.



The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a performance bond or other security provided by the Grantee.

## **SECTION 5. ADMINISTRATION AND REGULATION**

- 5.1 Rate Discrimination.** All of Grantee's rates and charges shall be published (in the form of a publicly available rate card). Grantee shall apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status, or physical or mental disability, or geographic location in the Franchise Area to the extent required by applicable law.
- 5.2 Filing of Rates and Charges.** Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement.
- 5.3 Time Limits Strictly Construed.** Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, as defined in Section 5.4, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.
- 5.4 Force Majeure.** For the purposes of interpreting the requirements in this Agreement, Force Majeure shall mean: an event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, acts of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the control of Grantee to foresee or control.
- 5.5 Mid-Term Performance Evaluation Session.**
- (A)** Grantor may hold a single performance evaluation session during the term of this Agreement. Grantor shall conduct such evaluation session.
  - (B)** Evaluation session shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

- (C) Evaluation session shall deal with the Grantee's performance of the terms and conditions of this Agreement and compliance with state and federal laws and regulations.
- (D) As part of the performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Grantee, which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the number of miles and location of overhead and underground cable plant. If the Grantor has reasons to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
- (E) During the evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable to Grantor to perform the evaluation subject to Section 8.2.

## **SECTION 6. FINANCIAL AND INSURANCE REQUIREMENTS**

### **6.1 Insurance Requirements.**

- (A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.
- (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:
  - (1) Commercial General Liability: Three million dollar (\$3,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a four million dollar (\$4,000,000) aggregate limit; one million dollar (\$1,000,000) limit for broadcasters liability.
  - (2) Automobile Liability: Two million dollar (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
  - (3) Employer's Liability: Two million dollar (\$2,000,000) limit.

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

- (A) Endorsements.
  - (1) All policies shall contain, or shall be endorsed so that:

- (a) The Grantor, its officers, officials, employees, and duly authorized agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;
  - (b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, and duly authorized agents shall be in excess of the Grantee's insurance and shall not contribute to it;
  - (c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability; and
  - (d) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the Grantor.
- (B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A-".
- (C) Verification of Coverage. Upon request, the Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantor's ordinances and laws.

### **6.3 Indemnification.**

- (A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 3.9 of this Agreement; and provided further Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the negligence or willful negligence of Grantor. Without limiting in any way the Grantee's obligation to

indemnify the Grantor and its officers, boards, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

- (1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;
  - (2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels or use of PEG funds by Grantor and/or DAP;
  - (3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and
  - (4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.
- (B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 6.2, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

#### **6.4 Performance Bond.**

- (A) In addition to any other generally applicable bond or security fund obligations required by local ordinance, upon the Effective Date of this Agreement, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor collectively with good and sufficient surety approved by the City, in the penal sum of One Hundred Thousand Dollars (\$100,000.00), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Agreement. Such bond shall be issued by a bonding company licensed to do business in the State of Oregon and shall be maintained by the Grantee throughout the term of this Agreement.
- (B) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the Grantor. The bond shall be subject to the approval of the Grantor as to its adequacy under the requirements of this Section. 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.

### **SECTION 7. CUSTOMER SERVICE**

- 7.1 Customer service obligations are set forth herein as Attachment A and are hereby incorporated by this reference.
- 7.2 **Emergency Broadcast.** Grantee will comply with the Emergency Alert System (EAS) as provided under applicable FCC Regulations, the Oregon State EAS Plan and the local EAS plan, if any, which applies to Grantor.
- 7.3 **ADA Accessible Equipment.** Grantee shall comply with the Americans with Disabilities Act (“ADA”), any amendments thereto and any other applicable federal, state or local laws or regulations. Grantee shall notify Subscribers of the availability of ADA equipment and services and shall provide such equipment and services in accordance with federal and state laws.
- 7.4 **Discriminatory Practices.** Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any other Persons on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee shall comply at all times with all other applicable federal, state or local laws, rules and regulations relating to non-discrimination.

### **SECTION 8. REPORTS AND RECORDS**

#### **8.1 Open Records.**

- (A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and Records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and Records of Grantee, its Parent Corporations and Affiliated entities that are reasonably related and

necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's Records on the basis that Grantee's Records are under the control of any Parent Corporation, Affiliated entity or a third party. Grantor may, in writing, request copies of any such Records or books and Grantee shall provide such copies within ten (10) business days of the transmittal of such request. If the requested books and Records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or Records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.

- (B) Grantee shall at all times maintain and allow Grantor, with reasonable notice, access and the right to review a full and complete set of plans, Records and "as built" maps showing the approximate location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium consistent with Grantee's regular business practices. Grantor's review of the plans, Records, and as-built maps, provided for herein, shall occur at the Grantee's local office.
- (C) The ability for Grantor to obtain Records and information from Grantee is critical to the administration of this Agreement and the requirements herein. Therefore, Grantee's failure to comply with the requirements of this Section may result in liquidated damages as prescribed in Section 14.2.

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

**8.3 Copies of Federal and State Documents.** Upon thirty (30) days of a request by Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its Parent Corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. To the extent allowed by law, any such confidential material determined to be exempt from

public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

#### **8.4 Complaint Files and Reports.**

- (A) Grantee shall keep an accurate and comprehensive Record of any and all complaints received from the City regarding the operation and performance of the Cable System within the Franchise Area, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those Records shall be retained for three (3) years, and remain available to Grantor during Normal Business Hours.
- (1) "Upon written request, with the request to be made within forty-five (45) days of the end of the preceding calendar year, Grantee shall provide an executive summary report within sixty (60) days of the written notice from Grantor. Information to be included in the executive summary would include: subscriber numbers by video category; homes passed; disconnections by category; construction activity to include new homes passed and marketable passings; number of service calls; % of service calls made within 72 hours of notification; and outages.
- (2) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Attachment A. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

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

**8.6 False Statements.** Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise. Grantor shall have the right to determine the severity of the violation based upon the report in question.

**8.7 Report Expense.** All reports and Records required under this or any other Section shall be furnished, without cost, to Grantor.

### **SECTION 9. PROGRAMMING**

#### **9.1 Broad Programming Categories.**

- (A) Grantee's Cable System shall provide the widest diversity of Programming possible. Grantee shall provide at least the following

broad categories of Programming to the extent such categories are reasonably available:

- (1) Educational Programming.
- (2) Sports.
- (3) General entertainment (including movies).
- (4) Children/family-oriented.
- (5) Arts, culture and performing arts.
- (6) Foreign language.
- (7) Science/documentary. Weather information.
- (8) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
- (9) National, state, and local government affairs.

(B) Grantee shall not delete any broad category of Programming within its control.

**9.2 Parental Control Devices.** Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

**9.3 Continuity of Service.**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of Section 5.4 of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

## **SECTION 10. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

(A) **Designated Access Providers.**

- (1) The Grantor 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") throughout the Franchise Area. The Grantor or its designee may formulate rules for the operation of the



Access Channels, consistent with this Franchise; such rules shall not be designed to control the content of Public Access programming.

Grantee shall cooperate with Designated Access Provider(s) in the use of the Access Channels for the provision of PEG Access. Nothing in this Franchise shall prevent the Grantor or its Designated Access Provider from carrying out fundraising activities to supplement access capital or operating funds consistent with applicable federal and state law and regulations, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities and equipment. However, Grantee may review such use and if Grantee determines that such use is inconsistent with applicable federal and state law or regulations, Grantor or its Designated Access Provider, upon written notification from Grantee, shall immediately cease such use.

- (2) 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.**

- (1) Grantee will continue to provide to the Grantor, for independent administration by the Grantor or its designee throughout the term of the Franchise, one (1) PEG Access Channel to be cablecast throughout the Franchise Area. In addition, as of the effective date of this Franchise, there is one (1) Channel used for PEG Access Programming that is not originating from or controlled by Grantor that will continue to be available to Subscribers: channel 11 (CAN - Regional Public Access). Grantor acknowledges that Grantee does not control any of the Access Programming on the CAN - Regional Public Access channel, and should any or all such Programming no longer be available by those controlling such Programming, Grantee is not obligated to maintain that Channel.
- (2) All Access Channels required by this Franchise shall be included by Grantee in Basic Cable Service, and shall throughout the term of the Franchise be fully available and accessible to every Subscriber without additional costs, charges or equipment.

**(C) Support for Access Costs.**

- (1) Except as otherwise agreed to by the parties, throughout the term of this Franchise, Grantee shall pay to the City fifty-two cents (\$.52) per month, per residential Subscriber, or such lesser amount if authorized in writing by Grantor, due within sixty (60) days of the Effective Date of the Franchise to be used for capital equipment and facilities related to PEG access and distribution, and, to the extent permitted by law, PEG operating costs. 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 4.2.

- (2) If Grantor enters into a franchise agreement or amends an existing franchise agreement with another Cable Operator after the Effective Date of this Franchise to provide Cable Service in all or any portion of the Grantee's Franchise Area that includes PEG financial support calculated based on a Gross Revenues basis that is less than twenty-five cents (\$.25) per month, per residential Subscriber, then, to the extent required by law, Grantee shall be entitled to reduce the PEG contribution to match that of the other Cable Operator(s).
- (3) Upon request, the Grantor shall provide a report not more than annually to the Grantee on the use of the funds provided to the Grantor under this Section 10(C). The annual report shall be submitted to Grantee within forty-five (45) days after the date the Grantor receives the request. Grantee may review Records of the Grantor and its designees regarding the use of funds described in such report. Grantee may review Records of the Grantor, and any PEG access providers receiving the funds, regarding the use of funds provided and channels, to verify that the funds have been used in accordance with this Agreement.
- (4) Grantee agrees that financial support or costs arising from or relating to the obligations set forth in this Section 10(C) 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 Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any past, present and future Franchise fee payments under this Franchise. As provided for under federal law, Grantee may pass through to Subscribers and itemize on Subscriber cable bills the PEG Access contribution set forth in subsection 10(C)(i).

## **SECTION 11. GENERAL STREET USE AND CONSTRUCTION**

### **11.1 Construction.**

- (A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction and maintenance necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within the Public Rights of Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Except as permitted in Section 11.1(D), prior to performing any construction or maintenance in the Public Rights of Way, Grantee shall apply for, and obtain, all necessary permits. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits and give appropriate notices to any other Cable Operators, licensees or permittees of the Grantor, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.

- (B) All construction shall be performed in compliance with this Agreement, all applicable Grantor ordinances and codes, and any permit issued by the Grantor. 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, Cable Operators, and permittees so as to reduce as far as possible the number of Street cuts.
- (C) Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area as it shall find necessary to ensure compliance with the terms of this Agreement, other pertinent provisions of law, and any permit issued by the Grantor.
- (D) In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits as soon as reasonably practicable but in no event later than forty-eight (48) hours after discovery of the emergency. Grantee shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permit or license fees.
- (E) Whenever possible, to avoid additional wear and tear on the Public Rights of Way, Grantee shall utilize existing poles and conduit. Grantee may charge for use of the conduit consistent with all applicable laws. Notwithstanding the foregoing, this Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Grantor or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Grantor upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

**11.2 Location of Facilities.** Grantee shall comply with the requirements of Oregon Utility Notification Center ORS 757.542-757.562 and ORS 757.993 (2009) (penalty for violation of utility excavation notification provisions), and applicable rules and regulations promulgated thereunder in OAR Chapter 952 relating to Oregon Utility Notification Center.

**11.3 Relocation.**

- (A) Relocation for Grantor.
  - (1) Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Public Rights of Way when the public convenience requires such change, and the expense thereof shall be paid by Grantee (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party). Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's

delay. If Grantor requires Grantee to relocate its facilities located within the Public Rights of Way, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights of Way.

(2) If public funds, which Grantor received, are available to any other user of the Public Rights of Way (except for Grantor) for the purpose of defraying the cost of relocating or removing facilities and Grantee relocates or removes its facilities as required by Grantor under this Agreement, the Grantor shall notify Grantee of such funding and will reimburse Grantee for such costs to the extent permitted or allowed by the funding source or applicable state law and to the extent other users of the Public Rights of Way are provided such funds. Grantee shall be reimbursed for costs associated with beautification or enhancement projects paid for by affected property owners to the same extent as impacted utilities.

(B) Relocation by Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the Public Right of Way or on any other property of the Grantor in the case of fire, disaster, or other emergency, provided that, Grantor shall be responsible for any damage to Grantee's facilities as a result of Grantor's negligence or gross negligence in performing work under this Section subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution. The Grantor shall attempt to provide notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action.

(C) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action regarding the necessary changes requested by the responsible entity. Grantee and such other Franchise holder shall determine how costs associated with the removal or relocation required herein shall be allocated.

(D) Movement for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require the permit holder to pay the full amount in advance.

**11.4 Restoration of Public Rights of Way.** Whenever Grantee excavates, damages, or disturbs the surface of any Public Right of Way for any purpose, including but not limited to relocation or undergrounding as required in this Section, Grantee shall promptly restore the Public Right of Way to the satisfaction of the Grantor in accordance with applicable Grantor ordinances and codes and any permit issued by the Grantor. In the event there is no applicable ordinance, code or permit, Grantee shall promptly restore the Public Right of Way to at least its prior condition. Unless otherwise provided in any permit issued by Grantor, when any opening is made by Grantee in a hard surface pavement in any Public Right of Way, Grantee shall refill within twenty-four

(24) hours. Grantee shall be responsible for restoration and maintenance of the Public Right of Way and its surface affected by the excavation in accordance with applicable regulations of the Grantor. Grantor may, after providing notice to Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, refill or repave any opening made by Grantee in the Public Rights of Way, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove and/or repair any work done by Grantee that, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. All excavations made by Grantee in the Public Rights of Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor.

**11.5 Maintenance and Workmanship.**

- (A) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Public Rights of Way by, or under, Grantor's authority.
- (B) Grantee shall maintain and use any equipment necessary to control and carry Grantee's cable television Signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

**11.6 Reservation of Grantor Public Rights of Way.** Nothing in this Agreement shall prevent Grantor or Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Public Right of Way; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Public Right of Way or public improvement, including construction, repair or removal of a sewer or water main or any other public work, Grantee's Cable System shall be removed or replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by Grantor's written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay.

**11.7 Use of Conduits by Grantor.** Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights of Way and other public places upon reasonable share of costs, to the extent space therein or thereon is

reasonably available and feasible without compromising the integrity of the Cable System or facility, and pursuant to all applicable ordinances and codes. For the purposes of this Section 11.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes or provision of services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor except as otherwise may be authorized by federal law.

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

**11.9 Discontinuing Use of Facilities.** Whenever Grantee intends to discontinue using any facility within the Public Rights of Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Public Rights of Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Rights of Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. Grantee shall not be required to remove the facility if the facility is used to provide services not regulated under this Agreement.

**11.10 Hazardous Substances.**

(A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Public Rights of Way.

(B) Grantee shall maintain and inspect its Cable System located in the Public Rights of Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Public Rights of Way to determine if any release of hazardous substances has occurred, or may occur, from or related to

Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

- (C) Grantee agrees to forever indemnify the Grantor, its officers, boards, City, duly authorized agents, and employees, from and against any claims, costs and expenses of any kind, pursuant to and in accordance with applicable State or federal laws, rules and regulations, for the removal or remediation of any leaks, spills, contamination or residues of hazardous substances attributable to Grantee's Cable System in the Public Rights of Way.

#### **11.11 Undergrounding of Cable.**

- (A) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines at no additional expense to the Grantor, to the extent permitted by law and applicable safety codes. Cable must be installed underground where: (1) all existing utility lines are placed underground, (2) statute, ordinance, policy, or other regulation of an individual Grantor or City requires utility lines to be placed underground, or (3) all overhead utility lines are placed underground.
- (B) Related Cable System equipment such as pedestals must be placed in accordance with applicable code requirements and underground utility rules; provided, however, nothing in this Agreement 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, pedestals, power supplies, or other related equipment. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.
- (C) For purposes of this Section 11.11, "utility lines" and "utility wiring" does not include high voltage electric lines.

**11.12 Tree Trimming.** Subject to acquiring prior written permission of the Grantor, including any required permit, the Grantee shall have the authority to trim trees that overhang a Public Right of Way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

**11.13 Construction, Building and Zoning Codes.** Grantee shall strictly adhere to all applicable construction, building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

#### **11.14 Standards.**

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

### **SECTION 12. SYSTEM DESIGN AND STANDARDS**

#### **12.1 Subscriber Network.**

- (A) As of the Effective Date of this Agreement, the Cable System utilizes a Fiber to the node architecture serving no more than fifteen hundred (1,500) Subscribers per node. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture as demand requires.
- (B) Grantee's Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

#### **12.2 Test and Compliance Procedures.**

- (A) Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.
- (B) To the extent required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.

- 12.3 Standby Power.** Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, to the node, rated for at least two (2) hours duration. In addition, throughout the term of this Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.

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

- 13.1 Equivalent Service.** It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions, subject to



federal law. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

### 13.2 Service Availability.

- (A) Service to New Subdivisions. Grantee shall provide Cable Service in new subdivisions upon the following occurrence:

Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.

- (B) Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Agreement.
- (2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor upon written request; and at nondiscriminatory monthly rates for residential Subscribers, subject to federal law.

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

- (D) Customer Charges for Extensions of Service. No potential Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a potential Subscriber's request to locate a cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to such Subscriber, or a density of less than ten (10) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and potential Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1320) cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a *pro rata* basis. The Grantee may require that the payment of the

capital contribution in aid of construction borne by such potential Subscriber be paid in advance.

- (E) Enforcement. Failure to meet these standards shall subject Grantee to enforcement actions on a per Subscriber basis in Section 14.

**13.3 Limitation on Free Service.** The parties acknowledge that as of the Effective Date of this Franchise agreement, Grantee continues to provide Complimentary Services to certain schools, libraries, and public institutions within the Franchise Area. In the event Grantee elects, to the extent permitted by Applicable Laws, to invoice the Grantor for Complimentary Services, Grantee agrees that it will do so only after providing City with one hundred twenty (120) days' prior written notice. Grantee agrees not to unfairly or unreasonably discriminate against the Grantor with respect to other Oregon served local franchising authorities, with respect to the costs to be imposed for Complimentary Services.

The Grantor shall have the right to discontinue the receipt of all or a portion of the Complimentary Services provided by the Grantee in the event Grantee elects to impose a charge against the Grantor for the Complimentary Services as set forth in the preceding paragraph.

## **SECTION 14. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE**

### **14.1 Procedure for Remedying Franchise Violations.**

- (A) If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.
- (B) The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall, with Grantee's consent, decide whether to accept, reject, or modify the remedial plan presented by the Grantee. Liquidated damages shall be assessed only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 14 shall be utilized to impose any liquidated damages. The date of violation will be the date of the event and not the date Grantee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation. Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:
  - (1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection (E) below, or;
  - (2) Cure the violation, or;

- (3) Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation, including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (C) below.
- (C) In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Grantor, who may waive all or part of the liquidated damages for such extended cure period in accordance with the criteria set forth in subsection (G) below.
  - (D) In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (C), the Grantor shall set a hearing to determine what liquidated damages, if any, shall be applied.
  - (E) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (B)(1) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what liquidated damages shall be applied.
  - (F) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.
  - (G) The liquidated damages set forth in Section 14.2 of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:
    - (1) Whether the violation was unintentional;
    - (2) The nature of the harm which resulted;
    - (3) Whether there is a history of prior violations of the same or other requirements;
    - (4) Whether there is a history of overall compliance, and/or;
    - (5) Whether the violation was voluntarily disclosed, admitted or cured.

- (H) If, after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:
  - (1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
  - (2) Establish the amount of liquidated damages set forth in Section 14.2, taking into consideration the criteria provided for in subsection (G) of this Section as appropriate in Grantor's discretion;
  - (3) Revoke this Agreement, and/or;
  - (4) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- (I) Liquidated damages shall not be imposed in an amount in excess of twenty -five thousand dollars (\$25,000) for the Grantor within any twelve (12) month consecutive period.
- (J) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.

#### **14.2 Liquidated Damages.**

- (A) Failure to comply with provisions of this Agreement may result in injury to Grantor. Grantor and Grantee recognize it will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this Agreement are intended as a reasonable forecast of compensation to the Grantor collectively for the harm caused by violation of this Agreement, including but not limited to administrative expense, legal fees, publication of notices, and holding of a hearing or hearings as provided herein.
  - (1) For violating aggregate performance telephone answering standards for a Quarterly measurement period:
    - (a) \$2,500 for the first such violation;
    - (b) \$5,000 for the second such violation, unless the violation has been cured;
    - (c) \$7,500 for any and all subsequent violations, unless the violation has been cured;

A cure is defined as meeting the Subscriber telephone answering standards for two (2) consecutive Quarterly measurement periods;
  - (2) For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: \$250 per violation, per day;

- (3) For all other violations of this Agreement, except as otherwise provided herein, (for example, but not limited to, Record submissions under Section 8): \$250/day for each violation for each day the violation continues.
- (B) The liquidated damages set forth in Section 14.2(A) may be reduced at the sole discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of violation as reflected by one or more of the following factors:
- (1) whether the violation was unintentional;
  - (2) the nature of the harm which resulted;
  - (3) whether there is a history of prior violations of the same or other requirements;
  - (4) whether there is a history of overall compliance, and/or;
  - (5) whether the violation was voluntarily disclosed, admitted or cured.
- (C) Collection of Liquidated Damages. The collection of liquidated damages by the Grantor shall in no respect affect:
- (1) Compensation owed to Subscribers; or
  - (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
  - (3) Other remedies available to the Grantor provided, however, that collection of liquidated damages shall be the exclusive remedy for the Grantor for the particular incident or for the particular time period for which it is imposed other than reasonable attorney fees and costs, if applicable. If the violation continues beyond the particular time period, Grantor shall have the right to pursue other remedies under this Agreement.

### **14.3 Revocation.**

- (A) Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 14.1, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- (B) 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 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.

- (C) Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.
- (D) Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

#### **14.4 Relationship of Remedies.**

- (A) Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed except as otherwise provided in Section 14.2. By way of example and not limitation, the collection of liquidated damages by Grantor shall in no respect affect:
  - (1) Refunds or credits owed to Subscribers; or
  - (2) Grantee's obligation to comply with the provisions of this Agreement or applicable law.
- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's performance bond, or the recovery of amounts under the insurance, indemnity or penalty provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for liquidated damages or otherwise, except as provided in Section 14.2; or an excuse of faithful performance by Grantee.

#### **14.5 Removal.**

- (A) In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Rights of Way use purposes, from the Franchise Area at

Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights of Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

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

**14.6 Receivership and Foreclosure.** Grantor and Grantee acknowledge that the following paragraphs may not be applicable or are subject to the jurisdiction of the bankruptcy court.

- (A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:
  - (1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment, or;
  - (2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.
- (B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:
  - (1) Grantor has approved the transfer of this Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and
  - (2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

**14.7 No Recourse Against Grantor.** Grantee shall not have any monetary recourse against Grantor or its officials, boards, City's agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall

not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.

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

## **SECTION 15. ABANDONMENT**

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

**15.2 What Constitutes Abandonment.**

- (A) The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:
- (1) The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 5.4; or
  - (2) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

## **SECTION 16. FRANCHISE RENEWAL AND TRANSFER**

**16.1 Renewal.**

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



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

## **16.2 Transfer of Ownership or Control.**

- (A) The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.
- (B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to cancellation unless and until the Grantor shall have consented thereto.
- (C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- (D) The Grantor shall render a final written decision on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.
- (E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- (F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding

and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.

- (G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.
- (H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required 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.

## **SECTION 17. SEVERABILITY**

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

## **SECTION 18. MISCELLANEOUS PROVISIONS**

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

### **18.2 Dispute Resolution.**

- (A) The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the Grantor and Grantee

agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.

- (B) If the parties are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

**18.3 Notices.**

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

Comcast of Delaware, II, Inc.  
Attn: Government Affairs  
9605 SW Nimbus Ave  
Beaverton, OR 97008

with copy to:

Attn : West Division/Government Affairs  
15815 25th Ave West  
Lynnwood, WA 98087

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

City of St. Helens  
PO Box 278  
St. Helens, OR 97051

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

**18.5 Authority to Amend.** This Agreement may be amended at any time by written agreement between the parties.

**18.6 Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Oregon.

**18.7 Venue.** Venue for any dispute arising out of this Agreement shall be Columbia County Circuit Court.

**18.8 Guarantee.** The performance of the Grantee shall be guaranteed in all respects by TCI West, LLC. A signed guarantee, in a form acceptable to the Grantor, shall be filed with the Grantor prior to the Effective Date hereof.

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

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

**18.11 Construction of Agreement.** The provisions of this Agreement shall be liberally construed to promote the public interest. Agreed to this \_\_\_ day of \_\_\_\_\_, 2020.

COMCAST OF DELAWARE II, INC.

CITY OF ST. HELENS, OREGON

By: \_\_\_\_\_

By: \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_

## **Attachment A CUSTOMER SERVICE**

These standards shall apply to Grantee to the extent it is providing Cable Services over the Cable System in the Franchise Area. This Attachment A sets forth the minimum customer service standards that the Grantee must satisfy.

### **1. Definitions**

- (A) Normal Business Hours mean those hours during which most similar businesses in the Franchise Area are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.
- (B) Normal Operating Conditions: Those service conditions that are within the control of the Grantee, as defined under 47 C.F.R. § 76.309(c)(4)(ii). Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- (C) Respond: The start of Grantee's investigation of a Service Interruption by receiving a Subscriber call, and opening a trouble ticket, and begin working, if required.
- (D) Service Call: The action taken by Grantee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- (E) Service Interruption: The loss of picture or sound on one or more cable Channels.
- (F) Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.
- (G) Standard Installation: Installations where the Subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.

### **2. Telephone Availability**

- (A) Grantee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Grantee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and such representatives shall be available to receive all other inquiries at least forty-five (45) hours per week including at least one night per week and/or some weekend hours. Grantee representatives shall identify themselves by name when answering this number.
- (B) Grantee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the

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

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

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

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

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

- (F) Upon request, Forty-five (45) days following the end of each Quarter, the Grantee shall report to Grantor, the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

- (1) Percentage of calls answered within thirty (30) seconds as set forth in subsection 2(D) of this Attachment A; and
- (2) Percentage of time Subscribers received a busy signal when calling the Grantee’s service center as set forth in Section 2(E) of this Attachment A.

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

### **3. Installations and Service Appointments**

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

- (B) The Standard Installation shall be performed within seven (7) business days of

Subscriber request. Grantee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding those requested by the Subscriber outside of the seven (7) day period.

- (C) Grantee will offer Subscribers “appointment window” alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Grantee’s discretion, Grantee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.
  - (1) Grantee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.
  - (2) If Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.
- (D) Grantee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Grantee representative go to the Subscriber’s residence, (ii) by using a mailer, or (iii) by maintaining a conveniently located facility for pick-up and drop-off of equipment and bill payment. If requested by a mobility-limited Subscriber, the Grantee shall arrange for pickup and/or replacement of converters or other Grantee equipment at Subscriber’s address or by a satisfactory equivalent.

#### **4. Service Interruptions and Outages**

- (A) Grantee shall promptly notify Grantor of any Significant Outage of the Cable Service.
- (B) Grantee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Grantee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after Grantor and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Grantee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m., which may interrupt service, and this Section’s notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.
- (C) Grantee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.
- (D) Under Normal Operating Conditions, Grantee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:
  - (1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.

- (2) Grantee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or Grantor of a Cable Service problem.
- (E) Under Normal Operating Conditions, Grantee shall complete Service Calls within seventy-two (72) hours of the time Grantee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.
- (F) Grantee shall meet the standard in Section 4(E) of this Attachment A for ninety percent (90%) of the Service Calls it completes, as measured on a Quarterly basis.
- (G) Upon request, Grantee shall provide Grantor with a report within forty-five (45) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period, not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section 4(G). Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request. At the Grantee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. The Grantee shall notify the Grantor of such a change at least thirty (30) days in advance.
- (H) At Grantee's option, the above measurements may be changed for calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change at least thirty (30) days in advance.
- (I) Under Normal Operating Conditions, Grantee shall provide a credit upon Subscriber request when all Channels received by that Subscriber experience the loss of picture or sound for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Grantee to verify the problem if requested by Grantee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.
- (J) Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Grantee shall issue a credit upon request to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit upon request to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Grantee, provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

## **5. Subscriber Complaints Referred by Grantor**

Under Normal Operating Conditions, Grantee shall begin investigating Subscriber complaints referred by Grantor within twenty-four (24) hours. Grantee shall notify Grantor of those matters that



require more than seventy-two (72) hours to resolve, but Grantee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. Grantor may require Grantee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Grantee shall inform Grantor in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section 5 of this Attachment A, "resolve" means that Grantee shall perform those actions, which, in the normal course of business, are necessary to investigate the Subscriber's complaint and advise the Subscriber of the results of that investigation.

## **6. Billing**

- (A) Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Grantee shall without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes, PEG capital fees, and/or other governmental-imposed fees. Grantee shall maintain records of the date and place of mailing of bills.
- (B) Every Subscriber with a current account balance sending payment directly to Grantee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.
- (C) A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Section 6(B) of this Attachment A.
- (D) Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved, provided that:
  - (1) The Subscriber pays all undisputed charges;
  - (2) The Subscriber provides notification of the dispute to Grantee within five (5) days prior to the due date; and
  - (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
  - (4) It shall be within Grantee's sole discretion to determine when the dispute has been resolved.
- (E) Under Normal Operating Conditions, Grantee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.
- (F) Grantee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Grantee.

- (G) Grantee shall forward a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to Grantor.
- (H) Grantee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Grantee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Grantee, the payment alternative may be limited.

## **7. Deposits, Refunds and Credits**

- (A) Grantee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to Grantee, or 3) who rent Subscriber equipment from Grantee, so long as such deposits are applied on a non-discriminatory basis. The deposit Grantee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Grantee may charge for Subscriber equipment is the cost of the equipment which Grantee would need to purchase to replace the equipment rented to the Subscriber.
- (B) Grantee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one (1) year and provided the Subscriber has demonstrated good payment history during this period. Grantee shall pay interest on other deposits if required by law.
- (C) Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).
- (D) Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.
- (E) Bills shall be considered paid when appropriate payment is received by Grantee or its authorized agent. Appropriate time considerations shall be included in Grantee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

## **8. Rates, Fees and Charges**

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

- (B) Grantee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice. Such late fees are subject to ORS 646.649.
- (C) All of Grantee's rates and charges shall comply with applicable law. Grantee shall maintain a complete current schedule of rates and charges for Cable Services on file with the Grantor throughout the term of this Agreement.

## **9. Disconnection/Denial of Service**

- (A) Grantee shall not terminate Cable Service for nonpayment of a delinquent account unless Grantee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.
- (B) Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Cable Service Interruption was reported by the Subscriber.
- (C) 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 toward Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.
- (D) Charges for Cable Service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Grantee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Grantee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Grantee. For purposes of this subsection 9(D) of this Attachment A, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Grantee and to receive Cable Service or other multi-channel video service from another Person or entity.

## **10. Communications with Subscribers**

- (A) All Grantee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Grantee shall wear a clearly visible identification card bearing their name and photograph. Grantee shall make reasonable efforts to account for all identification cards at all times. In addition, all Grantee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Grantee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Grantee vehicles shall have Grantee's logo plainly visible. The vehicles of those contractors

and subcontractors working for Grantee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Grantee.

- (B) All contact with a Subscriber or potential Subscriber by a Person representing Grantee shall be conducted in a courteous manner.
- (C) Grantee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Grantee may be referred to Grantor.
- (D) Grantee shall provide the name, mailing address, and phone number of Grantor on all Cable Service bills in accordance with 47 C.F.R. §76.952(a).
- (E) All notices identified in this Section 10 shall be by either:
  - (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
  - (2) A separate electronic notification.
- (F) Grantee shall provide reasonable notice to Subscribers and Grantor of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including Channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Grantee. If the change is not within Grantee's control, Grantee shall provide an explanation to Grantor of the reason and expected length of delay. Grantee shall provide a copy of the notice to Grantor including how and where the notice was given to Subscribers.
- (G) Grantee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Section 10(E), at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Grantee:
  - (1) Products and Cable Service offered;
  - (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Grantee related to Cable Service;
  - (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
  - (4) Channel positions of Cable Services offered on the Cable System;
  - (5) Complaint procedures, including the name, address, and telephone number of Grantor, but with a notice advising the Subscriber to initially contact Grantee about all complaints and questions;

- (6) Procedures for requesting Cable Service credit;
  - (7) The availability of a parental control device;
  - (8) Grantee practices and procedures for protecting against invasion of privacy; and
  - (9) The address and telephone number of Grantee's office to which complaints may be reported.
- (H) Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.
- (I) Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific Channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.
- (J) Every notice of termination of Cable Service shall include the following information:
- (1) The name and address of the Subscriber whose account is delinquent;
  - (2) The amount of the delinquency for all services billed;
  - (3) The date by which payment is required in order to avoid termination of Cable Service; and
  - (4) The telephone number for Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.
- (K) Grantee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C §551.

- (6) Procedures for requesting Cable Service credit;
  - (7) The availability of a parental control device;
  - (8) Grantee practices and procedures for protecting against invasion of privacy; and
  - (9) The address and telephone number of Grantee's office to which complaints may be reported.
- (H) Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.
- (I) Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific Channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.
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- (K) Grantee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C §551.

## FRANCHISE AGREEMENT

This Agreement is made and entered into this 12<sup>th</sup> day of December, 2007, by and between City of St. Helens, Oregon and Comcast of Oregon II, Inc.

The parties agree as follows:

### I. Definitions

For the purpose of this Franchise the following terms, phrases, words, and their derivations shall have the meanings given herein, otherwise such words or terms shall have the meaning specified in the Cable Act. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever required. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein or in the Cable Act shall be given their common and ordinary meaning.

1. "Affiliate" shall mean any Person who owns or controls, is owned or controlled by, or is under common ownership or control of the Cable Company.
2. "Basic Cable Service" or "Basic Service" shall mean the service tier that includes the retransmission of local television broadcast signals.
3. "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996 (collectively 47 U.S.C. Section 521 et seq.), all as may be further amended from time to time.
4. "Cable Company" or "Company" or "Grantee" means Comcast of Oregon II, Inc., its lawful successors, transferees or assigns.
5. "Cable Operator" means any Person or group of Persons, including the Cable Company, who provide(s) Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.
6. "Cable Service" means the one-way transmission to Subscribers of (i) Video Programming, or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service by Subscriber.

7. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of Video Programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended; or (5) any facilities of any electric utility used solely for operating its electric utility system. In this Franchise, unless otherwise specified or made clear by the context, this term shall refer to the particular cable system serving St. Helens.
8. "Channel" means that portion of the electromagnetic spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC.
9. "City" or "Grantor" is the City of St. Helens, Columbia County, Oregon, a municipal corporation of the State of Oregon.
10. "City Council" shall mean the governing body of the City.
11. "Easement" shall be limited to those Rights-of-Way owned or controlled by the City.
12. "Effective Date" means the date on which the Franchise is first in full force and effect.
13. "Facilities" means any and all fiber optic cable, coaxial cable, equipment and related appurtenances in any way comprising a part of the Cable System.
14. "FCC" shall mean the Federal Communications Commission and any successor governmental entity of the Federal Communications Commission.
15. "Franchise" means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System. Unless otherwise specified or made clear by the context, "Franchise" or "Franchise Agreement" shall refer to this particular agreement, established by ordinance, authorizing construction, operation and maintenance of a Cable System by the Cable Company in the city of St. Helens, Oregon.
16. "Franchise Area" shall mean the area within the City limits of the City of St. Helens, Oregon, including areas annexed during the term of this Franchise.



17. "Gross Revenue" means all revenues derived by the Grantee from the operation of the Cable System in the Franchise Area, calculated in accordance with generally accepted accounting principles ("GAAP"), under which calculation of Gross Revenue shall include, but not be limited to: revenues derived from the provision of Basic Service, expanded basic, digital, premium, high-definition, pay-per-view, on-demand, and interactive television services; revenues derived from installation, bulk accounts, additional outlets, remote and converter rental, leased access and channels, home shopping commissions, classified ads, the sale of advertising time, and franchise fees.

Gross Revenues shall also include any revenue derived directly or indirectly by any Affiliate of the Cable Company where such revenue in the ordinary course of business has been paid or should have been paid to the Cable Company from the operation of its Cable System to provide Cable Services within the Franchise Area; provided, however, any such revenue shall not be double counted. By way of illustration and not limitation, this definition would include revenue derived from the sale of Cable System advertising time by an Affiliate of the Cable Company.

Insofar as the Cable Company is part of a regional or national entity that receives compensation for any service or activity (e.g., advertising) involving the operation of the Cable System to provide Cable Services in the Franchise Area (e.g., advertising), Gross Revenues related to such services or activities shall be calculated as an allocation of such compensation based on the number of Subscribers in the Franchise Area divided by the total number of Subscribers involved in the regional or national entity multiplied by the total compensation figure.

Gross Revenue shall not include refundable deposits, bad debt (provided that, if debt written off is subsequently collected it shall be counted as Gross Revenue in the period in which it is collected), PEG fees, nor any taxes, fees or assessments imposed or assessed by a governmental authority and collected by the Cable Company. Gross Revenue shall also not include advertising sales commissions and revenue derived from cable modem Internet service or telephony unless those services are deemed to be Cable Services under federal law or regulation.

18. "Headend" means the facility, including antennas and associated electronics, which receives, controls, and switches the electronic information transmitted over the Cable System.
19. "Interconnect" or "Interconnection" means the electronic connection of two or more different Cable Systems for the purpose of exchanging, switching, or retransmitting PEG programming.
20. "Installation" shall mean the connection of the Cable System from feeder cable via a drop to a Subscriber's residence or building.
21. "PEG (Public, Educational and Governmental) Access" or "Access" means the Channel(s) made available for public, educational, or governmental non-commercial use in accordance

with applicable federal law and the services, facilities and equipment for the use of such Channel(s).

“Public Access” means Access where organizations and individuals are the primary users, on a first-come, first-served basis.

“Educational Access” means Access in which educational users are the primary users.

“Governmental Access” means Access in which government agencies are the principal users.

22. "Person" means any individual, sole proprietorship, partnership, association, corporation, or any other form of entity or organization.
23. "Premium Service" is programming delivered for a fee or charge to Subscribers on a per Channel, per program, or other basis, in addition to the fee or charge to Subscribers for Basic Service.
24. "Rights-of-Way" or "Right-of-Way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, Easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of a Cable System. No reference in this Franchise to a "Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of a Cable System, and the Cable Company shall be deemed to gain only those rights which the City has the right and power to give and only to the extent necessary to carry out the purposes of this Franchise.
25. "Subscriber" means any Person who lawfully subscribes to Cable Service provided by the Cable Company.
26. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **II. Authority and Relationship of Parties**

1. City is a "franchising authority" as that term is defined in the Cable Act, and has full authority to do all acts and perform all functions of franchising authorities under the Cable Act, including but not limited to, entering into this Franchise Agreement.
2. Cable Company will be providing Cable Service pursuant to this agreement. Cable Company is entitled to all rights and privileges conferred upon cable operators by the Cable Act and applicable state and local laws.

3. Grant of Franchise, Nature and Term. The Grantee is hereby granted for itself, its successors and assigns, subject to the terms and conditions of this ordinance, the franchise, authority, right and privilege for a period of ten (10) years to construct, operate and maintain a Cable System in the City, as hereinafter set forth.

4. Competitive Equity.

A. The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises or other similar lawful authorization to provide Cable Service within the Franchise Area; provided, the City agrees that, within ninety (90) days of Grantee's request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; security 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 for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the City agrees that, after Grantee presents evidence that the competitive entrant's franchise places or will place Grantee at a competitive disadvantage, identifying the Franchise sections it believes need to be changed to eliminate the disparity, the City shall amend this Franchise Agreement to include any more favorable or less burdensome terms or conditions.

B In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchising Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

C. In the event that a non-City franchised wireline or state franchised or federally franchised multichannel video programming distributor provides service to the residents of the City except for services not subject to regulation as a Cable Service under applicable law as of the effective date of this Franchise such as direct broadcast satellite, SMATV, broadcast television stations, video delivered over the public Internet (exceptions shall not include IP based delivery of video/cable services via a wireline system owned or controlled by the service provider) and wireless video providers, the Grantee shall have a right to request franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In the event federal law is amended after the effective date of this Franchise to modify local regulatory treatment of video programming services, including treatment prescribed under the Cable Act for Cable Services, the Grantee may exercise its modification rights as set forth above with respect to such change in the law and this Franchise. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petitions shall: (1) indicate the presence

of a non-franchised competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably withhold consent to the Grantee's petition.

### **III. Franchise Area**

The area covered by this franchise shall be the area commonly known as City of St. Helens, including territory annexed during the franchise term.

### **IV. Compensation**

#### **1. *Franchise Fee***

From and after the effective date of this franchise and continuing thereafter so long as this franchise remains in force and effect, the Cable Company will pay quarterly to the City five percent (5%) of all Gross Revenues. The payment of compensation shall be made for the quarterly period in which the effective date of this franchise falls, and for quarterly periods thereafter, on or before the forty-fifth day following each quarter year period. Quarter year periods shall extend from January 1 through March 31, inclusive; April 1 through June 30 inclusive; July 1, through September 30, inclusive; and October 1 through December 31, inclusive. Coincidentally with such payment the Cable Company will file with the City a report of the quarterly gross revenues covering the period for which payment is made, setting forth revenues according to the type of service.

#### **2. *Integrity of Compensation from Cable Services***

When Cable Services are bundled with non-cable services and sold to subscribers at a discounted price, or simply as part of the total price for the bundled services, then the allocation of revenues, solely for the purpose of calculating Gross Revenues shall be the price of the Cable Service in the bundled package. Bundling of Cable Services with non-cable services shall not be for the purpose of evading payment of franchise fees on Cable Services. Notwithstanding the above, should federal law or regulation require a specific methodology for the calculation of franchise fees regarding Cable Services bundled with non-cable services, the City and the Cable Company agree that they will comply with such law or regulation. Nothing in this section shall be construed to (1) regulate Cable Company's rates in a manner beyond that which is expressly authorized by federal law; or (2) compel Cable Company to pay more franchise fees than required under this Franchise and federal law and regulation.

#### **3. *Audit of Franchise Fees***

Upon reasonable prior written notice, during normal business hours, at Grantee's principal business office, the City shall have the right to inspect the Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place

within two (2) years from the date the City receives such payment, after which period any such payment shall be considered final.

Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event it is determined that franchise fees for the audit period has been underpaid, the City shall notify Grantee in writing of its determination. Upon receipt, Grantee shall have thirty (30) days to notify the City if it agrees or disagrees with the City's determination. If Grantee agrees with the City's determination, Grantee shall pay to the City the undisputed amount due to the City. The City and Grantee shall discuss all disputed amounts. In the event the parties are not able to reach an agreement on mutually acceptable terms and conditions, either party may pursue their legal remedies. The reasonable cost of such audit up to \$5,000 shall be borne by the Company only if the review results in an underpayment of five percent (5%) or more for the period under review.

## **V. Schedule of Rates and Charges**

### ***1. Schedule Required***

Upon granting of the franchise the Cable Company will file with the City a description of services and a schedule of all charges which it makes for those services. The Cable Company will submit notice of any changes in rates to the City 30 days prior to the effective date of the change. All rates will be published and non-discriminatory, and be uniform to all persons and organizations of like classes, under similar circumstances and conditions. Nothing in this provision shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers, nor will this provision be interpreted to prohibit the establishment of low-income senior discounts or a graduated scale of charges and rate schedules which vary with volume of usage to any subscriber included within a particular classification, or other such pricing strategies as part of its business practice. The schedule of rates will include installation and monthly charges for providing basic subscriber service, and rates for additional cable services.

### ***2. Prohibition Against Reselling Service.***

It is the City's intent that no Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

### ***3. Reservation of Right to Regulate***

The City reserves the right to regulate rates and charges imposed on subscribers by the Cable Company to the full extent permitted by law, and to institute procedures to ensure public review of all proposed Cable Company rates and charges.

#### **4. *Low-income Senior Discounts***

The Grantee, in its sole discretion, may offer basic and expanded basic services at a discount for low-income senior subscribers.

### **VI. System Construction, Extension, and Availability of Services**

#### **1. *Service Area.***

The Grantee shall make Cable Service available at standard rates and charges to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing Cable System. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of the Grantee's distribution cable.

The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

#### **2. *Uniform Availability of Residential Service.***

The Grantee will offer and make available Cable Services to all residents within the franchise area subject to the density requirements specified above.

#### **3. *Undergrounding of Cable.***

The Cable Company will install its plant underground subject to the following conditions:

a. If all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment. In any area of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the 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.

b. Wherever Subscribers in a service area request underground service and agree to pay in advance the cost of construction including all materials and labor to the Cable Company the Cable Company will accommodate the Subscriber's request.

#### ***4. Construction Codes.***

The Cable Company will adhere to all lawful building, zoning or other codes currently or hereafter in force in the City. The Company will arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of such property. In the event of such interference, the City may require the removal of the Cable Company's lines, cables, and appurtenances from the property in question.

#### ***5. Right to Inspect Construction.***

The City will have the right to inspect all system construction or installation work within its territory and to make such tests as it finds necessary to ensure compliance with the terms of this franchise agreement; however, no charge for the inspection work will be made to the Cable Company. The Cable Company will provide such cooperation, information and technical assistance to the City as is required for effective inspection.

#### ***6. New Developments.***

The City shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The City agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering and deployment of labor applicable to its cable facilities.

#### ***7. New Grades or Lines.***

If the grades or lines of any Public Right of Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the City (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, the City shall upon written request of the Grantee make application, at Grantee's expense, for such funds on behalf of the Grantee.

## **VII. Operation Standards, System Design and Performance Requirements**

### ***1. Technical Standards and Equipment.***

The system will meet or exceed all technical standards established by the FCC.

### ***2. Performance Testing.***

The Cable Company shall perform tests to determine compliance with FCC technical standards on a schedule as specified by the FCC, and in any case no less frequently than once each year. Results of the tests, with accuracy of the results certified by an authorized employee of the Cable Company, shall be submitted to the City within 45 days following completion of the published report of the test results. In addition, the City may independently perform technical tests of the cable system at a reasonable time, and the Cable Company shall cooperate fully with the City for such tests.

### ***3. Code Compliance.***

The Cable Company shall comply with the following standards:

National Electric Safety Code ("NESC");

National Electrical Code ("NEC");

Applicable FCC and other federal, state and local regulations; and

Applicable permitting procedures of the City.

### ***4. Emergency Alert System.***

The Cable Company shall comply with the FCC's Emergency Alert System requirements throughout the term of the franchise. Should jurisdiction of the FCC over an EAS cease during the term of this Franchise, the Company will continue to provide the emergency alert capability in accordance with the rules in effect as of the effective date of this Franchise.

## **VIII. Customer Protection and Service**

Cable Company shall follow the Customer Protection and Service rules as set out in Exhibit A.

## **IX. System Upgrades**

The parties recognize that cable operations are changing fast, and that the cable industry will see technological improvements during the life of this franchise. Therefore, the Cable



Company must incorporate into its cable system, as serviced in the area covered by this franchise, within a 12-month period, any technological advancements already in use by the Cable Company in the greater Portland metropolitan area, provided such advancement is significant, cost effective, and technologically feasible taking into consideration the cost thereof. Nothing herein shall be construed to require Grantee to employ any specific transmission technology, nor require a Grantee to upgrade its Cable System to implement a technology or service that can be shown to be financially infeasible to implement given various factors, including the remaining term of the Franchise Agreement.

#### **X. Erection and Use of Poles by the Cable Company**

Cable Company will endeavor to use poles owned by utilities such as Qwest, a corporation; Portland General Electric, a corporation; Columbia River PUD; and the Cable Company. In the event the Cable Company cannot obtain the necessary poles and allied facilities pursuant to the provisions of such agreement at reasonable costs, and only in such event, then it will be lawful for the Cable Company to make all needed excavations in any of the streets, alleys or public highways for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of the system of the Cable Company. This provision will not exempt the Cable Company from compliance with all charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto. All poles of the Cable Company will be erected between the curb and the sidewalk unless otherwise designated by the proper City authorities, and each pole will be set, whenever practicable, at an extension of the lot line. The City will have the right to require the Cable Company to change the location of any pole, conduit, structure or facility within the street area when, in the opinion of the City Engineer, the public convenience requires such change. The expense thereof shall be paid by the Cable Company. All pipes, conduits and underground facilities will be laid down and maintained, in such a manner so as not to interfere with sewers, water pipes, or any other property of City, or with any pipes, wires or conduits that may have been laid theretofore in the streets, alleys or highways of said City or by or under its authority. The systems of pipes, wires and conduits constructed or erected by the Cable Company will be of good quality and workmanship and will be maintained in good repair and efficiency. The foregoing authority to make needed excavations and to place, erect, maintain, repair and remove poles and supports for wires and conductors in the streets, alleys or public highways of the City is intended to apply to such locations where no utility poles exist or where such poles cannot physically accommodate facilities of the Cable Company.

#### **XI. Restoration of Streets**

Whenever the Cable Company will disturb the surface of any street, alley, public highway or ground, it will restore the same to a condition reasonably comparable to its condition prior to the opening, in the opinion of the City Engineer consistent with City standards; when any opening is made by the Cable Company in any hard surface in any street, alley or public highway, the Cable Company will promptly refill the opening and restore the pavement. After notifying the Cable Company and allowing it time to refill or repave any opening, the City may refill and/or repave in

case of neglect of the Cable Company. However, notice need not be given in the event the opening results in a hazard to the public. The costs thereof, including inspection and supervision, will be paid by the Cable Company. All excavations made by the Cable Company in the streets, alleys and public highways will be properly safeguarded for the prevention of accidents. The work hereby required will be done in strict compliance with the rules, regulations and ordinances of the City.

## **XII. Reservation of City Street Rights**

Nothing in this franchise will be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway or laying down, repairing and/or altering any street, alley or public highway, or laying down, repairing or removing water mains or construction or establishing any other public work. All such work will be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of the system of the Cable Company herein; provided, however, that if any of the poles, wires, conduits, conductors, pipes or appurtenances of the Cable Company will interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, all such poles, wires, conduits or other appliances and facilities will be removed or replaced in such manner as will be directed by the City so that the same shall not interfere with the said public work of the City, and such removal or replacement will be at the expense of the Cable Company.

## **XIII. Trimming of Trees**

Nothing contained in this franchise will be deemed to empower or authorize the Cable Company to cut or trim any trees, ornamental or otherwise, in any of the streets, alleys or public highways; but the Cable Company may cut or trim such trees as necessary pursuant to City rules and requirements for such trimming applying to public utilities.

## **XIV. Use of Poles and Conduits by City**

The Cable Company will permit the City to fasten wires and cables and stretch such wires and cables on any and all poles and in any conduits of the Cable Company, provided that there is sufficient space available and that such use by the City does not interfere with a current or future use by the Cable Company, and provided that the Cable Company will not be responsible for any damage without its fault resulting to the wires, cable or property of the City resulting from such use of its poles or conduits by the City. The cost of such use to the City will be consistent with how the City treats other utilities or is treated by them, but in no event the amount payable by the City shall be less than the actual cost incurred by the Cable Company including all cost of materials and labor. The City shall hold Cable Company harmless against and from all claims, demands, costs of liabilities of any kind arising out of such use of said poles and conduits.

## **XV. Franchise Not Exclusive**

This franchise will not be construed as any limitation upon the right of the City, through its proper officers, to grant to other persons or corporation, rights, privileges or authority similar to or different from the rights or authority herein set forth, subject however to Section II 4 hereof, in the same or other streets, alleys and public highways or public places by franchise, permit or otherwise.

## **XVI. Street Vacation or Abandonment**

In the event any street, alley, public highway or portion thereof used by the Cable Company will be vacated by the City, or the use thereof discontinued by the Cable Company during the term of this franchise, the Cable Company will forthwith remove its facilities therefrom unless specifically permitted to continue the same, and, on removal thereof 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 required by the City. In the event of failure, neglect or refusal of the Cable Company, after thirty (30) days notice by the City to repair, improve or maintain such street portions, the City may do such work or cause it to be done, and the cost thereof as found and declared by the City will be paid by the Cable Company.

## **XVII. Insurance**

Cable Company will maintain such public liability and property damage insurance as will protect the Cable Company and the City from all claims for damage for personal injury, including death, which may arise from operations under this franchise or in connection therewith. Such insurance shall provide coverage for not less than \$1,000,000 each person and \$3,000,000 for each accident, property damage liability insurance with limits of \$500,000 for each accident, and \$1,000,000 for all other liability. Such insurance will, without prejudice to coverage otherwise existing therein, name as additional insured City, its officers, agents and employees. The Cable Company shall also maintain automobile liability insurance with One-million dollars (\$1,000,000) combined single for bodily injury and property damage; and employer's liability and worker's compensation insurance as required by the State of Oregon. All policies shall contain, or shall be endorsed so that the policy shall not be suspended, voided, canceled, or limit per accident reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after thirty (30) days prior written notice, return receipt requested, has been given to the City.

Certificates evidencing such insurance will be filed with the City and will be subject to the approval of the City. It will also be the responsibility of the Cable company to see that all subcontractors carry satisfactory insurance protecting the public in the event of injury or damage arising from the acts or omissions of such subcontractors, their agents or employees.

## **XVIII. General Indemnification**

Except for the negligence or gross negligence of the City, its officers, employees and agents, the Cable Company hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this franchise, by or for Cable Company, its agents or employees, or by reason of any neglect or omission of Cable Company to keep its system in a safe condition. City shall endeavor to give the Grantee written notice of its obligation to indemnify and defend within ten (10) days of receipt of a claim or action pursuant to this Section. However, failure to give Grantee notice within ten (10) days shall not diminish Grantee's obligation to indemnify, defend and hold the City harmless. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City. Cable Company shall consult and cooperate with the City while conducting its defense of the City.

## **XIX. Movement of Facilities**

In the event it is necessary temporarily to move or remove any of the Cable Company 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 City, the Cable Company, upon reasonable written notice which shall be not less than ten (10) business days, will move, at the expense of the person requesting the temporary removal, such of its facilities as may be required to facilitate such movements. The Cable Company may require that the charge for the relocation be paid in advance of the movement of its wires and facilities.

## **XX. City's Consent Required for Assignment, Transfer**

In order to ensure that any future holder of any right, title or interest in this franchise be examined by the City as to their legal, financial, and technical qualifications for operating the system authorized by this franchise agreement, it is necessary that the City's prior written consent be obtained for assignment, or transfer, of this franchise, except that no consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness or in the ordinary course of business, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Accordingly, and except as noted above, this franchise shall not be assigned or transferred, without prior written consent of the City, such consent not to be unreasonably withheld. Within ten (10) days after the execution and delivery of any such instrument so consented to by the City, the Cable Company will file with the City an executed counterpart or certified copy thereof. The Cable Company will promptly notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of the Cable Company either directly, or indirectly through such a change, transfer or acquisition of control of a parent corporation or any other means. Any such change of control will make this franchise subject to revocation unless and until the City will have given its consent thereto. For the purpose of determining whether it will consent to such change, transfer or acquisition of control, the City may inquire into the legal, financial and technical qualifications of the transferee, and the Cable

Company will assist the City in any such inquiry. For the purposes of this section, a change in control will be deemed to have taken place if 51 percent (51%) of the stock of the Cable Company, is acquired by a single entity or by several entities under common control. The procedures for proposing and considering approval of transfers of control shall be consistent with the requirements of the Cable Act.

## **XXI. Regulation**

At all times, the power and right to regulate in the public interest the lawful exercise of the privileges permitted by this Franchise will remain in and be vested in the City.

## **XXII. Common User**

Whenever, in the judgment of the City Engineer, it is deemed impracticable to permit erection of poles or construction of underground conduit system by any other utility which may at the time have authority to construct or maintain a conduit or poles in the street area, the City may require the Cable Company to afford such utility the right to use such of the poles or facilities of the Cable Company, both parties sharing the costs and under such rules and regulations as they may agree upon, provided that the Cable Company shall have the same right as to placement of its facilities to poles and conduits of a utility.

## **XXIII. Remedies for Franchise Violations**

### ***1. Revocation.***

In addition to any rights set out elsewhere in this document, the City reserves the right to revoke this franchise agreement, including all its rights and privilege in the event that:

- A. The Cable Company substantially violates any material provisions of this agreement;
- B. The Company abandons the System or terminates the System's operations;
- C. The Cable Company is found to have practiced fraud or deceit of a material nature upon the City;
- D. The Cable Company fails to obtain and maintain any required federal or state permit relating to the construction, maintenance, and operation of the Cable System within the Franchise Area after notification from the appropriate government agency that the permit is lacking and the Cable Company fails to obtain the permit within a reasonable time; provided that any such federal or state permit is lawfully required and its legality is not challenged by Grantee;
- E. The Cable Company materially misrepresents facts in the application for or negotiation of the Franchise; or

- F. The Cable Company becomes insolvent, becomes unable or unwilling to pay its debts, or is adjudged bankrupt, subject to the exceptions described in Section XXIV.

In the event that the City believes that the Cable Company has not complied with terms of the franchise, it shall notify the Cable Company in writing of the exact nature of the alleged non-compliance. The Cable Company shall have thirty (30) days from receipt of the notice to (a) respond to the City contesting the assertion of non-compliance, or (b) to cure such default or, in the event, by the nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date they will be completed.

Before reaching a finding that there are grounds to revoke this franchise agreement, the City must give the Cable Company an opportunity to be heard. The Cable Company will be afforded due process rights at the hearing as if the hearing were a contested case hearing under State law, including the right to cross-examine witnesses and to require that all testimony be on the record. The findings will be written and will stipulate the reasons for the decisions.

Upon revocation of the franchise agreement and subject to other legal remedies the parties may have, all rights of the holders of the franchise will immediately be revoked without a further act upon the part of the City, and upon the written request of the City, the Cable Company will promptly remove its structures and property from the streets and restore the streets to their prior condition. If the Cable Company fails to do so, the City may perform the work and then collect the actual cost of the work from the Cable Company. The actual cost of the work, including administrative costs, will be a lien upon all plant and property of the Cable Company effective upon placement in the lien docket books of the City.

## ***2. Liquidated Damages.***

Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise Agreement by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages in the amount of up to five hundred dollars (\$500) per day and a maximum total amount of up to five thousand dollars (\$5,000) per substantial and material violation of this Franchise. To the extent that the City elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the City's sole and exclusive remedy. Nothing in this Section is intended to preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.

A. Prior to assessing any liquidated damages, the City will first discuss the alleged violation, informally, with the Cable Company in an attempt to resolve the problems. If the discussions are unsuccessful, the City shall mail to the Grantee a written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue. The Grantee shall have thirty (30) days from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged

violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period, Grantee's cure period shall be no less than one such period.

B. The City may not assess any liquidated damage if the Grantee has reasonably responded to the complaint or cured or commenced to cure, as may be appropriate, the violation following receipt of written notice from the City, unless some other cure period is approved by the City. In the event Grantee fails to cure or commence to cure, or fails to refute the alleged breach, the City may assess liquidated damages and shall inform Grantee in writing of the assessment. Grantee shall have thirty (30) days to pay the damages.

C. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day on which Grantee received the City's formal written notice of non-compliance.

D. Grantee may appeal (by pursuing judicial relief or other relief afforded by the City) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Grantee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.

E. If after that dollar limit set forth in paragraph A of this section is reached, and Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

Upon application of the Cable Company, the City may excuse the Cable Company from strictly performing terms and conditions of this agreement where it finds 1) that strict performance would not substantially further the purpose and principles of this agreement and 2) that strict performance would result in practical difficulties and hardship to the Cable Company which outweigh the benefit to be derived by the system or subscribers.

#### **XXIV. Receivership.**

Except as provided by applicable state or federal law, in the event that the Cable Company is placed in receivership, and in the event that the Cable Company has been under the control of a receiver or trustee more than one hundred and twenty (120) days from the date such a person is appointed, the Cable Company will be deemed to have violated a material portion of this agreement. The violation will be deemed to have occurred whether the Cable Company is in receivership, reorganization, bankruptcy, or other action or proceeding unless the following circumstances accompany the receivership:

1. Within 120 days after election of appointment, the receiver or trustee will have been approved by the City and will have fully complied with all the provisions of the franchise agreement and remedied all defaults under the agreement; and
2. The receiver or trustee, within 120 days, will have executed an agreement, approved by the

City as well as the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of the franchise agreement.

**XXV. Charter and General Ordinances to Apply.**

This franchise is hereby made subject to the charter and general ordinance provision passed pursuant thereto (to the extent not inconsistent with the limitations prescribed by Section XXXI(13) below), now in effect or hereafter made effective, of said charter. Nothing in this franchise will be deemed to waive the requirements of the various codes and ordinances of the City regarding permits or fees to be paid or manner of construction.

**XXVI. Public, Educational and Government (PEG) Access.**

**1. PEG Channels and Use.**

Upon and without interruption after the effective date of this Franchise, the Cable Company shall continue to make two (2) Access Channels available for Public and Government Access use by the City or by a designated Access provider identified by the City, for Public and Government Access purposes.

Upon ninety (90) days advance written notification from the City, but not earlier than February 1, 2008, Grantee shall make one (1) Access Channel available for Educational Access use by the City or by a designated Access provider identified by the City, for Educational Access purposes, for a total of three (3) Access Channels.

The City or its designated access entity shall pay for all cost of constructing the bi-directional fiber connection from any origination point within the Franchise Area to Grantee's head end or any other location agreed to by Grantee (including cost of materials and labor) and end user equipment. As of the effective date of this Agreement, the origination points shall be City Hall, the County administration building, and the designated access entity's facility located at 475 S.18<sup>th</sup> Street, St. Helens. Should the City desires to establish additional origination points after the effective date of this Franchise, the City shall consult with Grantee and the City shall be responsible for all costs of construction including costs of material and labor and all end user equipment.

Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Grantee shall not exercise editorial control over any public, educational, or governmental use of channel capacity, except Grantee may, consistent with the Cable Act and applicable State law, refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The City shall be responsible for developing, implementing, interpreting and enforcing rules for PEG



Access Channel use which shall ensure that Public Access Channel(s) and equipment will be available on a non-discriminatory basis.

***A. Grantee Use of Fallow Time.***

Because blank or under utilized PEG channels are not in the public interest, in the event the City or designated PEG access entity elects not to fully program its Channel(s), the Grantee may request the use of specific blocks of time with a consistent history of remaining unused on an access channel, for non-commercial programming of the Company's choosing, and the City will not unreasonably refuse the request. Such blocks of time shall be subject to reclamation by the City upon no less than 60 days notice.

***B. Indemnification.***

To the extent permitted by the Oregon tort claims act and the Oregon Constitution, the City shall indemnify Grantee for any liability, loss, or damage it may suffer from claims arising out of the City's negligent administration of its rules for Access.

**2. Access Channels on Lowest Tier.**

All PEG Access Channels shall be carried on the lowest service tier offered by the Cable Company in accordance with the Cable Act.

***3. PEG Access Capital Support.***

The City has determined that to meet community needs and interests for PEG Access in St. Helens over the term of the Franchise, the following developments, among possible others, are necessary:

- A. Fitting the current City Hall chambers with equipment for the effective video coverage of meetings;
- B. Establishing studio, mobile and portable production and post-production capability for Access coverage of community activities and events;
- C. Establishing an Educational Access Channel and possibly supporting the production, editing and playback capability for the Channel, which may be used by the City, by Portland Community College, and by elementary, secondary and post-secondary educational institutions; and
- D. Preparing for the establishment of a Government Access Channel and operations.

Except as otherwise agreed to by the parties, within sixty (60) days of the effective date of this Franchise, Grantee shall pay to the City an amount equal to fifty – two cents (\$0.52) per residential Subscriber per month as capital support for PEG access ("PEG capital"). The City shall allocate such amount to PEG capital uses exclusively. All such payments shall be made at the same time as the Grantee pays the franchise fee to the City.

In lieu of matching monetary support, the City shall support PEG Access operations by providing in-kind support such as a facility for the designated access entity. In the event that franchise fees are no longer available through state or federal governmental actions over which the City has no control, the obligation of the City and Grantee shall be waived for any time period in which the City does not receive franchise fees. In the event franchise fees are less than the pass-through PEG capital support fees, the Grantee's obligation to collect and pay to the City PEG capital fees shall be reduced correspondingly.

**4. *PEG Funding Audit.***

At the request of Grantee, the City shall provide Grantee with a report, no more often than annually, documenting the use of PEG capital fees. In the event the City cannot demonstrate that PEG funding was used for PEG capital needs, Grantee's PEG funding obligations going forward shall be reduced by an equivalent amount.

**5. *Status of PEG Contribution.***

The Grantee agrees that all contributions, services, equipment, facilities, support, resources and other activities to be paid for or supplied by Grantee pursuant to or in connection with its performance under this Section shall not be regarded as franchise fees or counted against the payment of franchise fees.

**6. *PEG Access Rules Determined by the City.***

The City shall have the authority to manage the operation of PEG Access, and the City may delegate part or all of this authority to a third party. Rules governing the use of all PEG Access resources, including without limitation the public, educational and governmental Access Channel(s), studios, equipment, facilities, services, origination points, and the PEG Access Grant will be determined by the City or a designee of the City.

**7. *Technical Assistance and Services.***

The Grantee will provide ongoing maintenance of its facilities up to the patch panel at the PEG origination sites. The City or the designated access entity shall be responsible for maintenance, repair and replacement of all equipment and connections within the origination site from the patch panel.

The Grantee will facilitate the City or the designated access entity in including a generic listing of all PEG programming by type (e.g., "Educational Access Programming," "Public Access Programming," "Government Access Programming", as identified by the City or its designee on the channel guide on its Cable System. If the City wishes to identify specific programs in listings, Grantee will assist the City with such listing, provided that the City or designated PEG access entity shall be responsible for all costs for such listing.

## **8. *Digital Channels.***

At such time as the entire Cable System is technically configured digital, City may request, and Grantee shall make available upon one hundred twenty (120) days advanced written notice from City, the conversion of the three (3) initial channels to three (3) digital channels, and one (1) additional digital channel for a total of four (4) digital channels; provided, however, to activate the one (1) additional digital channel the City or City's designee(s) demonstrates that it is providing the following level of programming: during ten (10) consecutive weeks, a pre-existing channel designated for the same purpose as the channel requested (Public Access, Educational Access, or Governmental Access) cablecasts at least forty-two (42) hours per week of original programming. For the purposes of calculating the forty-two (42) hours per week of programming, a program may be repeated only once after its original run during the ten (10) week period. The parties understand and agree that certain uses, such as government meetings, may reach channel capacity and warrant an additional channel while not meeting the standard for original programming set forth above. In such case the parties agree to consider and may mutually agree, on a case-by-case basis, to provide the additional channel without first meeting the standard set forth above. As used herein "original programming" means non-repeat programming and does not include character generation or bulletin boards.

At such time as the entire Cable System is digital, City shall be responsible for its cost or designated access entity's cost of equipment necessary to provide and transmit their respective digital programming for the PEG channels to Grantee's Cable System. Grantee will provide a fiber transmitter or its equivalent at the City's PEG access control site in order to transport the control site's digital signal over the fiber to Grantee's headend. The City may use PEG capital funds for these equipment needs, if any. Grantee shall be responsible for any equipment necessary at its headend or in its Cable System or return lines to provide the transport and distribution of the PEG channels to subscribers. Digital channels assigned or allocated to PEG access use shall have a compression ratio that is equivalent to other digitally delivered channels used for typical commercial channels that deliver programming to the Franchise Area in a similar format for delivery to subscribers.

## **9. *Non-Commercial Use.***

Public, Educational, and Governmental Access Channels shall be utilized solely for non-commercial purposes for the social, educational, cultural, charitable, and informational benefit and general welfare of the community. No Access user shall utilize the Access Channels for any purposes other than as specified and shall not derive any commercial profit therefrom, including the sale of advertising, commercials, or other similar activities. With the exception that the City has the right to delegate its authority to operate and regulate the PEG Access Channels, the right to utilize these Channels shall not be assigned by any Access user to any other Person or entity. The limitations of this section notwithstanding, nothing in this Franchise shall prohibit the solicitation and recognition of financial support for the provision of PEG Access by the City or its designee(s), and for charitable, educational or governmental purposes in accordance with applicable federal law and regulations.

## **XXVII. Service to Community Facilities.**

The Cable Company will provide and maintain at no expense to the City for installation or service, one (1) standard outlet and Basic Service at each municipal building, city police station and public school, not including "home schools" or colleges, provided that each location is within the Franchise Area and 125 feet of the Grantee's distribution cable. In addition, at the City's request, no more often than every two years during the life of the Franchise, the Cable Company shall provide the City with one (1) connection for Basic Tier Service to additional municipal buildings of the City's choosing, as long as the location is located within the Franchise Area and 125 feet of the Cable Company's distribution facilities. For the purpose of this Section, "municipal buildings" are buildings owned and occupied by the City for administration purposes and do not include buildings owned by the City but leased to third parties for non-government purposes, or buildings such as storage facilities at which government employees are not regularly stationed, and buildings housing jail populations. The City or the requesting public agency shall be responsible for nonstandard installations or extensions to buildings that do not fall within Grantee's line extension policy and any additional services or equipment at Grantee's customary charges.

## **XXVIII. Institutional Network**

The City and Grantee may enter into a separate agreement for the construction of an Institutional Network connecting City buildings within the Franchise Area under a Grantee managed network.

## **XXIX. Reporting Requirements.**

### ***1. Quarterly Reports.***

- A. Within 30 calendar days after the end of each fiscal quarter of the Cable Company, Cable Company shall submit to the City a written summary of all complaints referred to Cable Company within the report quarter. The reports shall contain, as a minimum, the specific nature of the complaint, remedial action taken, if any, and current status of the complaint ("closed" or "open"). For purposes of this section, "complaint" shall mean any written communication to the Cable Company of subscriber dissatisfaction regarding any service or practice of the Cable Company in its operations under this franchise.
- B. Within 30 days after the end of each of the Cable Company's fiscal quarters, the Cable Company shall submit a written report to the City, verified by an officer of the Cable Company, which shall contain:
  - (1) a statement certified by an officer of the Cable Company of all revenues received by the Cable Company or any parent or affiliate, related to operation of the cable system in the franchise area, identified by source or type, e.g., basic,

pay, installation, advertising, etc.;

(2) any adjustments to gross revenue to determine the franchise fee calculation base; and

(3) calculation of the franchise fee resulting in the amount being paid.

## **2. *Annual Report.***

No later than three and one-half months following the end of the Cable Company's fiscal year each year, Cable Company shall present a written report to the City which shall include:

- A. If requested, the full financial statements for the previous year, including income statement, balance sheet, cash flow statement, statement of capital expenditures and appropriate explanatory footnotes; audited, for [first Comcast entity in line of parentage which is normally audited]. In the event any audited financial report has not been published by the date due under this section, then the audited financial report shall be deemed presented on time if presented within 30 days after publication.
- B. A summary of the previous year's activities for the franchise area, St. Helens system area and state area, including, but not limited to, the total number of subscribers for each category of service, the number of homes passed, miles of overhead and underground cable plant, other system facilities and equipment constructed, any services added or dropped, and any technological changes occurring in the system.
- C. A summary of complaints received, with a summary of how the complaints have been dealt with.
- D. Plans for the future.

## **3. *Monitoring and Compliance Reports.***

No later than July 1 of each year, the Cable Company shall provide a written report of any FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted.

## **4. *Additional Reports.***

If requested, by the City, the Cable Company shall prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property relating to the Cable System serving the Franchise Area, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the City in connection with this franchise.

### **XXX. Surety and Guarantee**

A. Within sixty 60 days of the effective date of this agreement, Company shall obtain and maintain at its cost and expense, and file with the City, a performance bond and found acceptable by the attorney for the City in the amount of Fifty Thousand Dollars (\$50,000). The performance bond shall be conditioned upon and ensure the faithful performance of all material terms and conditions of the Franchise. Nothing in the performance bond shall alter the conditions of this Agreement. If Grantee fails to timely pay an amount required to be paid under this Franchise Agreement, the City shall give Grantee twenty (20) business days' notice of its intent to draw the amount owed from the performance bond. The City may not draw from the security bond while any action, appeal or other process has been instituted by Grantee to challenge the amount owed.

The City may reduce the amount of the bond consistent with Grantee's performance of its responsibilities under the Franchise. After the expiration of the term of the Franchise, transfer, revocation or termination, Grantee shall be entitled to the return of the bond or portion thereof as soon as possible; provided that the City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's material violation of the Franchise.

B. The performance bond shall remain in full force and effect throughout the term of this agreement.

C. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City, whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of a right with respect to such bond shall affect any other rights the City may have.

D. The performance bond shall contain the following endorsement:

It is hereby understood and agreed that this instrument may not be canceled by the surety nor the intention not to renew be exercised by the surety until thirty (30) days after receipt by the City by registered mail, of a written notice of such intent to cancel or not to renew.

The performance bond shall be used to insure the Grantee's faithful compliance with all of the terms and provisions of this Franchise.

E. Maintenance. The Grantee shall restore the performance bond to its full amount if a claim is made. The Grantee's maintenance of the performance bond shall not be construed to excuse unfaithful performance by the Grantee, or to limit the liability of the Grantee to the amount of the performance bond, or otherwise to limit the City's recourse to any other remedy available at law or equity.

### **XXXI. Miscellaneous Provisions**

1. Prohibition Against Discriminatory Practices. The Cable Company will not deny service or access, or otherwise discriminate against subscribers, programmers, or persons on the basis of

race, color, religion, national origin, sex, age, handicap, or marital status.

2. Privacy and Other Human Rights. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

3. Filing. When not otherwise specified, all matters to be filed with the City will be filed with the City Administrator

4. Right to Require Removal of Property. Subject to federal and state law, at the expiration of the term for which the franchise is granted, or under its revocation or expiration, as provided for herein, the City will have the right to require the Cable Company to remove, at Cable Company's expense, all portions of the cable communications system from all streets and public way with the City.

5. Open Books and Records.

(a) Throughout the term of this Franchise Agreement, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records related to the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such notice shall specifically reference the section or subsection of the Franchise, which is under review, so that the Grantee may organize the necessary books and records for easy access by the City. Alternatively, if the books and records are not easily accessible at the local business office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs up to \$5,000 of the City's representative to view the books and records at the appropriate location. Reasonable travel costs shall be those set forth in the then current City travel reimbursement policy for City employees who travel on City business. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

(b) Proprietary Information. Except as otherwise provided in this Section, the Grantee may not refuse to provide information requested by the City under this Section on the grounds that it is proprietary or confidential in nature; provided, however, the City shall not request information from Grantee that is not materially relevant and specific to Grantee's Cable Service within the Franchise Area and to the City's administration of this Franchise. Upon receipt of request from City, Grantee will identify information which is considered to be confidential and proprietary. To the extent permitted by the Oregon Public Records Laws, ORS chapter 192, the City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, subscriber lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information

that is reasonably determined by the Grantee to be competitively sensitive.

(c) Public Records Requests. In the event the City receives a request under the Oregon Public Records Law or applicable federal "sunshine" laws for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall promptly notify Grantee of such request and confer with Grantee regarding the appropriate response to such request.

6. Compliance with Laws. The Cable Company will comply with all applicable State and Federal laws and regulations, and with all local ordinances, resolutions, rules and regulations of general applicability.

7. Safety. The Cable Company will, at all times, employ standards of care commensurate with the risk involved in its operations. It will 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 its employees.

The Cable Company will install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electric Safety Code, and in such manner that they will not interfere with the installations of the City or any public utility.

8. Severability. If any section, subsection, sentence, clause, phrase or word of the franchise agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word will be deemed a separate, distinct and independent provision, and such holding will not affect the validity of the remaining provisions of this agreement.

9. Captions. The captions to sections throughout this franchise agreement are intended solely to create easier reference to this franchise agreement. The wording of captions will not effect the meaning or interpretation of this agreement.

10. Barrier to Recourse Against the City. Except as provided under federal and state law, the Cable Company will have no recourse whatsoever against the City or its officials, agents, or employees for any of the following any loss, costs or damage resulting from the non-negligent, good faith acts of such persons in the lawful enforcement or administration of this Agreement.

11. Non-enforcement by the City. The Cable Company will not be relieved of its obligation to comply with any of the provisions of this franchise agreement by reason of any failure of the City to enforce prompt compliance.

12. Force Majeure. If, by reason of force majeure, the Cable Company is unable in whole or part to carry out its obligations under this agreement, the Cable Company will not be deemed in violation or default during the period of such inability. The term "force majeure" as used here means 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 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; icing conditions; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of



government and people; civil disturbances; explosions; partial or entire failure of utilities; or any other circumstances found by the City to be beyond the reasonable control of the Cable Company. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. The Cable Company agrees, however, to exert its best efforts to remedy, as soon as possible under the circumstances, the cause or causes preventing it from carrying out its responsibilities and duties under this franchise agreement. In determining whether circumstances beyond the control of the Cable Company exist, the City will consider the cause of the non-performance and whether any action or inaction of the Cable Company was a material contributing factor.

13. Entire Agreement. This franchise agreement contains the entire agreement between the parties. It supersedes all prior agreements or proposals except as specifically set forth herein. It cannot be changed orally, but only by an instrument in writing, executed by the parties. Except for ordinances of general applicability relating specifically to the health, welfare and safety of the City's citizens, all ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise are superseded by this Franchise.

14. Consent. Wherever the consent of either the Cable Company or the City is specifically required in this agreement, such consent will not be unreasonably withheld.

15. Notices. All notices from the Cable Company to the City pursuant to this agreement will shall be in writing and shall be directed to the City Administrator unless the City designates an alternative recipient. The Cable Company will maintain with the City, throughout the term of this agreement, an address for service of notices by mail from the City.

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of St. Helens  
Attention: City Administrator  
265 Strand Street,  
St. Helens, OR 97051

To the Grantee:

Comcast  
Attention: Government Affairs  
9605 SW Nimbus Ave  
Beaverton, OR 97008

16. Expiration and Renewal. Renewal of this agreement will be subject to the renewal procedures and standards set forth in the Cable Communications Policy Act of 1984, as amended.

17. Continuity of Service. It shall be the right of all Subscribers to continue receiving service insofar as their financial and other obligations to the Cable Company are honored. In the event that the Grantee elects to rebuild, upgrade, modify, or sell the Cable System, or the City gives notice of intent to terminate or fails to renew this Franchise, the Company shall act so as to ensure that all Subscribers receive continuous, uninterrupted service.

In the event of a change of franchisee, or in the event a new operator acquires the Cable System, the Grantee shall cooperate with the City, new franchisee or operator in maintaining continuity of Cable Service to all Subscribers. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the Cable System and the City shall be entitled to the franchise fee, the PEG Access capital fee, and other monetary requirements as established by this agreement.

18. Police Powers. In accepting this Franchise, the Company acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public, and the Company agrees to comply with all generally applicable laws and ordinances enacted by the City pursuant to such power.

19. Effective Date. This Franchise shall be in full force and effect 30 days after the ordinance approving the franchise agreement as required by law, and acceptance by the Cable Company.

20. No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

21. Governing Law. This Franchise shall be deemed to be executed in the State of Oregon, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Oregon, as applicable to contracts entered into and performed entirely within the State.

22. Reservation of Grantee's Rights. Notwithstanding any provision to the contrary, Grantee reserves any and all rights and remedies it may have in law or in equity.

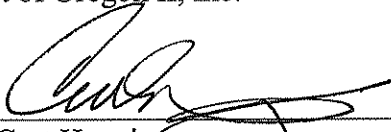
ENTERED into this 19<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
Mayor, City of St. Helens

Approved as to form:

  
\_\_\_\_\_  
City Attorney

Comcast of Oregon II, Inc.

By:   
\_\_\_\_\_  
Curt Henninger  
Senior Vice President

## EXHIBIT A

### Customer Protection and Service

The following policies and standards apply to Cable Company:

#### 1 Customer Service and Telephone Responsiveness

1.1 A Customer Service office must be located within the City of St. Helens, and be adequately staffed and able to respond to subscribers and the public not less than 40 hours per week, with a minimum of eight hours per day on weekdays. The Cable Company may relocate its office outside the City's boundaries but within Columbia County, Oregon upon sixty (60) days advance written notification to the City and subscribers.

1.2 As used herein, "able to respond" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways:

- 1.2.1 To accept payments;
- 1.2.2 To exchange or accept returned converters or other company equipment;
- 1.2.3 To respond to inquiries; and
- 1.2.4 To schedule and conduct service or repair calls.

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

1.4 Cable Company shall maintain, on average:

1.4.1 Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to subscribers; and

1.4.2 At least 90 percent responsiveness during normal call volume, defined as fewer than one customer call in ten will encounter a busy signal or a delay in reaching a customer service representative exceeding one minute in length.

#### 2 Service and Repair Calls

2.1 Requests from subscribers for repair service must be acknowledged by Cable Company within 24 hours or prior to the end of the next business day, whichever is earlier. Repair for service interruptions or other repairs not requiring on-premises work must be completed within 24 hours under normal operating procedures. All other repairs should be completed within 72 hours under normal circumstances. No charge may be made to subscribers for this repair service, except in cases beyond the reasonable control of the Cable Company, such as documentable cases of repeated subscriber negligence or abuse of Cable Company equipment

2.2 As a normal operating procedure, upon subscriber request Cable Company shall provide either a specific appointment time or else a pre-designated block of time (not to exceed four hours) for subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, or after 5:00 p.m. (repair only).

2.3 As a normal operating procedure, and with particular regard to the needs of working or mobility-limited subscribers, upon subscriber request Cable Company 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).

### 3 Disconnection

3.1 Cable Company may disconnect a subscriber for cause if:

3.1.1 At least 30 days have elapsed after the due date for payment of the bill of the affected subscriber; and

3.1.2 The Cable Company has provided at least ten days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.

3.2 Regardless of subsection 3.1 hereof, Cable Company may disconnect a subscriber for cause at any time if the Cable Company in good faith determines that the subscriber has tampered with or abused company equipment, caused or threatened physical harm to company representatives or company facilities, or is or may be engaged in theft of cable services.

3.3 Cable Company shall promptly disconnect any subscriber who so requests from the Cable Company's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by Cable Company. No charge may be imposed by Cable Company for such voluntary disconnection, or for any cable services delivered after the date of the disconnect request unless equipment has not been returned to the Cable Company. Upon the later of the date of actual disconnection or the return of all company equipment to Cable Company, the Cable Company shall within thirty (30) days return to such subscriber the amount of the deposit, if any, collected by Cable Company from such subscriber, less any undisputed amounts owed to Cable Company for cable services or charges prior to the date of disconnection.

### 4 Credits Upon Outage

Except for planned outages where subscribers are provided reasonable notification in advance, upon a subscriber's request Cable Company shall provide a pro-rated 24-hour credit to the subscriber's account for any period of four hours or more during which the subscriber experienced an outage or substantial impairment of cable service.

### 5 Itemized Billing

Each Cable Company bill to subscribers must itemize each category of service, equipment, or other applicable fees, and state clearly the charge therefor.

## 6 Information to Subscribers

6.1 Upon installing initial service to or reconnecting each subscriber, and upon request thereafter Cable Company must advise the subscriber, in writing, of:

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

6.1.2 The amount and any criteria for any deposit required by Cable Company, if applicable, and the manner in which the deposit will be refunded;

6.1.3 The Cable Company's policies and procedures by which complaints or inquiries of any nature will be addressed;

6.1.4 The toll-free telephone number and address of the Cable Company's office to which complaints and inquiries may be reported;

6.1.5 The Cable Company's practices and procedures for protecting against invasions of subscriber privacy; and

6.1.6 The notice and referral information to the City of St. Helens, as set forth in subsection 6.2 hereof.

6.2 If requested by the City but not more than once every three (3) years, Cable Company shall send a written notice to all subscribers that any complaints or inquiries not satisfactorily handled by the company may be referred to the City of St. Helens. Such notification may be included with a billing statement, and shall contain either the printed text specified in subsection 6.3 hereof or an alternate text approved by the City. The City shall supply the printed material.

6.3 The text of the printed notice shall be as follows, unless otherwise authorized by the City:

### PLEASE READ THIS

*The City of St. Helens is responsible for monitoring the customer service, system performance, and franchise compliance of your cable company. Toward this end, the City and your cable company work continuously to monitor and improve cable TV customer service in your community.*

*However, at times you may encounter problems with your cable service that you have been unable to resolve with your cable company. The City is available to help you with unresolved problems. If this is the case, please call the City. The City's Telephone Number Is: 503-397-6272*

*However, please contact your cable company FIRST before calling the City about your problems.*

*This announcement has been brought to you as a public service of the city of St. Helens and your cable company.*

### PLEASE SAVE FOR FUTURE REFERENCE

6.3.1 Such notice, in large boldface type, shall also be posted in a conspicuous place in Cable Company offices located within the City where customer service transactions are conducted.

6.4 Cable Company shall provide to its subscribers and the City written notice at least thirty (30) days in advance of any deletions in programming services, increases in any rates, costs, or charges to subscribers, or any channel repositioning within the control of Cable Company.

6.5 All Cable Company 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 Cable Company prepared promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, Cable Company shall take appropriate steps to ensure that Cable Company customer service representatives clearly and accurately disclose price terms to potential customers in advance of taking the order.

## 7 Nondiscrimination

7.1 Cable Company shall not unlawfully discriminate against any person in the provision of cable television services on the basis of race, color, religion, national origin, sex, sexual preference, age, disability, income, or the area in which such persons lives.

7.2 Cable Company shall use best efforts to assure maximum practical availability of Cable Company 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.

7.3 For hearing impaired customers, Cable Company shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, Cable Company 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. The TDD line doesn't have to be located in St. Helens, and if not, then Cable Company is responsible for such cost.

December 12, 2007

Mr. Chad Olsen, City Administrator  
City of St. Helens  
265 Strand Street,  
St. Helens, OR 97051

Re: Franchise Renewal – One-Time Upfront PEG Capital Grant

Dear Mr. Olsen:

In consideration of securing a renewed franchise (“Franchise Agreement”) with the City of St. Helens (“City”), Comcast of Oregon II, Inc. (“Comcast”) agrees to provide the City with the following:

Within sixty (60) days from the effective date of the Franchise Agreement, Comcast agrees to pay the City a one-time PEG capital grant in the total amount of \$115,000. After providing 30 days advance written notification to subscribers, Comcast will collect the fifty-two cents (\$0.52) per month per residential subscriber PEG Capital Support fee as set forth in Section XXVI 3 of the Franchise Agreement. Quarterly payments of the PEG Capital Support fee to the City pursuant to the Franchise Agreement will be as follows: Comcast will collect and retain the fifty-two cents (\$0.52) per month per residential subscriber fee until the \$115,000 amount has been recovered in full. After full recovery, Comcast shall collect and pay to the City said fifty-two cents (\$0.52) PEG fee as set forth in Section XXVI 3 of the Franchise.

As provided by Federal law, Comcast’s advance payment of the amount set forth above includes interest at five percent (5%), and the total amount including interest may be passed through and itemized on cable subscriber bills and recovered by Comcast on a schedule that permits full recovery of the \$115,000 and applicable interest.

The City agrees to release Comcast from any and all claims in dispute or known by the parties at the time of this Agreement related to Comcast’s compliance with requirements of the franchise adopted by the City on May 1, 1992.

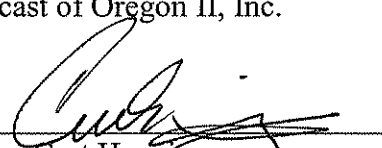


Mr. Chad Olsen  
City of St. Helens  
December 12, 2007  
Page 2

It is understood that fulfillment of this obligation is necessary and part of the consideration to secure a renewed franchise under the negotiated terms and conditions of that certain renewed franchise dated December 12, 2007.

Comcast of Oregon II, Inc.

By: \_\_\_\_\_

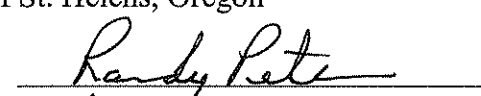
  
Curt Henninger  
Senior Vice President

Acknowledged and agreed to this 19<sup>th</sup> day of December, 2007.

City of St. Helens, Oregon

By: \_\_\_\_\_

Its: \_\_\_\_\_

  
Mayor

## RESOLUTION NO. 1460

### A RESOLUTION AUTHORIZING THE EXECUTION OF A NEW CABLE FRANCHISE AGREEMENT

**WHEREAS**, the City of St. Helens has determined that the protections and maintenance of the public health, peace, safety, and welfare of the residents of the City can best be accomplished by the continuation of cable service under the grant of a franchise; and

**WHEREAS**, City staff has worked with Comcast of Oregon II, Inc. to negotiate a new franchise agreement.

**NOW, THEREFORE, BE IT RESOLVED** that the City of St. Helens does hereby:

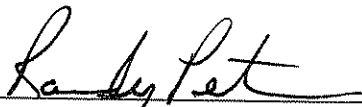
1. Adopt the Cable Franchise Agreement attached hereto and made a part hereof by this reference.
2. Approve the attached letter of understanding for a one time upfront PEG capital grant.

PASSED AND ADOPTED by the City Council on this 21st day of November, 2007 by the following vote:

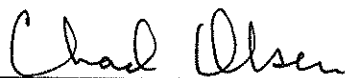
Ayes: Morten, Locke, Grant, Peterson

Nays: None

Approved by the Mayor: November 21, 2007

  
\_\_\_\_\_  
Randy Peterson, Mayor

ATTEST:

  
\_\_\_\_\_  
Chad Olsen, Interim City Recorder

# MARSH

# CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER  
CLE-001088253-09

**PRODUCER**  
MARSH USA INC.  
TWO LOGAN SQUARE  
PHILADELPHIA, PA 19103-2797  
Attn: Comcast.Certs@marsh.com Fax: 212-948-0360

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

### COMPANIES AFFORDING COVERAGE

- COMPANY  
**A** DISCOVER PROPERTY & CASUALTY INSURANCE COMPANY
- COMPANY  
**B** ACE PROPERTY & CASUALTY INS CO
- COMPANY  
**C** FIDELITY & GUARANTY INS. CO.
- COMPANY  
**D** N/A

05194 -ALL-GAWU-07-08 COMC BOTHE WA

**INSURED**  
COMCAST OF OREGON II, INC.  
19909 120TH AVE NE, #200  
BOTHHELL, WA 98011

**COVERAGES** This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b>	D001Q00048	12/01/07	12/01/08	GENERAL AGGREGATE \$ 25,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG \$ 6,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY \$ 1,900,000
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE \$ 1,900,000
	<input type="checkbox"/>				FIRE DAMAGE (Any one fire) \$ 1,900,000
	<input checked="" type="checkbox"/> \$100,000 SIR				MED EXP (Any one person) \$ 10,000
A A A	<b>AUTOMOBILE LIABILITY</b>	D001A00340 (AOS)	12/01/07	12/01/08	COMBINED SINGLE LIMIT \$ 10,000,000
	<input checked="" type="checkbox"/> ANY AUTO	D001A00341 (MA)	12/01/07	12/01/08	BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	D001A00342 (TX)	12/01/07	12/01/08	BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE \$
	<input type="checkbox"/> HIRED AUTOS				
	<input type="checkbox"/> NON-OWNED AUTOS				
	<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: \$
					EACH ACCIDENT \$
					AGGREGATE \$
B	<b>EXCESS LIABILITY</b>	XOO G23792254	12/01/07	12/01/08	EACH OCCURRENCE \$ 5,000,000
	<input checked="" type="checkbox"/> UMBRELLA FORM				AGGREGATE \$ 5,000,000
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				\$
C C A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	D001W00403 (AOS)	12/01/07	12/01/08	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER \$ 2,000,000
	<input type="checkbox"/> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE:	D001W00404 (OR,WI)	12/01/07	12/01/08	EL EACH ACCIDENT \$ 2,000,000
	<input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL	D001W00405 (NJ)	12/01/07	12/01/08	EL DISEASE-POLICY LIMIT \$ 2,000,000
	<input type="checkbox"/>				EL DISEASE-EACH EMPLOYEE \$ 2,000,000
	<b>OTHER</b>				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**

CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED AS RESPECTS THE GENERAL LIABILITY POLICY WHERE REQUIRED BY WRITTEN CONTRACT WITH THE NAMED INSURED. \$100,000 PER OCCURRENCE SELF INSURED RETENTION APPLIES ONLY TO THE ABOVE GENERAL LIABILITY POLICY.

**CERTIFICATE HOLDER**

CITY OF ST. HELENS  
265 STRAND ST.  
ST. HELENS, OR 97051

**CANCELLATION**

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.

By: Mary Radaszewski

*Mary Radaszewski*

MM1(3/02)

VALID AS OF: 11/30/07