

CABLE TELEVISION FRANCHISE AGREEMENT

between

THE CITY OF SANDY, OREGON

and

WAVEDIVISION VII, LLC

June 20, 2011

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1. PURPOSE AND INTENT.

- 1.1 The City of Sandy, Oregon (hereafter, the "Grantor") is authorized to and by this Franchise Agreement does grant to WaveDivision VII, LLC d/b/a Wave Broadband (hereafter, the "Grantee") a non-exclusive 12-year Franchise, revocable as provided herein, to construct, operate and maintain a Cable System in the Franchise Area.
- 1.2 The purpose of this Franchise Agreement is to create a binding, enforceable contract between the Grantor and Grantee.

2. DEFINITIONS.

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

- a. "Access" or "Community Access" or "Public, Educational and Government (PEG) Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, and distribute non-commercial Programming not under the Grantee's editorial control.
- b. "Access Channel" or "Public, Educational or Government Access (PEG) Channel" means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any organization may be a programmer, without charge by the Grantee, on a non-discriminatory basis.
 - i. "Educational Access Channel" means any channel or portion of a channel available for educational programming by individuals or institutions.
 - ii "Government Access Channel" means any channel or portion of a channel available for programming by government agencies.

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

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

- c. "Addressability" means the capability of the cable communications system to provide programming to specific subscribers on a per program, program package, and premium channel basis without the need for a major system upgrade to activate the capability. An upgrade that requires only the installation of a piece or pieces of equipment between the point at which a subscriber's drop line connects to the system and the point at which the drop connects to the subscriber's television receiver shall not be considered a major system upgrade.
- d. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- e. "Basic Cable Service" Act. means cable programming services, not included in the Local Broadcast Service, excluding digital tiers, on demand, premium or pay-per-view services
- f. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
- g. "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- h. "Cable Service" means a) the one-way transmission to Subscribers of video programming or other programming service; and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service covered by the Cable Act.
- i. "Cable Communications System" or "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act. In every case of its use in this Franchise, unless otherwise

specified, the term shall refer to the Cable System constructed and operated by the Grantee in the City under this Franchise.

- j. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering video signals, whether in an analog or digital format. This definition does not restrict the use of any channel to the transmission of analog video signals.
- k. "Converter" means an electronic device for changing the frequency of a television signal, or where IPTV is implemented, for changing the data packets. A set-top Converter changes the frequency of the mid-band, superband, or hyperband signals to a suitable channel which the television receiver is able to tune or, where IPTV is implemented, a set-top Converter changes the data packets into a signal that can be viewed through the television.
- l. "Designated Access Provider" means the entity or entities, if any, designated by the Grantor to manage or co-manage the Public, Educational, and Government Access Channels and facilities. The Grantor may be a Designated Access Provider.
- m. "FCC" means the Federal Communications Commission.
- n. "Franchise," "Franchise Agreement" or "Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by the Grantor.
- o. "Franchise Area" means all territory within the City.
- p. "Grantee" means WaveDivision VII, LLC, and the lawful successors, transferees, or assignees thereof.
- q. "Grantor" or "City" means the City of Sandy, an Oregon municipal corporation.
- r. "Gross Receipts" means Gross Revenues less any bad debts related to the operation of the System authorized by this Franchise.
- s. "Gross Revenues" means all amounts received by the Grantee, or any Affiliate, in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area in accordance with General Accepted Accounting

Principles. Gross Revenues shall include all revenue derived from Cable Services and premium services, net advertising revenue, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home shopping networks), revenue from installations, leasing, renting or selling of system capacity, and all other revenues derived from the operation of Grantee's Cable System to provide Cable Services, regardless of whether initially recorded to another entity and however characterized.

"Gross Revenues" shall not include (i) refunds, rebates or credits to Subscribers; (ii) sales, excise or other taxes or charges or fees levied directly upon the Subscribers by a local, state or federal government and collected by the Grantee for direct pass-through to such government (iii) the value of services provided by Grantee to any Person, including employees of Grantee at no cost; (iv) the value of services to Subscribers receiving services for no cost under a limited-time promotional offering, (v) bad debt written off by Grantee in the normal course of business (vi) reimbursement by programmers of marketing costs incurred by Grantee for the introduction of new programming pursuant to a written marketing agreement (vii) revenues received from Grantee by any Affiliate or other Person in exchange for supplying goods or services used by Grantee to provide Cable Service over the Cable System, or (viii) sales of capital assets or sales of surplus equipment; (ix) directory or Internet advertising revenue including, but not limited to yellow page, white page, banner advertisement and electronic publishing; (x) any revenue of Grantee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System notwithstanding that portion of such revenue that represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue; or the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer.

"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."

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

- t. u. "Interactive Services" means services provided to subscribers where the subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the

subscriber or equipment under the subscriber's control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose.

- v. "Leased Channel" means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.

"Local Broadcast" means any service tier that includes the retransmission consent of local broadcast signals.

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

- x. "Person" means any corporation, partnership, proprietorship, individual, organization, or other entity, or any natural person.

- y. "Programmer" means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to subscribers, by means of the Cable System.

- z. "Programming" means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.

- aa. "Resident" Means any natural person residing within the franchise area.

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

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

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

- ee. "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation

from the State of Oregon and, where required, from other authorized accrediting agencies, and which serve a minimum of twenty students.

- ff. "Section" means any section, subsection, or provision of this Franchise Agreement.
- gg. "Streets" or "Streets and Public Ways" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them.
- hh. "Subscriber" means any person who elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the cable communications system whether or not a fee is paid for such service.
- ii. "Telecommunications Services" shall have the meaning specified in the definition of "Telecommunications Services" in the Cable Act.
- jj. "Tap" or "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.

3. GRANT OF FRANCHISE.

3.1 Grant.

- a) Grantor hereby grants to the Grantee a non-exclusive, revocable Franchise for a twelve-year period from the effective date hereof, revocable as provided herein, to construct, operate and maintain a Cable System within the Franchise Area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the Cable System as required by the provisions of this Franchise Agreement and nothing herein shall be deemed to prohibit Grantee from providing other lawful services.

This Franchise is subject to the laws of the United States and the State of Oregon, and to the general codes of the Grantor affecting matters of general City concern and not merely existing contractual rights of the Grantor and Grantee, whether now existing or hereinafter enacted.. In particular, this Franchise supercedes any of Grantor's Ordinances in any matter in which the Franchise and Ordinance are in conflict. The Grantor shall make a good faith

effort to notify the Grantee of any City proceedings which would substantially affect the Grantee's operations, and shall upon request supply the Grantee with copies of any City laws or regulations affect Grantee's operations.

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

3.2 Use of Streets and Public Ways

For the purpose of constructing, operating and maintaining a Cable System in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Streets and Public Ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Cable System. Prior to construction or alteration, however, the Grantee shall comply with all applicable ordinances of the City in effect at the time of such construction or alteration. Nothing in this section shall relieve Grantor of the obligation of Section 4.5 regarding the trimming of trees and other vegetation

3.3 Duration and Effective Date of Franchise

Except as otherwise provided herein for revocation or early termination in accordance with Sections 11.1 and 13.11, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be twelve years from the effective date of this Agreement, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be the date of Grantee's unconditional written acceptance of this Franchise in accordance with Section 3.8.

During the six-month period beginning three years after the effective date of this Franchise, the Grantor may undertake a review of Grantee's System and performance to date, in order to determine whether the Franchise should continue in effect for the full twelve year term or should terminate early at the end of seven years from the effective date for the following reasons: The Grantor may terminate the Franchise

early if the Grantee has been guilty of a pattern of repeated, uncured material violations of the Franchise or has failed to complete, by the end of the third year of the Franchise, an upgrade of the system such that the system will be upgraded to at least 750 Mhz with a capacity of at least 200 activated analog and/or digital channels.

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

3.4 Franchise Area

The Franchise Area shall be that area designated on the attached map, Exhibit A. Except for annexed areas served pursuant to Section 4.3.3, any future modifications of the Franchise Area must be approved by the Grantor, as an amendment to this Franchise. Any expansion area beyond that shown in Exhibit A, as granted must include terms for initiation of construction within twelve months and coverage of area with complete service availability by eighteen months after initial construction, subject to the service availability limitations of section 4.3 below.

3.5 Franchise Not Exclusive

The Franchise granted herein is not exclusive. This Franchise shall not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets and Public Ways or public places by franchise, permit or otherwise subject to the provisions of Section 13.12 herein.

3.6 Franchise Non-Transferable

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

If the Grantee wishes to transfer this franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rulemakings of the FCC. In any event, Grantee shall give Grantor written notice of the proposed transfer, and shall

request consent of the transfer by the Grantor. Grantee shall furnish all information required by law and/or reasonably requested by Grantor with respect to the consideration of the franchise. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the legal, financial and technical qualifications of the prospective transferee to perform the obligations of the Grantee under this franchise agreement. The Grantee shall assist Grantor in any such inquiry. by providing all information reasonably requested in writing by the Grantor that is reasonably necessary to determine the legal, financial and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed transfer.

In cases where the Grantor finds it inappropriate to give unconditional consent to the proposed transfer, the Grantor may offer its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this franchise; provided however, any such terms and conditions so attached shall be related to the legal, financial and technical qualifications of the proposed transferee and to the resolution of outstanding and unresolved issues of Grantee's noncompliance with the terms and conditions of the Franchise. Any transfer of ownership affected without the written consent of the Grantor shall render this franchise subject to revocation. The Grantor shall have one hundred and twenty days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within said one hundred and twenty days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon the execution of the transfer documents, shall within thirty days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall within thirty days after the execution of the transfer documents, file such certified copy as is required.

The Grantee may, without obtaining prior consent of the Grantor,

from time to time (a) assign or transfer its assets, including the Franchise to a parent or affiliate of Grantee; (b) restructure its debt or change the ownership interests among its affiliates (c) pledge or grant a security interest in its assets, including but not limited to the Franchise, or of interests in the Grantee to any lenders(s) for purposes of securing indebtedness. However, the cable communications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this franchise.

The requirements of this Section shall not be deemed to prohibit the sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without consent of the Grantor.

3.8 Franchise Acceptance

The Grantee, within sixty days after the tender by the Grantor to Grantee of the Franchise Agreement adopted by the Grantor, shall file with the Grantor a written acceptance executed by Grantee, in the form attached hereto as Exhibit B. In the event Grantee fails to file the acceptance as required herein, then this Franchise shall be null and void.

4. CONSTRUCTION AND SERVICE REQUIREMENTS.

4.1 General

The Grantee shall maintain on its Cable System a minimum practical capacity of 120 activated analog and/or digital channels, defined under the Cable Act of 1992 as those channels engineered at the headend of the Cable System for the provision of services generally available to Residential Subscribers of the Cable System, regardless of whether such services actually are provided. In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension and service requirements set forth in this Franchise Agreement.

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

permittees, and franchisees so as to reduce as far as possible the number of Street cuts.

4.2 Right of Inspection of Construction

Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise Agreement and other pertinent provisions of law. Grantor shall make reasonable effort under the circumstances to notify Grantee on times and locations of inspection.

4.3 Availability of Residential Service

4.3.1 Density for Normal Extension of Service

a) The Grantee shall make service available to every Residential potential subscriber where the average density is equal to or greater than twenty-five occupied dwelling units per mile or six occupied dwelling units per quarter mile as measured in strand footage from the nearest technically feasible point in the existing cable distribution plant. Should through new construction an area meet the density requirements after the effective date of this Franchise, Grantee shall use commercially reasonable efforts to provide Cable Service to such area within 90 days of the date that Grantee is notified of a request from a potential Subscriber of an occupied residential dwelling unit and Grantee verifies that the density requirement is satisfied.

No charge in addition to the standard installation charge shall be made by the Grantee to potential Residential subscribers for: the extension of the Cable System under this subsection; nor the provision of a cable drop to the premises of any potential Residential subscriber requesting service, so long as the drop does not exceed 125 feet in length.

4.3.2 Isolated Areas

Potential Residential subscribers requesting service but not entitled to service under Section 4.3.1 shall be provided service under the following circumstances, through contractual agreement between the Grantee and the person requesting service for payment of line extension construction costs:

- 1) Grantee shall provide service at its normal, published

installation charge for the initial 125 feet of extension.

- 2) Grantee and the Subscriber shall share equally the actual cost of the extension for the distance over 125 feet but less than 500 feet.
- 3) The Subscriber shall pay all costs for the extension for the distance greater than 500 feet.
- 4) The amount of cable extension as measured in feet, which is the basis for the cost sharing, will be computed as follows:

The starting point shall be a point at the nearest reasonably usable existing cable plant using public right-of-way, exclusive of a street crossing; provided that the Grantee shall make a reasonable effort to secure and use private rights of way if the use of such rights of way reduces the cost of the line extension to the potential Residential subscriber. The actual length of cable needed from the starting point to the potential Residential subscriber's home shall be the total number of feet. The cost of the project from the starting point to the home shall be divided by the total number of feet. The resultant cost per foot shall be used to compute each party's share. Street bores or crossings needed to bring the existing cable plant to the requesting potential subscriber's side of the street shall be included as part of any line that does not exceed one hundred and twenty-five feet ft., otherwise these costs shall not be charged to the potential subscriber

- 5) If more than one person becomes a Subscriber along a cable line constructed in accordance with this subsection, during a period of three years following the completion of the construction, the Grantee shall fairly divide the Subscriber charges for such construction among all the Subscribers along the line, by means of proration and rebates, as necessary. Following the three-year period, any additional Subscribers may be charged normal published installation rates.

4.3.3 New Subdivisions

- a) Subject to Sections 4.3.1 and 4.3.2, Grantee will be required to build, activate, proof and sell cable in new

subdivisions within sixty days of the time when 50% of the subdivision's potential dwelling units have been issued building permits, or 25% of the subdivision's potential dwelling units have contracted for cable television service.

- b) Grantee shall be responsible for ascertaining building permit activity in new subdivisions.
- c) Where jurisdictional approval of a subdivision includes provision for the construction of separate phases of the subdivision each phase will be considered a separate subdivision, for the purpose of this Section.
- d) Grantee may serve but shall not be required to extend service in subdivisions that have access to City of Sandy fiber optic facilities.

4.3.3 Annexation

If any land adjacent to the Franchise Area is annexed by the City during the term of this Franchise, the annexed area shall become part of the Franchise Area and Grantee shall extend cable service to such areas within sixty days of annexation, subject to Sections 4.3.1 and 4.3.2.

4.4 Erection of Poles

If additional poles in an existing aerial utility system route are required, Grantee shall negotiate with the owner of existing poles for the installation of the needed poles. Grantee shall not erect, for any reason, any pole on or along any Street in an existing aerial utility system unless approved by the Grantor. The Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions, and shall comply with all applicable ordinances, resolutions, rules and regulations of the Grantor.

4.5 Trimming of Trees or other Vegetation

In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Tree or vegetation trimming shall be done only in accordance with the codes and other rules and regulations of Grantor and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands. Nothing contained in

this Franchise Agreement shall be deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

4.6 Repair & Restoration of Streets, and Public Ways

Whenever the Grantee shall disturb the surface or otherwise damage any Street or other public way or ground for any purpose mentioned herein, it shall repair and restore the same to the condition in which it was prior to the opening or other damage thereof. When any opening is made by the Grantee in any Street, the Grantee shall promptly refill the opening and restore the pavement to its original condition. The Grantor may refill and/or repave in case of neglect of the Grantee, provided that Grantor first notifies and provides Grantee fifteen days to cure, and the cost thereof, including the cost of inspection, supervision and administration, shall be paid by the Grantee. All excavations made by the Grantee in the Streets shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the rules, regulations and codes of Grantor as now or hereafter in effect.

4.7 Construction Codes

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

4.8 Reservation of Street Rights

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any Street or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any Street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a Street or any other public improvement, then on reasonable notice from the Grantor all such property including poles, wires, conduits or other appliances

and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee, to relocate its facilities or to repair, restore, or reconstruct such Street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.9 Street Vacation and Abandonment

In the event any Street or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect or refusal of the Grantee, to remove its facilities or to repair, restore, or reconstruct such Street, following thirty days' notification, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.10 Movement of Facilities

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

4.11 Undergrounding

a) Cable must be installed or relocated underground where:

- i. all existing utilities, other than high voltage electric transmission lines which are equivalent or higher than 13kV, , are placed underground,
 - ii. statute, ordinance or other regulation lawfully imposed by the Grantor requires utilities to be placed underground,
 - iii. overhead utility lines are moved underground (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise),
 - iv. Grantee is unable to get or maintain proper clearances,
 - v. underground easements are obtained from developers of new residential areas, or
 - vi. utilities are overhead but individual residents requesting such cable prefer underground (undergrounding is to be paid by the residents, and such undergrounding shall be provided by the Grantee to the residents at cost).
- b) Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from poles, pedestals or vaults to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be used which meets the industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

4.13 As Built

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

4.14 Emergency

In the event of an emergency, or when the cable equipment creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's Cable System without prior notice. Subject to the limits of the Oregon Torts Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold Grantee harmless for any negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 4.14.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS.

5.1 Equal and Uniform Service

Reasonable efforts shall be made to provide equal and uniform access and rates to customers within the Franchise Area consistent with federal law.

5.2 System Upgrade

Grantee shall upgrade its Cable System to 750 MHz throughout the Franchise Area with a capacity of at least 200 activated analog and/or digital channels. The upgrade of the system shall be completed within thirty-six months from the effective date of this Franchise Agreement. The System as upgraded shall have the forward and return capacity to provide pay-per-view, video-on-demand and other services requiring addressability. In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise Agreement.

5.3 Channel Capacity.

Until the upgrade required in Section 5.2 has been completed, the residential Cable System shall have a minimum channel capacity of the equivalent of 120 activated standard television channels. The system shall throughout the Franchise term carry reverse signals in the upstream direction. At a minimum the reverse spectrum of the Residential Subscriber Network shall have the capability of permitting return signals within the total 5-40 MHz bandwidth, from any Subscriber tap to the head end facility serving that Subscriber. Customers ordering tiers of service that require other than the minimum reverse bandwidth shall be provided with access to those upstream signals required by the service.

5.4 Satellite Earth Stations

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

5.5 Interconnection

- a) Grantee shall continue all Interconnections in effect on the effective date of this Franchise listed in Exhibit C.
- b) Upon Grantor's reasonable request and as needed to distribute PEG programming, Grantee shall interconnect the Cable System with all other major, contiguous cable systems or geographically adjacent to Grantor. The Grantor shall not request interconnection in this case except under circumstances where it can be accomplished without undue burden or excessive cost to the Subscribers. Grantee shall not be required to interconnect with the other cable system unless the cable operator of that system is willing to do so and pay for its own costs of constructing and maintaining the interconnect to the demarcation point, which shall be at a meet point located at or near the border of the neighboring jurisdictions, except as may otherwise be agreed by the parties. Grantee shall use reasonable efforts to agree with the other cable operator upon mutually convenient, cost effective, technically viable interconnections of the PEG Access Channel signals.
- c) Grantee shall ensure that all interconnections on its own property are securely housed and maintained, and shall establish and continue in effect a routing system that meets FCC technical requirements for carriage of signals for Institutional Network and PEG Access signals.

With respect to installing the capacity required under this Section, the Grantor understands that interconnection requires cooperation from other cable system operators as to engineering, design, and technical operation issues. In addition, Grantee's interconnection obligation, with respect to equipment and construction, shall be limited to providing equipment needed, and performing construction work required, within Grantee's Franchise Area in order to enable the required interconnections to occur. In order to actually establish the interconnections, it may be necessary for the operators of cable systems interconnecting with the Grantee's system to provide equipment needed, and perform construction work required, within their respective Franchise Areas; and the

provision of such equipment and performance of such construction work shall be the obligation of Grantee only within its own Franchise Area. Therefore Grantor shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable system operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder shall be subject to such cooperation being obtained.

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

- d) Notwithstanding the foregoing, interconnection may be waived by the Grantor if not technically feasible. Grantee may after consultation with Grantor, terminate an interconnection for any period where an interconnection system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.
- e) Grantee's interconnection obligation is conditioned upon the consent of the Cable Operators in the affected neighboring jurisdictions. Grantee shall not charge a fee for the transmission of programming from adjacent systems if Grantee is not required to pay a fee to obtain such programming.

5.6 Emergency Alert Capability

- a) In accordance with the provisions of FCC Regulations Part 11, and as such provisions may from time to time be amended, the Grantee shall install and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notification (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the local primary, state primary, and/or the state Emergency Operations Center, as those authorities are identified and defined within FCC Reg. Section 11.51 and other applicable state and local laws.
- b) The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall to the extent permitted by law indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from use of the Cable System or the EAS equipment by the Grantor, its employees, authorized representatives, or designees, including, but not limited to, reasonable attorneys' fees. Additionally, subject to the limits of the Oregon Tort Claims Act and the Oregon

Constitution, Grantor will defend, indemnify and hold harmless the Grantee for the negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 5.6(b). and shall agree to use due care and to take reasonable precautions against such damage, loss or inappropriate use of the EAS equipment or other Cable System equipment which may be used during a declared emergency.

5.7 Standby Power

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

5.8 Status Monitoring

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

Status monitoring shall be capable of notifying the Grantee, 24 hours per day, seven days per week, of system problems, including utility power outages, that will negatively affect its customers.

5.9 Parental Control Lock

Grantee shall provide Subscribers (by sale or lease or otherwise), upon request, with a parental control locking device or digital code that permits inhibiting the viewing of any Channel.

5.10 Technical Standards

Grantee shall install all aerial and underground cables and wires in a manner consistent with City requirements and in compliance with all applicable laws, ordinances and safety requirements including but not limited to the FCC, Federal Aviation Administration, National Electric Code, National Electric Safety Code and National Cable Television Association Standards of Good Engineering Practices. FCC Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or

hereafter constituted, shall apply, and may be enforced by the Grantor.

5.11 Performance Testing

Grantee shall perform all System tests required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. These tests shall include, at a minimum:

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

Written records of all System test results performed by or for the Grantee shall be maintained for a period of two years, and shall be available for Grantor inspection upon request.

System tests shall be performed at intervals of no greater than every six months, at a minimum of five randomly chosen Subscriber television receiver connections in the Franchise Area, or connections to the System which are the equivalent of standard Subscriber connections. Grantor shall be notified in advance of such tests. At least two of the test locations shall be the far end of the distribution trunk cables. The tests may be witnessed by representatives of the Grantor, and Grantee shall inform the Grantor of the time and place of each test no less than three weeks prior to the test. Written test reports shall be submitted to the Grantor. The Grantor may conduct independent tests of the System for which the Grantee shall give its fullest cooperation. If one or more of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed, and at least five additional randomly chosen locations. If results of a second test indicate failure of the System to meet the technical performance requirements of this Franchise, then the Grantor may apply such remedy or remedies as appropriate, unless the circumstances of the failure are caused by conditions which are beyond the Grantee's control, as determined and acknowledged by the Grantor.

6. SERVICES AND PROGRAMMING.

6.1 Programming Categories

The Grantee shall provide broad categories of video programming in at

least the following broad categories:

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

The identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable System.

6.2 Changes in Video Programming Services

In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories described in Section 6.1, then the Grantee shall be obligated to carry such programming only upon reasonable terms and conditions.

Except as otherwise provided in FCC Rules and Regulations, Grantee shall provide written (by letter or e-mail) notice to Grantor and to Subscribers for any proposed deletions, additions, or rearrangements of individual programming service at least 30 days in advance. Grantor reserves the right to regulate to the fullest extent permitted by law to ensure maintenance of the mix, level and quality of service.

6.3 Interactive Residential Services

The Grantee shall make Interactive Services available to Residential Subscribers no later than 60 days after the effective date of this Franchise.

6.4 Leased Channel Service

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

adopted thereunder.

6.5 Obscenity

Grantee shall comply with applicable laws related to obscenity, provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including Public, Educational and Governmental Access programming.

6.6 Public, Educational and Government Use of System

6.6.1 Public and Government Access Channels

1. Grantee shall, upon the effective date of this Franchise, provide to the Grantor, for independent administration by the Grantor or its designee throughout the term of the Franchise, two Access Channels.
2. At such time that Grantee migrates its Cable Service to an all-digital platform, Grantee shall convert the activated analog PEG Access Channels to digital channels and Grantor may require Grantee to provide two additional digital downstream PEG access channels when the Channel for a particular type of access programming meets the criteria stated below, Grantor shall provide at least 120 days prior written notice of required additional Access Channels.
 - a) Grantor must show that during any eight consecutive weeks, the Public Access Channel is in use for Locally Produced, Locally Scheduled Original Programming eighty percent of the time, seven days per week, for any consecutive five hour block during the hours from noon to midnight; or
 - b) Educational Access Channels: During any eight consecutive weeks, the Educational Access Channel is in use for Locally Scheduled Original Programming eighty percent of the time, five days per week, Monday through Friday, for any consecutive five hour block during the hours from 6:00 AM to 11:00 PM, or
 - c) Governmental Access Channels: During any eight consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming eighty percent of the time, five days per week, Monday through

Friday, for any consecutive five hour block during the hours from 6:00 AM to 11:00 PM; and,

The applicable PEG Access Channel capacity expansion criteria as set forth in Subsections 1, 2, or 3, has been met, or exceeded, by the Grantor or the Designated Access Provider with responsibility for programming the PEG Access Channel. For the purpose of Section 6.6:

- i. "Locally Produced" means programming produced in the Clackamas County.
 - ii. "Original Programming" means Programming in its initial cablecast on the Cable System or in its first or second repeat; and
 - iii. "Locally Scheduled" means that the scheduling, selection, and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received over the interconnection, the provider transmitting the programming over the interconnection. However, carriage on any Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as part of its Basic or Expanded Basic Cable Services shall not be considered "Locally Scheduled."
3. The Education Channel may be shared between educational resources until such time as utilization justifies the need for separate college and K-12 usage.
 4. Grantee shall provide advance written notification to Local Broadcast or Basic Cable Subscribers at least 30 days in advance of the digital conversion and shall provide the technical capability to receive PEG Channels at no additional cost to those Subscribers receiving PEG Channels without a converter at the time of digital conversion. The channel number designation for the two Access Channels provided as of the effective date of this Agreement shall be same after digital conversion as they were prior to digital conversion.

6.6.2 Access Interconnections

The Grantee shall install and maintain all access interconnections of PEG access channels in accord with the requirements of Section 5.5.

6.6.3 Support for Access Costs

(a) Beginning with the first video services rate increase by Grantee after the effective date of this renewal franchise and by no later than March 1, 2012, Grantee shall provide eighty cents (\$.80) per month, per Residential Subscriber for Public, Educational and Government Access capital costs, or such lesser amount if authorized by Grantor. The contribution shall be payable by the Grantee to the Grantor after (1) the approval of Grantor, if required, to the inclusion of the contribution on the bills of Residential Subscribers, including any requirements for approval pursuant to 47 C.F.R. Section 76.922, (2) notice, approved by the Grantor, to the Grantee's Residential Subscribers of such inclusion, and (3) the collection of the contribution from such Residential Subscribers. The Grantee shall make such payments quarterly, following the effective date of this Franchise 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 days following the end of the quarter.

(b) Upon request, Grantor shall provide a report annually to the Grantee on the use of the funds provided to the Grantor under this Section 6.6.3. The annual report shall be submitted to Grantee within 120 days of the close of the Grantor's fiscal year, which fiscal year runs for twelve consecutive months from July 1 to and including July 30. Grantee may review the records of Grantor regarding the use of funds described in such report. The Grantor agrees that the report shall document the amounts spent or encumbered for operating support for PEG access.

(c) If Grantor enters into a franchise agreement after the effective date of this Franchise to provide Cable Service in all or a portion of the Grantee's franchise area that includes PEG financial support calculated based on a per month, per residential subscriber basis that is less than per month, per residential subscriber, then Grantee shall be entitled to reduce the PEG contribution to match that of the other cable operator.

6.6.4 Access Capital Costs Not Franchise Fees

- a) The Grantee agrees that financial support for Access capital costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect the Grantee's obligations to pay franchise fees to the Grantor. The Grantee agrees that although the sum of Franchise Fees and the capital costs payments set forth in this Section may total more than five percent of the Grantee's Gross Revenues in any twelve month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Agreement. In the event the financial support set forth in this subsection is used for non-capital costs, the Grantee may offset the amounts of the support used for non-capital costs against franchise fee payments required under section 8.1 herein.
- b) The Grantor recognizes franchise fees and certain additional commitments are external costs as defined under the FCC rate regulations in force at the time of adoption of this Agreement and the Grantee has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

6.6.6 Cable Service to Public Facilities

Grantee will provide cable service to public facilities per separate agreement negotiated by Grantor and Grantee.

6.6.7 Change in Technology

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

6.6.8 Technical Quality

- a) Grantee shall maintain all upstream and downstream Access Channels and Interconnections of Access Channels

at the same level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for Residential Subscriber Channels.

- b) Grantee shall have no responsibility for the technical production quality of the Access Programming distributed on the Access Channels.
- c) The Grantee shall not cause any Programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider.

7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS.

7.1 Intent

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

7.2 Areas of Regulation and Administration

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

- a) Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- b) Coordination of the operation of Public, Government and Educational Access Channels.
- c) Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as City departments, Schools and health care institutions;
- d) Formulating and recommending long-range cable communications policy for the Franchise Area;
- e) Disbursing and utilizing franchise revenues paid to the Grantor.
- f) Regulating rates, to the extent permitted by law.

- g) Customer service, to the extent permitted by law.
- h) Planning and facilitating development of public uses of the Cable System on the Residential Subscriber Network , within the City and through interconnection with adjacent systems;

7.3 Rate Regulation

- a) Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the Franchise; and to establish rate regulation policies and guidelines for carrying out its authority.
- b) Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give all Subscribers at least thirty days notice of proposed rate changes, as required by the FCC. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of arbitrating Subscribers or users.
- c) Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges to all Subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein or by federal law; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.
- d) The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Policy Act of 1984), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor in relation to regulation of rates and charges under those provisions of the Cable Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights shall be deemed superseded by those provisions of the Cable Act.

7.4 Remedies for Franchise Violations

- a) In addition to any other remedies as specified in this Franchise, the Grantor has the right to and may impose penalties not to exceed \$100, per incident, not to exceed a total of \$2,500 per year, and \$10,000 throughout the life of the franchise, in the event Grantee violates any material provision of this Franchise Agreement, subject to Section 7.4(c), below. For purposes of this Section, the term “per incident” means a single occurrence of a violation without regard to number of customers.

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

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

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

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

 - ii. Cure the violation, or;

 - iii. Notify Grantor that Grantee cannot cure the violation within the thirty 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 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 day cure period, Grantor shall, within thirty days of Grantor's receipt of such notice, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the

Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (g) of this Section. Following the hearing, Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.

- d) In the event that the Grantee fails to cure the violation within the thirty day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (c), the Grantor shall set a hearing to determine what penalties, if any, shall be applied.
- e) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (b)(i) above, the Grantor shall set a hearing within sixty days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what penalties shall be applied.
- f) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.
- g) The penalties set forth in this Section of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:
 - i. Whether the violation was unintentional;
 - ii. The nature of any harm which resulted;
 - iii. Whether there is a history of overall compliance, and/or;
 - iv. Whether the violation was voluntarily disclosed, admitted or cured.
- h) If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:

- i. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - ii. Establish the amount of penalties, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;
 - iii. Revoke this Agreement, and/or
 - iv. Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- i) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor, and shall be in writing. Grantee may appeal the decision of Grantor to a court of competent jurisdiction.

7.6 Remedies Not Exclusive

The Grantor has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation the remedies provided for in this Section 7, and may without limitation pursue any rights, remedies or actions that it may have in law or equity regardless of whether they are specifically mentioned in this Franchise.

7.7 Consumer Protection Standards

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

7.7.1 Customer service and telephone responsiveness

- a) The Grantee shall maintain an office or customer service location within the Sandy metropolitan area that is capable of accepting payments and having customers drop off Subscriber equipment. The office must be adequately staffed and able to respond to Subscribers and the public not less than forty hours per week, with at least some evening hours at least one night per week. . As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned Converters or other

company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.

- b) Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational twenty-four hours a day, including weekends and holidays.
- c) The Grantee shall maintain, on average as verifiable by statistical data:
 - i. Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers. Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.
 - ii. The customer service line may be answered by a service or an automated response system, including an ARU or VRU. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty seconds. If the Grantee is using an automated response system, the wait time not to exceed thirty seconds will commence once the ARU or VRU forwards the call to a queue for a live representative. If a call needs to be transferred, transfer time shall not exceed thirty seconds. These standards shall be met no less than ninety percent of the time under normal operating conditions, measured on a quarterly basis.

7.6.2 Service and Repair Calls

- a) Under normal operating conditions, at least ninety-five percent of the time measured on a quarterly basis, requests from Subscribers for repair and maintenance service must be responded to, and repairs must commence within twenty-four hours or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises work must be completed within twenty-four hours under normal circumstances. All other repairs should be completed within seventy-two hours under normal

circumstances.

- b) Under normal operating conditions, at least ninety-five percent of the time measured on a quarterly basis, as a normal operating procedure, upon Subscriber request the Grantee shall offer either a specific appointment time or a pre-designated block of time (not to exceed four hours) for Subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, and after 5:00 p.m.

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

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

- c) With regard to the needs of mobility-limited customers, upon subscriber request, the Grantee shall arrange for pickup and/or replacement of converters or other company equipment at the subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer). It is further the intent of Grantee to accommodate customer's working schedules by arranging, upon customer request, for pickup and/or replacement of converters or other company equipment at the customer's address.
- d) Under normal operating conditions, at least ninety-five percent of the time measured on a quarterly basis, where the service requested is installation of service, standard installations shall be performed by the Grantee within seven business days after an order has been placed. "Standard" installations, for the purposes of this Section, shall mean those that are located up to 125 feet from the existing distribution system. and those underground installations that are located up to 60 feet from the existing distribution system.

7.6.3 Disconnection

- a) The Grantee may disconnect a Subscriber if:

- i. at least thirty days have elapsed without payment after the due date for payment of the bill of the affected Subscriber; and
 - ii. the Grantee 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.
- b) Regardless of subsection a) hereof, the Grantee may disconnect a Subscriber for cause at any time if the Grantee in good faith determines that the Subscriber has tampered with or abused company equipment, or is or may be engaged unlawfully in theft of Cable Services, or is causing a System violation of FCC rules or regulations, or has threatened or assaulted employees of the Grantee
- c) The Grantee shall promptly disconnect any Subscriber who so requests from the Grantee's Cable System. No period of notice prior to voluntary termination of service may be required of Subscribers by the Grantee. No charge may be imposed by the Grantee for any Cable Services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, at least ninety-five percent of the time measured on a quarterly basis, within thirty days return to such Subscriber the amount of the deposit, if any, collected by Grantee from such Subscriber, less any disputed amounts owed to Grantee for Cable Services or charges prior to the date of disconnection.

7.6.4 Credits Upon Outage

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

7.6.5 Downgrade Charges

- a) Grantee may impose Downgrade Charges only if:

- i. the Subscriber has been notified, at the time of initiating Cable Services, of Grantee's Downgrade Charges; and
 - ii. the Downgrade Charge does not exceed the Grantee's costs of performing the downgrade as determined under FCC rate regulation rules, subject to applicable law.
- b) As used in this Section, "Downgrade Charge" means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a change or reduction of Cable Services to less expensive Cable Services or tiers.

7.6.6 Billing information required

The Grantee bill to Subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge therefor, including franchise fees paid pursuant to section 8.1 which may be passed through directly to Subscribers consistent with applicable laws. The Grantee shall make its best effort to inform Subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

7.6.7 Information to Subscribers

- a) Upon installing initial service to or reconnecting each customer, and upon request thereafter, the Grantee shall advise the customer, in writing, of:
- i. the equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
 - ii. the amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;
 - iii. the Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
 - iv. the toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
 - v. the company's practices and procedures for protecting

against invasions of Subscriber privacy;

vi. service termination policy;

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

viii. the notice and referral information, as set forth in subsection b) hereof;

ix. liability specifications;

x. Converter/subscriber terminal policy; and

xi. breach of agreement policy.

b) Notice to Subscribers.

i. The Grantee shall inform the Grantor and Subscribers per FCC rules prior to any changes in Programming or increases in rates, costs, or charges to Subscribers, or any Channel repositioning within the control of Grantee.

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

iii. The Grantee shall, upon request by the Grantor and as required by FCC rules,, send written notice approved by the Grantor to all Subscribers that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Grantor or its designee, giving the

address and phone number of the appropriate Grantor office. Such notification may be included with a billing statement. The Grantee shall bear the cost of the providing the notice.

c) **Written Complaint Acknowledgment**

Within ten days following receipt of a written complaint as defined in subsection b) of Section 7.6.8, received from a Subscriber, the Grantee shall provide an acknowledgement to the Subscriber of receipt of the complaint and of any action the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than the City, such as the FCC.

7.6.8 Complaint Resolution

- a) The Grantor may take all necessary steps to ensure that all Subscribers and members of the general public have recourse to a satisfactory hearing of any complaints, where there is evidence that the Grantee has not settled the complaint to the satisfaction of the person initiating the complaint.
- b) For purposes of this Section, a "complaint" is a grievance received by Grantee pursuant to Section 7.6.7(c) of this Franchise and related Cable Service within the Franchise Area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of Programming or information services other than grievances regarding broad categories of Programming, and does not include customer contacts resulting in routine service calls that resolve the customer's problem satisfactorily to the customer or inquiries by the customer

7.6.9 Failure to Resolve Complaints

If Grantee fails to resolve a complaint within thirty days, or longer where Grantee is making a good faith effort to resolve the complaint, following the date the complaint was made to the Grantee, and after the Grantor follows the processes set forth in Section 7.4 herein Grantor finds that Grantee has failed to satisfactorily resolve the complaint, then Grantee shall be deemed in violation of the Franchise, and the Grantor may assert any of

the remedies set out in Sections 7.4, and other applicable sections.

8. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

8.1 Compensation

a) Franchise Fee.

As compensation for the Franchise to be granted, and in consideration of permission to use the Streets and Public Ways of the Grantor for the construction, operation, and maintenance of a Cable System within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent of the Gross Revenues generated in any manner through the operation of the Cable System to provide Cable Services as defined in this Franchise. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below the five percent of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent.

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

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

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

b) Bundling.

If Cable Services subject to the Franchise fee required under this Franchise are sold to Subscribers in conjunction with non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Grantee, in

accordance with applicable FCC or state rules, regulations, standards or orders. Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose or with the intent of evading or substantially reducing Grantee's Franchise fee obligations to Grantor.

c) Payment of Franchise Fees.

- i. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary for the Grantor to verify the amounts of franchise fee payments.
- ii. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and re-computation by Grantor.
- iii. In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Oregon.
- iv. Payment of the franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

8.2 Faithful Performance Bond

- a) Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor with good and sufficient surety approved by the Grantor, in the penal sum of Ten Thousand Dollars, or the deposit of \$10,000 in a restricted account satisfactory to the Grantor, conditioned that the Grantee shall well and truly observe, fulfill and perform each

term and condition of this Franchise. Such bond shall be maintained by the Grantee throughout the term of this Franchise.

- b) Grantee shall pay all premiums charged for any bond required under Section 8.2(a) and unless the Grantor specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:
 - i. The remaining term of this Franchise; or
 - ii. If required by the Grantor, the removal of all of Grantee's Cable System installed in the Grantor's Streets and Public Ways.
- c) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty days written notice first being given to the Grantor. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty days prior written notice to the Grantor.
- d) In a form approved by the Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the Grantor substantially the same rights and guarantees provided by a faithful performance bond.
- e) The Grantor may at any time during the term of the Franchise reduce or eliminate the bond requirements.

8.3 Damages and Defense

- a) The Grantee shall defend, indemnify and hold harmless the City, and its officers, agents, and employees, from and against all claims, damages and penalties, including but not limited to attorney fees, arising as a result of any actions of the Grantee under this Franchise unless such claims, damages and penalties are the result of Grantor's negligence or willful misconduct. These claims, damages and penalties shall include, but shall not be limited to: damages arising out of copyright infringement; defamation or anti-trust actions; and all other damages arising out of the Grantee's actions under the Franchise or the construction, operation, maintenance or

reconstruction of the Cable System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

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

8.4 Liability Insurance and Indemnification

- a) Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:
- b) The insurance shall provide coverage at all times for not less than \$1,000,000 for personal injury to each person, \$1,000,000 aggregate for each occurrence, and \$500,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence, plus costs of defense. The insurance shall be equal to or better than commercial general liability insurance.

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

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

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

- c) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the Grantor and its

officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

- d) The insurance certificate shall provide that , should any of the above described policies be cancelled before the expiration date thereof, the Grantee shall provide notice to the certificate holder within 10 days upon receiving notice from the issuing insurer. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.
- e) Grantee shall file prior to the effective date of this Franchise and shall maintain on file with the Grantor a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the City Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of this Section 8.4. At a minimum, the certificate shall be signed by a representative with authority to bind the insurance carrier.

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

- i. Broad form property damage;
 - ii. Products and completed operations;
 - iii. Explosion, collapse, and underground exposures;
 - iv. Owners and contractors protective coverage.
- f) Failure to maintain adequate insurance as required under this Section 8.4 shall be cause for immediate termination of this Franchise by the Grantor as provided in Section 11.1 herein
 - g) The Grantee shall also indemnify, defend and hold harmless the Grantor and its officers, agents and employees for any and all

claims for damages or personal injury which exceed the limits of insurance provided for in this Section.

9. RIGHTS RESERVED TO GRANTOR.

9.1 Right of Inspection of Records

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

- a. With respect to the cable system and its operation authorized under this franchise, and to the extent necessary for the enforcement of this franchise, information pertaining to the operations of the Grantee, and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, including but not limited to: the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this franchise, and of the maintenance, administration and operation thereof, including any operations or revenue generated from the cable system by any parent company or affiliate within the franchise area indicated or implicated as direct or indirect revenue to WaveDivision VII, LLC.
- b. The amount collected by the Grantee from users of services of the Grantee's cable communications system under this Franchise and the character and extent of the services rendered therefore to them.

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

9.2 Right to Perform Franchise Fee Audit

In addition to all rights granted under Section 9.2, the Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and the books and records of any parent or Affiliate company, for the purpose of determining the Gross Receipts of the Grantee generated in any manner through the operation of the Cable System under this Franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit must be commenced not later than three years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of 3% or more

in franchise fees than required by this Franchise, then the Grantee shall, within thirty days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit, up to \$7,500.

9.3 Right of Inspection of Construction

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this Franchise Agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law.

9.4 Intervention

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

9.5 Right to Require Removal of Property

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

9.6 Inspection of Facilities

Grantor may inspect upon request any of the Grantee's facilities and equipment to confirm compliance with this Agreement at any time upon at least 48hours written notice, or, in case of an emergency, upon

demand without prior notice.

10. RIGHTS OF INDIVIDUALS PROTECTED.

10.1 Discriminatory Practices Prohibited

- a) The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against Subscribers, Programmers, or persons on the basis or race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to nondiscrimination.
- b) The Grantee shall use best efforts to assure maximum practical availability of Grantee services and facilities to all Subscribers, regardless of disability, including the provision of a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.
- c) For hearing impaired customers, the Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired.
- d) Upon request by a Subscriber or potential subscriber, the Grantee shall make a reasonable effort as determined by Grantor to provide information required under Section 7.6.7, or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- e) Nothing in this Section shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

10.2 Unauthorized Monitoring or Cable Tapping Prohibited

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

10.3 Privacy and Other Rights

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

10.4 Permission of Property Owner Required

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

10.5 Sale of Subscriber Lists and Personalized Data Prohibited

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

10.6 Landlord - Tenant

Grantee shall provide to individual units of a multiple housing facility, such as a duplex, apartment or condominium unit, all services offered to other dwelling units within the Franchise Area, providing the owner of

the facility consents in writing, if requested by Grantee, as follows:

- i. To Grantee's providing the services to units of the facility;
- ii. To reasonable conditions and times for installation, maintenance and inspection of the system on facility premises;
- iii. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the System; and
- iv. To not demand payment from Grantee for permitting Grantee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive Cable Service and those who do not.

11. TERMINATION AND EXPIRATION.

11.1 Revocation

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

- i. the Grantee is in violation of any material provision of the Franchise Agreement after application by the Grantor of a remedy lesser than Franchise revocation pursuant to this Franchise Agreement, and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation;
- ii. the Grantee or the Guarantor becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;
- iii. the Grantee is found to have engaged in fraud or deceit upon the Grantor, Persons or Subscribers;
- iv. the Grantee fails to obtain and maintain any permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the Cable System; provided, however, that the Grantee shall be allowed a reasonable time to cure failure to obtain any permit; or
- v. the Grantee fails to maintain the full amount of its insurance or to

post a performance bond as required under the terms of this Franchise.

Upon the occurrence of one of the events set out above, and after following the due process procedure set forth in Section 7.4 of the Franchise, including the public hearing described therein, the Grantor shall provide written notice to Grantee of such intent. The notice shall set forth the specific nature of noncompliance. The Grantee shall have ninety days from receipt of such notice to object in writing and to state its reason(s) for such objection. In the event the Grantor has not received a satisfactory response from Grantee, it may then seek revocation of the franchise at a second public hearing. The Grantor shall be caused to be served upon the Grantee, at least thirty business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the franchise.

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

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

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

The parties agree that the limitation of Grantor liability set forth in 46 U.S.C § 555a is applicable to this Franchise Agreement.

11.2 Receivership

The Grantor shall have the right, subject to federal law, to declare a forfeiture or otherwise revoke this Franchise 120 days after the appointment of a receiver or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

- i. within 120 days after his or her election or appointment, such receiver or trustee shall have been approved by Grantor and shall fully have complied with all the provisions of the Franchise and remedied all defaults thereunder; and,
- ii. within said 120 days, such receiver or trustee shall have executed an agreement, duly approved by Grantor, as well as the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the Franchise, and agrees to accept responsibility for and to correct all past defects known and unknown if discovered in performance of Franchise obligations.

11.3 Expiration

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

11.4 Continuity of Service Mandatory

It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or Grantor revokes or fails to renew the Franchise, the Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, , during the lifetime of the Franchise.

12. OPERATION AND MAINTENANCE.

12.1 Open Books and Records

The Grantor shall have the right as necessary or desirable to inspect at any time upon reasonable notice, all records of the Grantee and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, also of any affiliate or any cable operator, which relate to the operation of the franchise. Access to such records shall be maintained or made available at no cost to the Grantor within Clackamas County or at Grantee's local business office during normal business hours (if maintained locally) or provided within ten business days of notice from the Grantor for such records (if not available locally). Any such records provided to Grantor will not contain any personally identifiable information concerning any Subscriber. Access to the aforementioned records shall not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary information" nor on the basis that they contain trade secrets unless the Grantor cannot protect the trade secrets from disclosure under Oregon law. To the extent allowed under Oregon law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure. The Grantee shall not be required to maintain any books and records for Franchise compliance longer than three years.

12.2 Communications with Regulatory Agencies

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

12.3 Reports

a) Quarterly Reports.

Within forty five days after the end of each of the Grantee's fiscal quarters, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee or the officer's designee, which

shall contain an accurate statement of all Gross Revenues earned and Gross Receipts collected by the Grantee or any Affiliate or Cable Operator, related to operation of the Cable System franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments.

b) Annual Report.

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

- i.) Financial reports that are normally prepared for the previous fiscal year, including Gross Revenues .

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

c) Monitoring and Compliance Reports.

Upon written request, the Grantee shall provide a written report of any FCC technical performance tests for the Residential Subscriber Network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall upon written request provide reports of the test and compliance procedures established by this Franchise Agreement, no later than thirty days after the completion of each series of tests.

d) Additional Reports.

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

- e) All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. Grantee shall not be required to create reports that are not part of its

normal business procedures and reporting or that have not been defined specifically within this Franchise in order to meet the requirements of this Franchise.

12.4 Safety

- a) The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.
- b) The Grantee shall install and maintain its wires, cable, fixtures, and other equipment, including the drop to the Subscriber's premise, in accordance with the requirements of the National Electrical Safety Code (NESC) and National Electrical Code (NEC), and in such manner that they shall not interfere with the installations of any public utility.
- c) All lines, equipment and connections in, over, under, and upon either the Streets and Public Ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

13. MISCELLANEOUS PROVISIONS.

13.1 Compliance with Laws

The Grantee shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all lawful general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder.

13.2 Severability

Subject to the provisions of Section 13.7 below, if any section, subsection, sentence, clause, phrase or word of the Franchise is held to be invalid or unconstitutional by any court of competent jurisdiction or pre-empted by federal or state regulations or law, such section, subsection, sentence, clause, phrase or word shall be deemed a separate,

distinct and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate replacement provisions to fulfill the purpose and intent of the superseded provisions consistent with applicable law.

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, the parties shall discuss the regulatory changes and mutually agree to modify the Franchise consistent with such regulatory change.

13.3 Captions

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

13.4 No recourse Against the Grantor

Except as provided by applicable law, the Grantee shall have no recourse whatsoever against the Grantor or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Franchise Agreement or any part thereof is determined to be invalid.

13.5 Nonenforcement by Grantor

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

13.6 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part

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

13.7 Entire Agreement

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

13.8 Consent

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

13.9 Time Limit for Grantee Communications

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

13.10 Consistency of Franchise with Cable Act

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

13.12 Comparability of Other Cable 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 the Grantor issues a franchise to a cable operator to enter upon the streets and public rights of way for the purpose of operating a Cable System to provide Cable Service to any part of the franchise area, except to the extent that state or federal laws, or regulations permit or require more favorable or less burdensome terms or conditions, the Grantor shall ensure that, considering all the circumstances, including any limitations on its regulatory authority, the material provisions of such other franchise are, taken together, reasonable comparable to the material provisions of this Franchise. The parties agree that, notwithstanding any provision of this subsection 13.12, 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.

13.13 Notice

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

If to the Grantor: _____
City of Sandy
39250 Pioneer Blvd.
Sandy, Oregon 97055-8001

If to the Grantee: _Wave Broadband
401 Kirkland Parkplace, Suite 500
Kirkland WA 98033
Attention: Steve Weed and Jim Penney

13.14 Public Disclosure

Subject to the Oregon Public Records Law, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information

considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's prior written consent.

13.15 Time is of the Essence

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

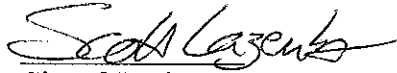
13.16 Reservation of Rights

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

EXHIBIT A: FRANCHISE AREA

EXHIBIT B: ACCEPTANCE

ACCEPTANCE




City of Sandy
39250 Pioneer Blvd.
Sandy, Oregon 97055-8001

Wave Division VII, LLC d/b/a

The undersigned, Wave Broadband, does hereby accept the Franchise granted pursuant to Ordinance No. 2011-08, passed and approved on June 20, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law.

WAVE DIVISION VII, LLC

d/b/a WAVE BROADBAND

BY: 

TITLE: Executive Vice President

DATE: June 21, 2011

EXHIBIT C: INTERCONNECTIONS

11595 SW 312th Avenue
Boring Oregon, 97009