

**ORDINANCE NO. 03-2008**

**An Ordinance Granting a Cable Television Franchise Agreement for Use of the County Rights-of-Way By Verizon Northwest, Inc. and Declaring an Emergency**

WHEREAS this matter coming on at this time, and it appearing that the County of Clackamas, Oregon ("County") a franchising authority in accordance with Title VI of the Communications Act (see 47 U.S.C. §522(10)) and authorized to grant one or more nonexclusive cable franchises, and Verizon Northwest, Inc. ("Verizon") a corporation duly organized under the applicable laws of the State of Washington, have reached agreement on the terms and conditions for the grant of a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in the Agreement, and;

WHEREAS it further appearing that the County has identified the future cable-related needs and interests of the County and its community, considered the financial, technical and legal qualifications of Verizon, found Verizon to be financially, technically and legally qualified to operate a cable communications system that is consistent with the public interest, and;

WHEREAS it further appearing that the County and Verizon have conducted extensive negotiations as provided by federal law concerning the grant of a competitive franchise, and;

WHEREAS it further appearing that the issuance of a nonexclusive franchise to Verizon subject to the terms and conditions of the attached Franchise Agreement would be in the best interests of the citizens of the County; now, therefore;

The Board of Commissioners of Clackamas County ordains as follows:

- Section 1: That the attached Franchise Agreement be approved and executed, and be subject to the terms and conditions as specified in the Agreement for a term of fifteen (15) years as specified in Section 2.3.
- Section 2: Emergency Clause. The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the welfare of the residents of the County. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this 4<sup>th</sup> day of December, 2008.

BOARD OF COUNTY COMMISSIONERS

  
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Lynn Peterson, Chair

  
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Mary Raethke, Recording Secretary

**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**CLACKAMAS COUNTY, OREGON**

**AND**

**VERIZON NORTHWEST INC.**

**2008**

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the County of Clackamas, Oregon ("Grantor") and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington ("Grantee").

WHEREAS, Grantor wishes to grant Grantee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, Grantor is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Grantee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Oregon;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within Clackamas County, and Grantee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, Grantor has identified the future cable-related needs and interests of Grantor and its community, considered the financial, technical and legal qualifications of Grantee, and determined that Grantee's plans for its Cable System are adequate in a full public proceeding affording due process to all parties;

WHEREAS, Grantor has found Grantee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, Grantor has determined that the grant of a nonexclusive franchise to Grantee is consistent with the public interest; and

WHEREAS, Grantor and Grantee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of Grantor's grant of a franchise to Grantee, Grantee's promise to provide Cable Service to residents of the Franchise/Service Area of Grantor pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

Except as otherwise provided herein, the definitions set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Access Channel*: Any Channel utilized for non-commercial, public, educational or governmental programming without charge by Grantee.

1.2. *Additional Service Area*: Any such portion of the Service Area added pursuant to Section 3.1.2 of this Agreement.

1.3. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.4. *Basic Service*: Any service tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.5. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.6. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), which currently states, "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent that such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems." The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.7. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.8. *Communications Act*: The Communications Act of 1934, as amended.

1.9. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Grantee's affairs.

1.10. *Educational Access Channel*: An Access Channel available for educational programming by individuals or institutions.

1.11. *Effective Date*: The effective date of this Agreement shall be the date of last signature of the parties following approval by the Clackamas County Board of County Commissioners.

1.12. *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.

1.13. *Force Majeure*: An event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's FTTP Network is attached, and documented unavailability of materials and/or qualified labor to perform the work necessary.

1.14. *Franchise Area*: The unincorporated area within the boundaries of Grantor as it now exists or may exist in the future.

1.15. *Government Access Channel*: An Access Channel available solely for the use of Grantor for government programming.

1.16. *Grantee*: Verizon Northwest Inc., and its lawful and permitted successors, assigns and transferees.

1.17. *Grantor*: The County of Clackamas or its lawful successor, transferee, or assignee.

1.18. *Gross Revenues*: All revenue, including any and all cash, credits, property or consideration of any kind, as determined in accordance with generally accepted accounting principles, which is earned or derived by Grantee and/or its Affiliates from the operation of the Cable System to provide Cable Service in the Service Area. Grantee shall report Gross Revenue to the Grantor using the "accrual method" of accounting. Gross Revenue shall include the following items so long as all other cable operators in the Initial Service Area and areas added pursuant to Section 3.1.2 of this Agreement include the same in Gross Revenues for purposes of calculating franchise fees:

- (a) fees charged for Basic Service;
- (b) fees charged to Subscribers for any service tier other than Basic Service;
- (c) fees charged for premium Channel(s), e.g. HBO, Cinemax, or Showtime;

- (d) fees charged to Subscribers for any optional, per-channel, or per-program services;
- (e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees for video or audio programming;
- (f) fees for downgrading any level of Cable Service programming;
- (g) fees for service calls;
- (h) fees for leasing of Channels;
- (i) rental of customer equipment, including converters (e.g. set top boxes, high definition converters, and digital video recorders) and remote control devices;
- (j) advertising revenue as set forth herein;
- (k) revenue from the sale or lease of access Channel(s) or Channel capacity;
- (l) revenue from the sale or rental of Subscriber lists;
- (m) revenues or commissions received from the carriage of home shopping channels;
- (n) fees for any and all music services that are deemed to be a Cable Service over a Cable System;
- (o) revenue from the sale of program guides;
- (p) late payment fees from Subscribers;
- (q) forgone revenue that Grantee chooses not to receive in exchange for trades, barbers, services, or other items of value;
- (r) revenue from NSF check charges;
- (s) Revenue received from programmers as payment for programming content cablecast on the Cable System; and
- (t) Franchise fees.

Advertising commissions paid to independent third parties shall not be deducted from advertising revenue included in Gross Revenue. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Grantee's Subscribers within all areas covered by the particular advertising source as of the last day of such period, e.g., Grantee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Oregon. Grantee has 100 Subscribers in the Franchise Area, 500 subscribers in Oregon, and 1,000 subscribers nationwide. Gross Revenue as to the Grantor from Ad "A" is 10% of Grantee's revenue therefrom. Gross Revenue as to the Grantor from Ad "B" is 20% of Grantee's revenue therefrom.

Gross Revenue shall not include:

1.18.1. 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;

1.18.2. Bad debts written off by Grantee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.18.3. Refunds, rebates or discounts made to Subscribers or other third parties;

1.18.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Grantee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

1.18.5. 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;

1.18.6. 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;

1.18.7. Any tax of general applicability imposed upon Grantee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Grantee and remitted to the taxing entity (including, but not limited to, sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and Franchise fees for Non-cable Services);

1.18.8. Any foregone revenue which Grantee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Grantee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Grantee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.18.9. Sales of capital assets or sales of surplus equipment;

1.18.10. Reimbursement by programmers of marketing costs incurred by Grantee for the introduction of new programming pursuant to a written marketing agreement; and

1.18.11. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing.

1.19. *Information Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), and shall include, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services.

1.20. *Initial Service Area:* The portion of the Franchise Area within the following wire centers: Gresham, Sunnyside, Tigard, Sherwood, Valley View, and Wilsonville, as they exist on the Effective Date of this Agreement, as generally shown in Exhibit A.



1.21. *Institutional Network or I-Net*: That part of a communications network designed principally for the provision of non-commercial and non-entertainment interactive services to Schools, public agencies or other non-profit agencies for use in connection with the ongoing operations of such institutions.

1.22. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.23. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services consistent with FCC rules and orders by courts of competent jurisdiction following all appeals.

1.24. *PEG*: Public, educational, and governmental.

1.25. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.26. *Public Access Channel*: An Access Channel available for the use by the residents in the Franchise Area as authorized by Grantor.

1.27. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, that are under the jurisdiction or control of Grantor to the extent Grantor has the right, title, interest, and/or authority to grant a franchise to occupy and use such Public Rights-of-Way for Cable Service. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.28. *School*: Any public or private primary or secondary school, college, or university, but excluding home schools and private primary and secondary institutions that are not registered by the State of Oregon pursuant to ORS 354.505-.525.

1.29. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any Additional Service Areas.

1.30. *Service Date*: The date that Grantee first provides Cable Service on a commercial basis directly to more than one Subscriber in the Franchise Area. Grantee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall become a part of this Franchise.

1.31. *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.32. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Grantee's express permission.

1.33. *Telecommunications Facilities*: Grantee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.34. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.35. *Title II*: Title II of the Communications Act.

1.36. *Title VI*: Title VI of the Communications Act.

1.37. *Transfer of the Franchise*:

1.37.1. Any transaction in which:

1.37.1.1. an ownership or other interest in Grantee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Grantee is transferred; or

1.37.1.2. the rights held by Grantee under the Franchise are transferred or assigned to another Person or group of Persons.

1.37.2. However, notwithstanding Sub-subsections 1.37.1.1 and 1.37.1.2 above, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Grantee to the parent of Grantee or to another Affiliate of Grantee; transfer of an interest in the Franchise or the rights held by Grantee under the Franchise to the parent of Grantee or to another Affiliate of Grantee; any action which is the result of a merger of the parent of Grantee; or any action which is the result of a merger of another Affiliate of Grantee.

1.38. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

## **2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Act, Grantor hereby grants Grantee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.1.1. Except as set forth in this Agreement, this Agreement does not deprive Grantor of any powers, rights, or privileges it now has or may acquire in the future under applicable law, to use, perform work on, or regulate the use and control of Grantor's streets covered by this Agreement, including without limitation, the right to perform work on its roadways, Public Rights-of-Way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading or excavating thereof.

2.1.2. To the extent Grantee uses other parties (whether or not affiliated) to fulfill its obligations hereunder, Grantee will insure such parties comply with the terms and conditions of this Agreement.

2.2. *Grantor Does Not Regulate Telecommunications:* Grantor's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of Grantee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services. Nothing in this Agreement shall affect Grantor's authority, if any, to adopt and enforce lawful regulations with respect to Grantee's FTTP Network in the Public Rights-of-Way.

2.3. *Term:* The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

2.4. *Grant Not Exclusive:* This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of the Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Public Rights-of-Way for any purpose not incompatible with Grantee's authority under this Agreement, and for such additional franchises for cable systems as the Grantor deems appropriate. Any such rights which are granted shall not adversely impact the authority as granted under this Agreement and shall not interfere with existing facilities of the Cable System.

2.5. *Franchise Subject to State and Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of state and federal law and regulations as they may be amended, including but not limited to the Communications Act.

2.6. *No Waiver:*

2.6.1. The failure of Grantor on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by Grantor, nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2. The failure of Grantee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse Grantor from performance, unless such right or performance has been specifically waived in writing.

2.7. *Construction of Agreement:*

2.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.7.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545.

2.8. *Police Powers:* Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of Grantor's police powers. However, if the reasonable, necessary and lawful exercise of Grantor's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on Grantee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Grantee may terminate this Agreement without further obligation to Grantor or, at Grantee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.9. *Franchise Acceptance:* By accepting this Agreement, Grantee: (1) acknowledges and accepts Grantor's legal right to issue the Agreement; (2) acknowledges and accepts Grantor's legal right to enforce the Agreement; (3) agrees that it will not oppose Grantor intervening or other participation in any proceeding affecting Cable Service over the Cable System in the Franchise Area; (4) accepts and agrees to comply with each and every provision of this Agreement; and (5) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.10. *Termination of Telecommunications Services:* Notwithstanding any other provision of this Agreement, if Grantee ceases to provide Telecommunications Services over the FTTP Network at any time during the term and is not otherwise authorized to occupy the Public Rights-of-Way in the Franchise Area, Grantor may regulate the FTTP Network as a Cable System to the extent permitted by Title VI.

### 3. PROVISION OF CABLE SERVICE

#### 3.1. *Service Area:*

3.1.1. *Initial Service Area:* Grantee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area and may make Cable Service available to businesses in the Initial Service Area, within twenty-four (24) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Initial Service Area within five (5) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by Grantor; (C) for periods of delay resulting from Grantee's inability to obtain authority to access rights-of-way in the Service Area; (D) developments or buildings or other privately owned areas that are subject to purported exclusive arrangements with other providers; (E) in developments or buildings where Grantee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Grantee; and (F) in developments or buildings where Grantee is unable to provide Cable Service for technical reasons or that require non-standard facilities that are not available on a

commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirements set forth in Sub-section 3.1.1.1.

3.1.1.1. *Density Requirement:* Grantee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than twenty-five (25) occupied residential dwelling units per mile or six (6) occupied residential dwelling units per quarter (1/4) mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Grantee shall provide Cable Service to such area within ninety (90) days of the date that the Grantee's Franchise Service Manager is notified of a request from a potential Subscriber and Grantee verifies that the density requirement is satisfied.

3.1.1.2. If a potential Subscriber resides in a part of the Service Area where the average density is below the density limitation in Subsection 3.1.1.1, the Grantee shall extend Cable Service to such potential Subscriber if he or she is willing to pay a one-time charge equivalent to the Grantee's cost, which shall include all costs required to extend Cable Service more than three hundred twenty five (325) feet, including, but not limited to, total construction, engineering, capital and administrative costs.

3.1.2. *Additional Service Areas:* Except for the Initial Service Area, Grantee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Grantee desires to add Additional Service Areas within the Franchise Area, Grantee shall notify Grantor in writing and provide a map of such Additional Service Area at least thirty (30) days prior to providing Cable Services in such areas.

3.2. *Availability of Cable Service:* Grantee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Grantee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Grantee shall provide Cable Service, Grantee shall be required to connect, at Grantee's expense, other than a standard installation charge, all residential dwelling units that are within three hundred twenty-five (325) feet of trunk or feeder lines not otherwise already served by Grantee's FTTP Network. Grantee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed three hundred twenty-five (325) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Subject to 3.1, Grantee shall provide, without charge, one service outlet activated for Basic Service to future Schools, public libraries, and other public buildings used for public purposes as may be designated by the Grantor; provided, however, that (1) the incumbent cable operator in the area in which the building to be served is located shall have a similar requirement; (2) all such buildings shall be located within Grantee's Service Area and be served by the video-enabled FTTP Network, except that Grantee agrees to serve County-owned buildings in incorporated areas of the County that are served by the video-enabled FTTP Network where Grantee has a cable franchise agreement; (3) if it is

necessary to extend Grantee's trunk or feeder lines more than three hundred twenty five (325) feet solely to provide service to any such School or public building, the Grantor shall have the option either of paying Grantee's direct costs for such extension in excess of three hundred twenty five (325) feet, or of releasing Grantee from the obligation to provide service to such building; and (4) the number of buildings to which Grantee shall provide service under this Section 3.3 relative to the total number of buildings located within the Service Area which qualify for service under this Section 3.3, shall be proportionate to Grantee's market share within the Service Area measured by number of Subscribers and, in any event, shall not exceed five (5) buildings. Furthermore, Grantee shall be permitted to recover, from any School or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than three hundred twenty five (325) feet of drop cable; provided, however, that Grantee shall charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Grantee's rights with third parties respecting programming. Equipment provided by Grantee, if any, shall be replaced at retail rates if lost, stolen or damaged.

#### **4. SYSTEM OPERATION**

4.1. As provided in Section 2.2, the parties recognize that Grantee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of Grantor over such Telecommunications Facilities is restricted by federal and state law, and Grantor does not and will not assert jurisdiction over Grantee's FTTP Network in contravention of those limitations.

4.2. During the six-month period beginning seven (7) years after the Effective Date of this Franchise, Grantor, at its own expense, may undertake a review of Grantee's system and performance to date. Grantee will consider Grantor's recommendations based on the results of that review. Any modifications to the Franchise must be made in writing and with mutual consent of both parties pursuant to Section 14.12 herein.

#### **5. SYSTEM FACILITIES**

5.1. *System Characteristics:* The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time. Grantee's Cable System shall substantially conform in all material respects to the following standards to the extent such standards remain in effect and are consistent with accepted industry standards.

5.1.1. The System shall be designed with a digital carrier passband between 50 and 860 MHz.

5.1.2. The System shall be designed to be an active two-way plant for Subscriber interaction, if any, required for selection or use of Cable Service.

5.2. *Standby Power.* Grantee shall provide standby power generating capacity at the cable communications system control center and all hubs and any fiber optic nodes. Grantee shall maintain standby power system supplies, rated at least at four (4) hours duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place and shall

have filed with 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.

5.3. *Status Monitoring.* Grantee shall continue to utilize status monitoring of the Cable System which can continually monitor the system for signal quality on the forward and return spectrums of the system. In addition, Grantee shall maintain status monitoring for all power supplies in its headend(s) and hub(s) as well as the distribution system. Status monitoring shall be capable of notifying Grantee, twenty-four (24) hours a day, seven (7) days a week, of system problems including utility power outages, that will negatively affect its customers.

5.4. *Parental Control Lock.* Grantee shall provide Subscribers (by sale or lease or otherwise), upon request, with a manual or electronic parental control locking device or digital code that permits inhibiting the viewing of any channel.

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

5.6. *Emergency Alert System:* Grantee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System. In accordance with the provisions of FCC Regulations Part 11, Emergency Alert System (EAS), and as such provisions may from time to time be amended, Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notification (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the local primary, state primary, the state Emergency Operations Center and the Clackamas County Emergency Operations Center, as those authorities are identified and defined within FCC Reg. Section 11.51 and other applicable state and local laws.

5.6.1. Upon request by Grantor, Grantee shall cooperate with Grantor to test the EAS and emergency override systems for periods not to exceed one (1) minute in duration and not more than once every three (3) months at a time disruptive to the least number of Subscribers.

## **6. PEG SERVICES**

### **6.1. *PEG Set Aside:***

6.1.1. In order to ensure universal availability of public, educational and government programming, Grantee shall provide on the Basic Service tier two (2) dedicated Public Access Channels, two (2) dedicated Educational Access Channels, and one (1) dedicated Government Access Channel (collectively, "PEG Channels"). The initial content and source location for the PEG Channels is identified in Exhibit B.

6.1.2. Grantor may require Grantee to provide a total of one (1) additional Access Channel when any existing Access Channel meets the criteria set forth below and such additional Access Channel is carried by all other cable operators in the Service Area.

Upon Grantee's request, a public hearing will be conducted regarding the need for additional capacity.

6.1.2.1. *Public Access Channels:* During any eight (8) consecutive weeks, the Public Access Channel is in use for Locally Produced, Original Programming eighty percent (80%) of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or

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

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

6.1.2.4. Subject to the conditions in Section 6.2.1, as long as the origination point is a PEG Source Location (as defined below), any additional PEG Access Channel to be provided under this subsection shall be made available by Grantee within 180 days following the Grantor's written request and verification of compliance with each of the foregoing conditions. If the origination point is not a PEG Source Location, Grantee's obligations under this Section 6.1.2.4 shall be subject to the same conditions that are applicable to the PEG Source Locations in Section 6.2.1 and the timing of the availability and other conditions will be by mutual agreement of the parties. In no event shall the origination point be located outside the Service Area unless Grantee consents.

6.1.3. For the purpose of Section 6.1.2:

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

6.1.3.2. "Original Programming" means Programming in its initial cablecast on the Cable System or in its first or second repeat.

6.1.4. Grantor shall notify Grantee of the general nature of the programming to be carried on each of the PEG Channels set aside by Grantee. Grantor hereby authorizes Grantee to transmit PEG programming within and without Grantor jurisdictional boundaries. Grantee shall assign the PEG Access Channels on its channel line-up as set forth in the notice from Grantor to the extent such channel assignments do not interfere with Grantee's existing or planned channel line-up. If Grantor later changes the programming carried on a PEG Access Channel(s), Grantor shall provide Grantee with at least ninety (90) days notice of the change(s). If a PEG Channel provided under this Article is not being utilized by Grantor, Grantee may utilize such PEG Channel, in its sole discretion, until such time as Grantor elects to utilize the PEG Channel for its intended purpose.



6.2. *PEG Channel Origination:*

6.2.1. Grantee shall obtain the PEG Access Channel programming via a dedicated connection to the source locations listed in Exhibit B (the "PEG Source Location(s)"). Grantee's obligations under this Section 6.2.1, including its obligation to provide upstream equipment and facilities necessary to transmit signals, shall be subject to the provision by the Grantor, without charge to the Grantee, of: (1) access to the PEG Source Location facilities; (2) access to any required PEG equipment within the PEG Source Location facilities and suitable required space, environmental conditions, electrical power supply, access and pathways within the PEG Source Location facilities; (3) video signals in a mutually agreed upon format suitable for PEG Access Channel programming; (4) any third-party consent that may be necessary to transmit PEG signals (including, without limitation, any consent that may be required with respect to third-party facilities, including the facilities of the incumbent cable operator used to transmit PEG content to the PEG Source Locations from auxiliary locations); and (5) any other cooperation and access to facilities as are reasonably necessary for the Grantee to fulfill the obligations stated herein. The Grantee shall, within one hundred eighty (180) days of the Service Date or delivery of suitable video signals, whichever is later, provide, install, and maintain in good working order the equipment necessary for transmitting such signals to Subscribers.

6.2.2. *Interconnection:* Grantee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods. Upon request by the Grantor and based upon a demonstrated need, Grantee shall work in good faith with the Grantor and other cable operators that have a cable service franchise for any part of the Service Area, to interconnect with other cable operators in order to hand off PEG Access Channel signals. Grantee shall use reasonable efforts to agree upon mutually convenient, cost-effective and technically viable interconnection of the PEG Access Channel signals. Any such interconnection shall preserve the technical quality of the PEG Access Channels.

6.3. *PEG Grant:*

6.3.1. Grantee shall provide a grant to Grantor to be used in support of the production of local PEG programming and for support of the institutional network (the "PEG Grant"). Such grant shall be used by Grantor for (1) institutional network capital facilities and equipment so long as any such facilities or equipment are not owned by another cable operator; and (2) for PEG access facilities, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

6.3.2. Throughout the term of this Franchise, the PEG Grant provided by Grantee hereunder shall be \$1.00 per month, per Subscriber in the Initial Service Area, except as otherwise provided herein. If Grantor enters into a franchise agreement with another cable operator after the Effective Date of this Agreement to provide Cable Service in all or any portion of the Initial Service Area that includes PEG financial support that is less than \$1.00 per month, per Subscriber, then Grantee shall be entitled to reduce the PEG Grant to match that of the other cable operator. If Grantee provides Cable Service in any portion of the Franchise Area other than the Initial Service Area, the PEG Grant for those portions of Grantee's Service Area shall

be, at Grantee's option, either (1) one dollar (\$1.00) per month, per Subscriber, or (2) an amount less than one dollar (\$1.00) that is the same per month, per subscriber amount provided by any other cable operator providing Cable Service outside the Initial Service Area and within the area to be served by Grantee.

6.3.3. Grantor will make a good faith effort, upon renewal, to ensure that all other cable operators in Grantee's Service Area are subject to comparable PEG contributions, and agrees to undertake a County-wide assessment of the community needs and interests by December 31, 2009. If the County-wide assessment of community needs and interests results in any cable operator providing less than one dollar (\$1.00) per month, per Subscriber in PEG support within Grantee's Service Area, Grantee shall be entitled to reduce the PEG Grant to match that of the other cable operator.

6.3.4. The PEG Grant payment, along with a brief summary of the Subscriber information upon which it is based, shall be delivered to Grantor within forty-five (45) days after the beginning of each calendar quarter during the Franchise Term.

6.3.5. Grantor shall provide Grantee with a complete accounting annually of the distribution of funds granted pursuant to this Section 6.3.

6.4. Grantor shall require, through contract with any party designated by Grantor to be responsible for the content of one or more PEG Channels or otherwise, all producers, originators, authors or distributors (hereinafter "Producer") of any programming carried on the Access Channels to agree in writing to authorize Grantee to transmit programming consistent with this Agreement and to defend and hold harmless Grantee and Grantor, from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the Producer; and for any other injury or damage in law or equity, which result from the use of a PEG facility or PEG Channel. Third parties with whom Grantor currently contracts to be responsible for the content of one or more PEG Channels include Willamette Falls TV, Clackamas Community College, and Sabin-Schellenberg Center (K-12 Educational Channel).

6.5. To the extent permitted by federal law, Grantee shall be allowed to recover the costs of a PEG Grant or any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Grantee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

## **7. FRANCHISE FEES**

7.1. *Payment to Grantor:* Grantee shall pay to Grantor a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise

fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Grantee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable. In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of Gross Revenues required herein, Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%), during the appropriate time period provided that Grantee shall have sixty (60) days to implement such change.

7.2. *Supporting Information:* Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Grantee showing the basis for the computation substantially in the form attached hereto as Exhibit C.

7.3. *Acceptance of Payments:* No acceptance of any payment shall be construed as accord by Grantor that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by Grantor.

7.4. *Interest on Late Payments:* In the event that a Franchise fee payment or other sum is not received by Grantor on or before the due date, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the statutory interest rate on judgments in the State of Oregon.

7.5. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.

7.6. *Bundled Services:* If Cable Services subject to the Franchise fee required under this Article 7 are provided 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 FCC or state public utility regulatory commission 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.

## **8. CUSTOMER SERVICE**

Customer Service Standards are set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

## **9. REPORTS AND RECORDS**

9.1. *Audit of Franchise Fee Payments:*

9.1.1. Grantor, or its designee, may conduct an audit or other inquiry in relation to payments made by Grantee no more than once every three (3) years during the Term. As a part of the audit process, Grantor or Grantor's designee may inspect Grantee's books of accounts relative to Grantor at any time during regular business hours and after thirty (30) calendar days prior written notice.

9.1.2. All records deemed by Grantor or Grantor's designee to be reasonably necessary for such audit shall be made available by Grantee in a mutually agreeable format and location. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Grantee may provide such responses within a reasonable time after the expiration of the response period above so long as Grantee has made a good faith effort to procure any such tardy response.

9.1.2.1. If the results of any audit indicate that Grantee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by three percent (3%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Grantee underpaid the franchise fee by more than three percent (3%), then Grantee shall pay the reasonable, documented, third-party costs of the audit, which costs shall be limited to five thousand dollars (\$5,000). Such limit shall increase to ten thousand dollars (\$10,000) at such time that Grantee has fifteen thousand (15,000) Subscribers to its Cable Service in the Franchise Area.

9.1.3. Any auditor employed by Grantor shall not be compensated on a success based formula, e.g., payment based on a percentage of underpayment, if any. Grantee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to Grantor.

9.2. *Open Books and Records:* Upon reasonable written notice to Grantee and with no less than thirty (30) business days written notice to Grantee, Grantor shall have the right to inspect Grantee's books and records pertaining to Grantee's provision of Cable Service in the Franchise Area at any time during normal business hours and on a nondisruptive basis, at a mutually agreeable location within Grantee's Title II service area in Oregon, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Grantee may organize the necessary books and records for appropriate access by Grantor. Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

9.3. *Proprietary Books and Records:* If the Grantee believes that the requested information is confidential and proprietary, the Grantee must provide the following documentation to Grantor: (i) specific identification of the information; and (ii) statement attesting to the reason(s) Grantee believes the information is confidential. Grantor shall take reasonable steps to protect the proprietary and confidential nature of any books, records, Service Area maps, plans, or other documents requested by Grantor that are provided pursuant to this Agreement to the extent they are designated as such by Grantee, consistent with the Oregon Public Records Law. Should Grantor be required under state law to disclose information derived

from Grantee's books and records, Grantor agrees that it shall provide Grantee with reasonable notice and an opportunity to seek appropriate protective orders prior to disclosing such information. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area, or any confidential information relating to such Cable Service where Grantor cannot lawfully protect the confidentiality of the information.

9.4. *Records Required:* Grantee shall at all times maintain:

9.4.1. Records of all written complaints for a period of three (3) years after receipt by Grantee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Grantee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.4.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.4.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Grantee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.4.4. Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Grantee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.4.5. A map showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

9.5. *Copies of Federal and State Documents:* Grantee shall provide to Grantor a list or copy of all pleadings, applications, notifications, communications and documents of any kind submitted by the party or its parent corporations or Affiliates to any federal, state or local courts, regulatory agencies or other government bodies if such documents concern the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such list or documents to Grantor no later than thirty (30) days after filing, mailing or publication thereof. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency, or request for confidential treatment is pending.

9.6. *Additional Requests.* Grantor shall have the right to request in writing such information as is appropriate and reasonable to determine whether Grantee is in compliance with applicable Customer Service Standards, as referenced in Exhibit D. Grantee will provide Grantor with such information in such format as Grantee customarily prepares reports. Grantee

shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance, subject to Section 9.7.

9.7. *Report Expense:* All reports and records required under this or any other Article shall be furnished, without cost, to Grantor. Grantee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have not been defined specifically within this Agreement in order to meet the requirements of this Section 9.

## 10. INSURANCE AND INDEMNIFICATION

### 10.1. *Insurance:*

10.1.1. Grantee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Grantee's Cable Service business in the Franchise Area.

10.1.1.2. Automobile Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$2,000,000 policy limit.

10.1.2. Grantor shall be designated as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement. Failure to maintain adequate insurance as required under this Article shall be considered a violation of this Franchise, which violation will be subject to the enforcement procedures set forth in Article 13 herein.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Oregon, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

10.1.5. Within thirty (30) days of the Effective Date, Grantee shall deliver to Grantor Certificates of Insurance showing evidence of the required coverage, which

Certificates shall be subject to the approval of the County Attorney as to the adequacy of the Certificates and of the insurance certified under the requirements of this Article, which approval shall not be unreasonably withheld.

10.2. *Indemnification:*

10.2.1. Grantee shall indemnify, save and hold harmless, and defend Grantor, its officers, agents, boards and employees, from and against any liability, damages or claims resulting from or arising out of Grantee's willful misconduct or negligence relating to its construction, operation, or maintenance of its Cable System, provided that Grantor shall give Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Grantee shall not indemnify Grantor, for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor, its officers, agents, employees, attorneys, consultants, or independent contractors or for any activity or function conducted by any Person other than Grantee in connection with PEG Access, or EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Grantee's indemnity obligations set forth in Subsection 10.2.1, Grantee shall provide the defense of any claims brought against Grantor by selecting counsel of Grantee's choice to defend the claim, subject to the consent of Grantor, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent Grantor from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with Grantor, Grantee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Grantee shall have the authority to decide the appropriateness and the amount of any such settlement subject to the following sentence. In the event that the terms of any such proposed settlement includes the release of Grantor and Grantor does not consent to the terms of any such settlement or compromise, Grantee shall not settle the claim or action but its obligation to indemnify Grantor shall in no event exceed the amount of such settlement.

10.2.3. Grantor shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by Grantor for which Grantor is legally responsible, subject to any and all defenses and limitations of liability provided by law. Grantee shall not be required to indemnify Grantor for acts of Grantor which constitute willful misconduct or negligence, on the part of Grantor, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

**11. TRANSFER OF FRANCHISE**

11.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior written consent of Grantor, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness, or otherwise for transactions otherwise excluded under Section 1.37 above.