

ORDINANCE NO. 1384-15

AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE FRANCHISE TO COMCAST OF OREGON II, INC.

WHEREAS, in 1980 the Metropolitan Area Communications Commission (hereinafter "MACC") was formed by Intergovernmental Cooperation Agreement, amended in 2002 and now an Intergovernmental Agreement (hereinafter "IGA") to enable its member jurisdictions to work cooperatively and jointly on communications issues, in particular the joint franchising of cable services and the common administration and regulation of such franchises, and the City of Tualatin (hereinafter "City") is a member of MACC;

WHEREAS, the IGA authorizes MACC and its member jurisdictions to grant one or more nonexclusive franchises for the construction, operation and maintenance of a cable service system within the combined boundaries of the member jurisdictions;

WHEREAS, the IGA requires that each member jurisdiction to be served by the proposed franchisee must approve any cable service franchise;

WHEREAS, the City has previously granted a cable franchise to TCI Cablevision of Tualatin Valley, Inc. and that franchise is now held by Comcast of Tualatin Valley, the grantee's lawful successor in interest;

WHEREAS, the Board of Commissioners of MACC, by Resolution 2015-05 adopted on the 10th day of June, 2015, recommended that the member jurisdictions grant a franchise to Comcast of Oregon II, Inc. in the form attached hereto as Exhibit "A," which authorizes the provision of cable services from July 1, 2015 through June 30, 2025;

WHEREAS, MACC and the City have provided adequate notice and opportunities for public comment on the proposed cable services franchise including public hearings on March 18, 2015 and June 10, 2015;

WHEREAS, the Council finds that approval of the recommended franchise is in the best interest of the City and its citizens, consistent with applicable federal law;

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. The City grants to Comcast of Oregon II, Inc. a non-exclusive cable services franchise on the terms and conditions contained in Exhibit "A," which is attached and incorporated herein.

Section 2. The grant of franchise in Section 1 is conditioned upon each of the following events:

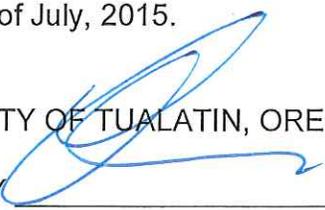
(a) The affirmative vote of the governing body of each MACC member jurisdiction;

(b) Comcast of Oregon II, Inc.'s fulfillment of the franchise acceptance provisions contained in the Franchise; and

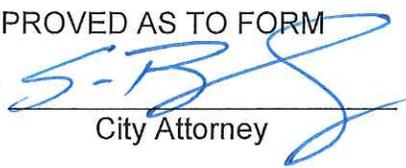
(c) Formal written determination by the MACC Administrator that, in accordance with the requirements of the IGA, each of the above two events has occurred.

Adopted by the City Council this 27 Day of July, 2015.

CITY OF TUALATIN, OREGON

BY  _____
Mayor

APPROVED AS TO FORM

BY  _____
City Attorney

ATTEST:

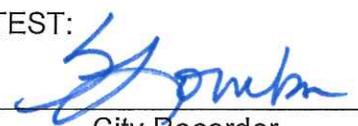
BY  _____
City Recorder

Exhibit A

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION 2015-05

A RESOLUTION RECOMMENDING THE MEMBER JURISDICTIONS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION GRANT COMCAST OF OREGON II, INC. A CABLE SERVICES FRANCHISE

WHEREAS, in 1980 the Metropolitan Area Communications Commission (hereinafter MACC) was formed by Intergovernmental Cooperation Agreement, amended in 2002 and now an Intergovernmental Agreement (hereinafter IGA) to work cooperatively and jointly on communications issues, in particular the franchising of cable services and the common administration and regulation of such franchises;

WHEREAS, today the member jurisdictions of MACC consist of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin, and West Linn;

WHEREAS, the IGA authorizes MACC and its jurisdictions to grant one or more nonexclusive franchises to construct, operate, and maintain a cable system within the combined boundaries of the member jurisdictions;

WHEREAS, the IGA requires that each member jurisdiction formally approve any joint cable services franchise agreements, or any amendment or renewal of such agreements;

WHEREAS, MACC and/or its member jurisdictions have previously granted cable franchises to TCI Cablevision of the Tualatin Valley, Inc., in 1999, and to TCI Cablevision of Oregon, Inc. in 1995 (to serve West Linn and a portion of Washington County) and those franchises are now held by Comcast of Tualatin Valley, or Comcast of Oregon II, Inc., the grantee's lawful successors in interest;

WHEREAS, on March 9, 2011, Comcast requested that its franchise agreement with MACC and its member jurisdictions be renewed;

WHEREAS, staff began holding informal negotiations sessions with Comcast in February 2013;

WHEREAS, the Commission, at its December 11, 2013 meeting, ratified the Executive Committee's action of November 22, 2013, directing staff to initiate the Formal Renewal Process as set out in Section 626 of the Cable Act on behalf of the Commission;

WHEREAS, while the Formal Renewal Process moved forward, MACC met informally with representatives of Comcast to resolve outstanding differences in the terms of a renewed

RESOLUTION NO. 2015-05
METROPOLITAN AREA COMMUNICATIONS COMMISSION
RECOMMENDING GRANT OF FRANCHISE TO
COMCAST OF OREGON II, INC.

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franchise, which meetings have resulted in a proposed cable services franchise acceptable to MACC and Comcast; and,

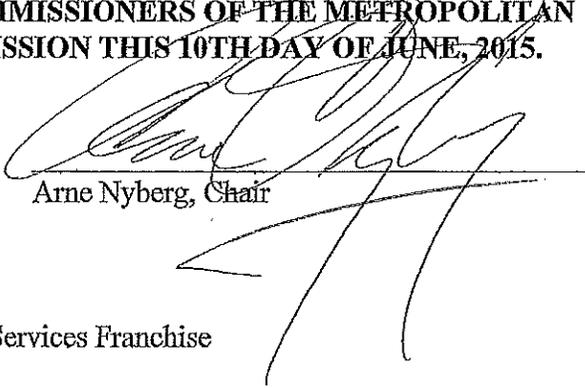
WHEREAS, MACC has provided adequate notice and opportunities for public comment on the proposed new cable services franchise including public hearings held on March 18, 2015 and June 10, 2015; and,

WHEREAS, the MACC Board of Commissioners finds the proposed new cable franchise reflects the cable-related community needs of the member jurisdictions, and that Comcast has the legal, technical, and financial qualifications to own and operate the proposed cable services system, and therefore recommends to its member jurisdictions that they grant the franchise to Comcast of Oregon II, Inc;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THAT:

1. MACC recommends to its member jurisdictions that they grant Comcast a cable services franchise substantially in the form attached hereto as Exhibit A ("Franchise").
2. In accordance with the requirements of the IGA, the member jurisdictions' grant of the Franchise shall be contingent on the affirmative vote of each member jurisdiction's governing body.
3. The MACC Administrator is hereby authorized to execute the Franchise on behalf of the member jurisdictions only after MACC staff's determination that Comcast has fulfilled the Franchise acceptance provisions contained in the Franchise and that each member jurisdiction has approved the Franchise.
4. This resolution shall be effective from and after its adoption.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THIS 10TH DAY OF JUNE, 2015.


Arne Nyberg, Chair

Attachment: Exhibit A - Comcast Cable Services Franchise

Exhibit C

COMCAST CURRENT and PROPOSED FRANCHISE COMPARISON Metropolitan Area Communications Commission June 10, 2015

FRANCHISE PROVISION	Today's COMCAST	§	July 2015 COMCAST	§
Term	15 years (the standard in 1999)	2.3	10 years (current national standard)	2.3
ROW AUTHORITY				
Police Powers and Right of Way Use	Comcast must abide by all generally applicable Codes in each member jurisdiction.	2 & 10	No change.	2 & 10
Competition	Competitor's franchise must be "reasonably comparable...in order that one operator not be granted an unfair competitive advantage...". MACC makes that determination, which may be adjudicated.	2.6	<p>If competitor's franchise has terms that are perceived to be less demanding on these points:</p> <ul style="list-style-type: none"> • 5% franchise fee • PEG funding • PEG channels • Customer Service standards • Complimentary services <p>Then, this process could be initiated by Comcast: (1) discussion with MACC to mitigate the Comcast franchise, and then, if not resolved, (2) court review, or (3) a reduction in the franchise term to not more than 30 months.</p> <p>Step 3 would result in a new negotiated franchise through the renewal procedures of the Cable Act.</p> <p><u>Only applies to the specific jurisdiction(s) where a competitor's franchise is granted and challenged by Comcast.</u></p>	2.6

FRANCHISE PROVISION	Today's COMCAST	\$	July 2015 COMCAST	\$
FINANCE				
Franchise fees	5% of gross revenues	3.1	No change	3.1
Gross Revenue Definition	<p>Among the most aggressive Gross Revenue definitions in the country.</p> <p>MACC collected approximately \$6.6M in CY 2014</p>	1.18	<p>MACC retained its broad definition of Gross Revenue – the application of a 5% fee on all revenue attributable to Cable Services. Still better standard than most franchises and all area franchises.</p> <p>If the revenue base is the same, MACC collections in CY2015 would be: \$6.5M, a 1.5% drop. (No longer includes PCN revenue due to changes in PCN management.)</p>	1.24
Audit authority	<p>Authority to audit once each 12 months;</p> <p>If franchise fees are underpaid by 3% or more, Comcast pays the total cost of the audit</p>	3.6	<p>Retained all data submission requirements.</p> <p>No changes in the timing of, or the way MACC conducts audits.</p> <p>If underpaid 4% or more, company pays the total cost of the audit up to \$15,000. Comparable to Frontier.</p>	3.6
Insurance Limits	<p>General Liability: \$2 million Broadcasters Liab: \$1 million Auto BI/PD: \$2 million Employers Liab: \$2 million</p>	5.1	<p>General Liability: \$3 million Broadcasters Liab: \$1 million Auto BI/PD: \$2 million Employers Liab: \$2 million</p>	5.1

FRANCHISE PROVISION	Today's COMCAST	\$	July 2015 COMCAST	\$
PEG PROGRAMMING				
PEG Channels	6 channels required in MACC/Washington County franchises; 5 channels in West Linn franchise. There is potential for additional channels. MACC programs 4 Public & Government Channels.	9	5 channels required, but no change in current usage A side agreement provides the potential to discontinue the CAN (11) and PCC (27) channels if all other metro areas systems do so. Public and Government channels are guaranteed.	9.2
PEG/PCN Fee	\$1.00 per subscriber /month Requires a Competitive Grant Process.	9.7	Although the per subscriber fee, falls to \$0.80 per month, there is no reduction on the PEG/PCN Fund: Combining the three franchises requires Comcast to provide funding based on an additional 25,000 subscribers. Commission will allocate funding following a review of current PEG/PCN Fund Policy early next Fiscal Year.	13
HD Channels	No HD channels	n/a	3 new HD channels implemented over 4 years.	9.4
PEG Origination Points	Seven Activated Origination Points	9.5	Eighteen Activated Origination Points – new sites for council meetings and other programming direct from jurisdiction sites. Includes new Cornelius & Tualatin City Hall locations.	9.8

FRANCHISE PROVISION	Today's COMCAST	§	July 2015 COMCAST	§
CUSTOMER SERVICE	1999 standard Customer Service Requirements.	6	Comcast will abide by the Frontier customer service model, unifying the standards that apply to all cable operators in the MACC area.	Attc. A
Telephone Answering	90% of the calls answered within 30 seconds	6.3	No change	Attc. A-2
Local office	One center conveniently located in the franchise area to provide pick up/drop off equipment, bill payment, and complaints	6.2	No local office requirement, which matches Frontier requirement to pick up or drop off equipment free of charge (using Comcast representative home visit, prepaid mailer, or establishing a local business office). Note that Comcast, however, is opening additional offices in the MACC area.	Attc. A-6
Fines	<p>Telephone answering: Failure to meet standard – \$10,000 first violation; \$20,000 2nd violation; \$30,000 3rd violation</p> <p>Other Violations: \$250/day</p> <p>No cap on total fines.</p>	15	No change in current fine schedule, but now capped and proportional to Frontier's franchise – at \$75,000/year.	15

FRANCHISE PROVISION	Today's COMCAST	§	July 2015 COMCAST	§
Institutional Network (PCN)	<p>Upgrade of existing network, run by Comcast Cable with protections and services guaranteed by the MACC Franchise.</p> <p>Rates rise 3.5% per year.</p> <p>Current rates: \$250 - \$1150/mo.</p>	11.2	<p>Comcast is required by the Franchise to maintain and provide PCN network services. Most standards provided for in individual customer agreements.</p> <p>Rates guaranteed for 10 years:</p> <p>New rates: \$90 - \$850/month</p> <p>Approximately 25% or greater cost savings to member jurisdictions.</p> <p>Network-wide jurisdiction savings of \$150,000 - \$250,000 per year.</p>	12 & Attc. D

Exhibit D

Comcast Cable Franchise Questions and Answers

Prepared by MACC
July 2015

Q1: What is MACC?

- A: Your jurisdiction is a member of the Metropolitan Area Communications Commission – a fifteen member joint powers organization. MACC was created in 1980 to provide a centralized agency to prepare for, negotiate and administer cable television franchises. On behalf of the member jurisdictions, in accordance with its Intergovernmental Agreement (IGA), MACC provides the daily management of the area's cable franchises (Comcast and Frontier), including:
- Finance - Franchise fee collection, audits, insurance and bonds
 - Centralized Customer Service Regulation – all complaint calls should come to MACC
 - TVCTV's Public and Government Access programming services – a division of MACC
 - General administration and compliance with Federal cable television franchising rules
 - Coordination of the Public Communications Network (PCN)

Q2: How does MACC operate?

- A: Each member jurisdiction is an equal partner in MACC. Jurisdictions appoint a MACC Commissioner who participates, reviews and recommends new and renewed cable television franchises along with other administrative chores. When MACC recommends a cable franchise, the MACC IGA requires that every member jurisdiction approve the franchise in order to make it effective. Each MACC jurisdiction, from the smallest (Gaston) to the largest (Washington County) has one vote.

Q3: How are cable television franchise negotiations different than other negotiations?

- A: Incumbent Cable Operators, such as Comcast, have the right to renew their franchise through negotiation. While there are certain limiting federal laws and requirements, a company already in the Right of Way has rights to continue service unless it has failed to perform, or it will not meet the demonstrated needs of the communities it serves.

Federal law provides a lengthy and somewhat costly three-year renewal window. By combining resources in MACC, the renewal process is more affordable and effective for the member jurisdictions. MACC began preparations for franchise negotiation in 2011 and began negotiations in 2013. Negotiations took 28 months to complete.

Q4: What benefits does the Comcast franchise provide my jurisdiction?

- A: The primary benefits are financial, reduced-cost connectivity and customer service regulation:
- The 5% franchise fee paid by Comcast provides about \$6.5million to the member jurisdictions each year. The Franchise provides for continued fee review and audit functions by MACC.
 - PCN service costs are reduced - small jurisdictions retain complimentary PCN connectivity.
 - Public Meeting coverage through TVCTV is secured, and upgraded to High Definition (HD).
 - The PEG/PCN Fee (currently \$1/month) is reduced to 80¢/month.
 - Complementary TV service will still be provided to public buildings.

Q5: What is non-negotiable in a cable television franchise?

A: Federal Law restricts local governments from negotiating:

- Rates for service or equipment.
- Programming – either including or excluding any particular channel.
- The type of technology a cable operator uses to transmit its signals.
- Franchise provisions re: Comcast's Internet services.
- And, the amount of the franchise fee is capped under the Cable Act at 5% of Gross Revenue.

Q6: How does this franchise address competition issues?

A: In every way possible, Comcast and MACC tried to ensure a level playing field in the recommended franchise. Cable television is an increasingly competitive environment, with new options and providers every day. Since the law is moving slower than the technology, cable companies, including Comcast, are insisting on a process to address unknown competitive situations.

This was one of the most difficult areas to resolve in negotiations. However, MACC has negotiated a limited commitment that addresses Comcast's concerns without undermining the rights and authority of the member jurisdictions.

Q6: When will the new Franchise be effective?

A: Once MACC certifies that all 15 MACC jurisdictions have approved the new Comcast Agreement, probably in early September, the new Comcast Franchise will be retroactively effective back to July 1, 2015

For additional questions about the renewal process, contact **Fred Christ**, MACC Administrator at 503-645-7365 x206 or at fcrist@maccor.org. MACC's website is at: www.maccor.org

**CABLE TELEVISION
FRANCHISE AGREEMENT**

**Between the Jurisdictions participating in the
METROPOLITAN AREA
COMMUNICATIONS COMMISSION**

AND

COMCAST OF OREGON II, INC.

June 10, 2015

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SECTION 1. DEFINITIONS

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

- 1.1 Access means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video and Signals as permitted under applicable law, including, but not limited to:
- (A) Public Access means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary Programmers or users having editorial control over the content;
 - (B) Educational Access means Access where Schools and educational institutions are the primary Programmers or users having editorial control over the content;
 - (C) Governmental Access means Access where governmental institutions are the primary Programmers or users having editorial control over the content; and
 - (D) PEG Access means Public Access, Educational Access, and Governmental Access, collectively.
- 1.2 Access Center means a facility or facilities where Public, Educational, or Governmental use Signals are managed and delivered Upstream to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- 1.3 Access Channel means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- 1.4 Affiliate when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- 1.5 Basic Service means any service tier which includes the retransmission of local television broadcast Signals and PEG Access Channels, or as such service tier may be further defined by federal law.
- 1.6 Cable Act means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.
- 1.7 Cable Operator means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

- 1.8 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.9 **Cable System** means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.10 **Capacity** means the maximum ability to carry Signals or other information within a specified format.
- 1.11 **Capital or Capital Cost** means the expenditure of funds for resources whose useful life can be expected to exceed a period of one (1) year or longer as consistent with Generally Accepted Accounting Principles ("GAAP").
- 1.12 **Channel** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.
- 1.13 **Commission** means the Metropolitan Area Communications Commission and its officers, agents and employees, created and exercising its powers pursuant to an Intergovernmental Cooperation Agreement entered into by Grantors herein, as authorized by state law (particularly ORS Chapter 190) and the laws, charters, and other authority of the individual member units of local government who are members of the Commission. The powers of the Commission have been delegated to it by Grantors and although it may exercise those powers as an entity, it remains a composite of Grantors herein.
- 1.14 **Demarcation** means up to and including the device (as of the Effective Date known as the "modulator") where the DAP Signal is converted into a format to be transmitted over a fiber connection to Grantee.
- 1.15 **Designated Access Provider ("DAP")** means the entity or entities designated by the Grantor to manage or co-manage PE G Access Channels and Access Centers. The Grantor may be a Designated Access Provider; however, any entity designated by the Grantor shall not be a third party beneficiary under this Agreement.
- 1.16 **Downstream** means the transport of Signals from the Headend to Subscribers or to Interconnection points served by the Cable System.
- 1.17 **Effective Date** means the date defined in Section 2.4 herein.
- 1.18 **FCC** means the Federal Communications Commission.

- 1.19 **Fiber** means a transmission medium of optical strands of cable capable of carrying Signals by means of lightwave impulses.
- 1.20 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.
- 1.21 **Franchise Area** means the area within the legal jurisdictional boundaries of the individual member units of local government who are members of the Commission during the term of this Agreement. The Franchise Area shall include any additional signers of the Intergovernmental Agreement only if Grantee is currently providing Cable Service in such additional areas. For purposes of Washington County, the Franchise Area includes only the unincorporated areas within the legal jurisdictional boundaries of the County.
- 1.22 **Grantee** means Comcast of Oregon, II, Inc. or its permitted successors, transferees or assignees.
- 1.23 **Grantor** means, individually and, where applicable, collectively, the Oregon cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin, and West Linn together with Washington County, Oregon.
- 1.24 **Gross Revenue** means, and shall be construed broadly to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:
- Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
 - Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
 - fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
 - Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
 - Payments for pre-paid Cable Services and/or equipment;
 - Advertising Revenues as defined herein;
 - Fees including, but not limited to: (1) late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; (2) Franchise fees; (3) the FCC user fee and (4) PEG fees if included on Subscriber billing statements;
 - Revenues from program guides; and
 - Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.

- "Gross Revenues" shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.

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

- (B) "Gross Revenues" shall not include:
 - Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
 - Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee, the FCC user fee and PEG fee shall not be regarded as such a tax or fee;
 - Launch fees and marketing co-op fees; and,
 - Revenues associated with the provision of managed network services provided under separate business contract.
 - Unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above.

- (C) To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

Example: Prior to any bundle-related price reduction, if Cable Service is valued at 50% of the total of the services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than fifty percent (50%) of the price of the bundled service total.

- (D) Grantee reserves the right to change the allocation methodologies set forth in paragraph (C) above to meet standards mandated by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantor acknowledges and agrees that Grantee shall calculate Gross Revenues in a manner consistent with GAAP where applicable; however, the Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item.
- (E) Grantor agrees and acknowledges that Grantee shall maintain its books and Records in accordance with GAAP.

- 1.25 **Headend** means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the Interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.
- 1.26 **Interconnect or Interconnection** means the provision by Grantee of technical, engineering, physical, financial and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Cable System or any separate communications network, so that services of technically adequate quality may be sent to, and received from, such other systems to the extent required by this Agreement.
- 1.27 **Leased Access Channel** means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.
- 1.28 **Origination Point** means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.

- 1.29 **Parent Corporation** means Comcast Communications, Inc. or successors and assigns and includes any other existing or future corporations with greater than fifty percent (50%) ownership or control over Grantee.
- 1.30 **Person** means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization authorized to do business in the State of Oregon, and includes any natural person.
- 1.31 **Programmer** means any Person responsible for PEG Access Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides PEG Access Programming for transmission on the Cable System.
- 1.32 **Programming** means television programs, audio, video or other patterns of Signals to be transmitted on the Cable System, and includes all programs or patterns of Signals transmitted, or capable of being transmitted, on the Cable System.
- 1.33 **Public Communications Network ("PCN")** means the separate communications institutional network provided by the Grantee under Section 12 of this Agreement designed principally for the provision of non-entertainment, interactive services to public Schools, public universities and colleges, Pacific University, public agencies, or the Virginia Garcia Health Centers (or successor agencies) for use in connection with the ongoing operations of such institutions. Services provided include data to PCN users on an individual application, private channel basis.
- 1.34 **Public Rights of Way** include, but are not limited to, Streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such Streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a)(2).
- 1.35 **Record** means written or graphic materials, however produced or reproduced, or any other tangible permanent record, to the extent related to the enforcement or administration of this Agreement.
- 1.36 **Quarterly or Quarter** means the standard calendar periods of January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, unless otherwise specified in this Agreement.
- 1.37 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools.
- 1.38 **Section** means a provision of this Agreement, unless specified as part of another document.
- 1.39 **Signal** means any electrical or light impulses carried on the Cable System, whether one-way or bi-directional.
- 1.40 **Streets** means the surface of any public Street, road, alley or highway, within the Grantor, used or intended to be used by the general public for general transportation purposes to

the extent the Grantor has the right to allow the Grantee to use them, and the space above and below.

- 1.41 **Subscriber** means any Person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of, or in connection with, the Cable System.
- 1.42 **Upstream** means the transport of Signals to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 **Grant**

- (A) Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services and to provide a PCN for voice, video, and data, subject to the terms and conditions set forth in this Agreement.
- (B) This Agreement is intended to convey limited rights and interests only as to those Public Rights of Way, in which the Grantor has an actual interest. It is not a warranty of title or interest in any Public Rights of Way, it does not provide the Grantee any interest in any particular location within the Public Rights of Way, and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Public Rights of Way covered by this Agreement, including without limitation, the right to perform work on its Streets, or appurtenant public works facilities, including constructing, altering, paving, widening, grading, or excavating thereof.
- (C) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended, and to provide a related PCN as described in Section 12 of this Agreement. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions including additional compensation conditions for use of the Public Rights of Way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.
- (D) Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any agent, Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

2.2 **Use of Public Rights of Way**

Subject to Grantor's supervision and control and the terms of this Agreement, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights of Way within the Franchise Area, such wires, cables, conductors, ducts,

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

2.3 Duration

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through June 30, 2025, unless extended or terminated sooner as hereinafter provided.

2.4 Effective Date

The Effective Date of this Agreement shall be July 1, 2015 unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by Section 5.4. Grantee shall accept this Agreement within forty-five (45) days of the Effective Date, unless the time for acceptance is extended by Grantor. In the event acceptance does not take place or the security is not posted as required hereunder, this Agreement shall be voidable at the reasonable discretion of Grantor, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under the express terms of this Agreement shall be of no force or effect.

2.5 Franchise Nonexclusive

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, Public Rights of Way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Public Rights of Way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate subject to Section 2.6 below.

2.6 Grant of Other Franchises

- (A) The Grantor reserves the right to grant additional Franchises or similar authorizations to provide video programming services via Cable Systems or similar wireline systems located in the Public Rights of Way. Grantor intends to treat wireline competitors in a nondiscriminatory manner in keeping with federal law. If the Grantor grants such an additional Franchise or authorization to use the Public Rights of Way to provide such services and Grantee believes the Grantor has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this Section 2.6 will apply.
- (B) As part of this Agreement, the Grantor and Grantee have mutually agreed that the following material Franchise terms may be used to compare Grantee's Franchise

to a wireline competitor: a 5% (five percent) Franchise fee, PEG funding, PEG Access Channels, customer service obligations, and complimentary services (hereinafter "Material Obligations"). Grantor and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a wireline competitor and as such can reasonably be expected to be applied fairly across all wireline competitors.

- (C) Within one (1) year of the adoption of a wireline competitor's Franchise or similar authorization, Grantee must notify the Grantor in writing of the Material Obligations in this Agreement that exceed the Material Obligations of the wireline competitor's Franchise or similar authorization. The Grantor shall have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the wireline competitor, or dispute that the Material Obligations are different. In the event the Grantor disputes the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what Franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the Grantor that it elects to immediately commence the renewal process under 47 USC § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.
- (D) Nothing in this Section 2.6 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the Grantor be required to refund or to offset against future amounts due the value of benefits already received.
- (E) This provision does not apply if the Grantor is ordered or required to issue a Franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Cable Operator actually commencing provision of service in the market to its first customer. Should the new Cable Operator fail to continuously provide service for a period of six (6) months, the Grantor has the right to implement this Agreement with its original terms upon one hundred eighty (180) days' notice to Grantee.
- (F) This Section shall apply separately in the individual member units of local government who are members of the Commission. Grantee may seek to invoke the provisions of this Section only in that individual jurisdiction, not in any jurisdiction where a competitor has not secured a competitive Franchise. This Section does not apply to open video systems, nor does it apply to common carrier systems exempted from Franchise requirements pursuant to 47 U.S.C. Section 571; or to systems that serve less than 5% (five per cent) of the geographic area of the Grantor; or to systems that only provide video services via the public Internet.

2.7 Police Powers

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor. Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

Nothing in this Section shall be deemed a waiver by Grantee or the Grantor of the rights of Grantee or the Grantor under applicable law.

2.8 Relations to Other Provisions of Law

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising in contract or at law. The Franchise issued, and the Franchise fee paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

2.9 Effect of Acceptance

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

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fees

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

3.2 Payments

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

3.3 Acceptance of Payment and Recomputation

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

3.4 Quarterly Franchise Fee Reports

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

3.5 Annual Franchise Fee Reports

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

3.6 Audit/Reviews

No more frequently than every twenty-four (24) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit or review of Grantee's Records reasonably related to the administration or enforcement of this Agreement. The Grantor may hire an independent third party to audit or review the Grantee's financial Records, in which case the Grantee shall provide all necessary Records to the third party. All such Records shall be made available in the local offices of the Grantee, or provided in electronic format fully compatible with Grantor's software. If the audit or review shows that Franchise fees have been underpaid by four percent (4%) or more, Grantee shall reimburse Grantor the reasonable cost of the audit or review up to fifteen thousand dollars (\$15,000) within thirty (30) days of the Grantor's written demand for same. Records for audit/review purposes shall include without limitation:

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

3.7 Interest on Late Payments

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

3.8 Additional Commitments Not Franchise Fees

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

3.9 Costs of Publication

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

3.10 Tax Liability

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

3.11 Payment on Termination

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

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion. Grantor has vested the Commission with the administration of this Agreement and Grantee is expected to rely upon, look to, communicate with and comply with the decisions and orders of the Commissions, its agents and employees on all cable matters to which the Grantor has lawfully delegated the exercise of its authority under this Agreement to the Commission during such time that Grantor is a member of the Commission.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status, or physical or mental disability, or geographic location in the Franchise Area to the extent required by applicable law.

4.4 Filing of Rates and Charges

Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement.

4.5 Time Limits Strictly Construed

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, as defined in Section 4.7, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

4.6 Mid-Term Performance Evaluation Session

- (A) Grantor may hold a single performance evaluation session during the term of this Agreement. Grantor shall conduct such evaluation session.
- (B) Evaluation session shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- (C) Evaluation session shall deal with the Grantee's performance of the terms and conditions of this Agreement and compliance with state and federal laws and regulations.
- (D) As part of the performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Grantee, which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the number of miles and location of overhead and underground cable plant. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense,

reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.

- (E) During the evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation subject to Section 7.2.

4.7 **Force Majeure**

For the purposes of interpreting the requirements in this Agreement, Force Majeure shall mean: an event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, acts of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the control of Grantee to foresee or control.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 **Insurance Requirements**

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

5.2 **Deductibles and Self-Insured Retentions**

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

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

- (a) The Grantor, its officers, officials, employees, and duly authorized agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;
- (b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, and duly authorized agents shall be in excess of the Grantee's insurance and shall not contribute to it;
- (c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability; and
- (d) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the Grantor.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A-".

(C) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantor's ordinances and laws.

5.3 **Indemnification**

(A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the

Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 2.9 of this Agreement; and provided further Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the negligence or willful negligence of Grantor. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

- (1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;
 - (2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels or use of PEG funds by Grantor and/or DAP;
 - (3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and
 - (4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.
- (B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and

disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

5.4 Performance Bond

- (A) In addition to any other generally applicable bond or security fund obligations required by local ordinance, upon the Effective Date of this Agreement, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantors collectively with good and sufficient surety approved by the Commission, in the penal sum of Three Hundred Fifty Thousand Dollars (\$350,000.00), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Agreement. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the Grantee throughout the term of this Agreement.
- (B) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the Grantor. The bond shall be subject to the approval of the Grantor or the Commission as to its adequacy under the requirements of this Section. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Grantor.

SECTION 6. CUSTOMER SERVICE

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

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

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

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

- (B) Grantee shall provide Grantor with a sample Cable Services bill, on a monthly basis. Cable Services bills associated with complimentary services accounts provided under this Agreement shall satisfy this requirement.
- (C) Grantee shall at all times maintain and allow Grantor, with reasonable notice, access and the right to review a full and complete set of plans, Records and "as built" maps showing the approximate location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium consistent with Grantee's regular business practices. Grantor's review of the plans, Records, and as-built maps, provided for herein, shall occur at the Grantee's local office.
- (D) The ability for Grantor to obtain Records and information from Grantee is critical to the administration of this Agreement and the requirements herein. Therefore, Grantee's failure to comply with the requirements of this Section may result in fines as prescribed in Section 15.

7.2 Confidentiality

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

7.3 Copies of Federal and State Documents

Upon thirty (30) days of a request by Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its Parent Corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

7.4 Complaint File and Reports

- (A) Grantee shall keep an accurate and comprehensive Record of any and all complaints regarding the operation and performance of the Cable System within the Franchise Area, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those Records shall be retained for three (3) years, and remain available to Grantor during Normal Business Hours.
- (1) Grantee shall provide an executive summary report Quarterly (within forty-five (45) days of the end of the preceding Quarter) to Grantor, which shall include the following information:
- (a) Nature and type of customer complaints.
 - (b) Number, duration, general location and customer impact of unplanned service interruptions.
 - (c) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.
 - (d) Subscriber reports indicating the total number of Subscribers by service categories in such format as Grantee commonly prepares such reports, including Total Subscribers, Equivalent Billing Unit ("EBU") Reporting Number, Basic Tier Subscribers, and "Pay" Subscribers.
 - (e) Total disconnections and major reasons for those disconnections.
 - (f) Total number of service calls.
 - (g) Video programming changes (additions/deletions).
 - (h) A Telephone Response activity report provided in a manner consistent with the requirements of Attachment A showing Total Calls Answered within thirty (30) seconds, Average Hold Time, Percent of Calls Answered within thirty (30) Seconds, Percent of Abandoned Calls, and the Percent of Lines Available. A sample of an acceptable report pursuant to this Section is attached to this Agreement as Attachment B.

- (i) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.
- (2) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Attachment A. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

7.5 Inspection of Facilities

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

7.6 False Statements

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

7.7 Report Expense

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

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

- (A) Grantee's Cable System shall provide the widest diversity of Programming possible. Grantee shall provide at least the following broad categories of Programming to the extent such categories are reasonably available:
 - (1) Educational Programming.
 - (2) Sports.
 - (3) General entertainment (including movies).
 - (4) Children/family-oriented.
 - (5) Arts, culture and performing arts.
 - (6) Foreign language.
 - (7) Science/documentary.

- (8) Weather information.
 - (9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
 - (10) National, state, and local government affairs.
- (B) Grantee shall not delete any broad category of Programming within its control.

8.2 Parental Control Devices

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

8.3 Leased Access Channels

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

8.4 Continuity of Service

- (A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of Section 4.7 of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.
- (B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 Management and Control of Access Channels

- (A) Grantor may authorize a DAP to control and manage the use of any and all Access Centers provided by Grantee under this Agreement, including, without limitation, the operation of Access Channels. To the extent of such designation by Grantor, as between the DAP and Grantee, the DAP(s) shall have sole and exclusive responsibility for operating and managing such Access Centers. The Grantor or its designee may formulate rules for the operation of the Public Access Channel, consistent with this Agreement; such rules shall not be designed to control the content of Public Access Programming. Nothing herein shall prohibit the Grantor from authorizing itself to be a DAP.
- (B) Grantee shall cooperate with Grantor and DAPs in the use of the Cable System and Access Centers for the provision of PEG Access.
- (C) Except as provided in this Agreement, the Grantor shall allocate Access resources to DAPs only.

- (D) The Grantee shall, at Grantee's expense, provide connection, including all necessary terminal equipment for the transmission, of all PEG Access Channels required in this Agreement to and from the Grantee's Headend and the DAP headend as of the Effective Date of this Agreement. If the Grantor designates new Access providers, or if a current DAP moves its site or location at its own instigation after the Effective Date of this Agreement, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the PEG capital fee under Section 13 of this Agreement.

9.2 Channel Capacity and Use

- (A) Upon the Effective Date of this Agreement, all Access Channels provided for herein are administered by the Grantor or a DAP.
- (1) Existing Access Channels: Grantee shall provide five (5) standard definition ("SD") Downstream Channels for distribution on Grantee's Basic Service level of Public, Educational, and Governmental Access Programming. The Channel designations of those Channels as of the Effective Date of this Agreement shall be: Channel 11; Channel 21; Channel 23; Channel 28; and Channel 30. Grantee does not relinquish its ownership of or ultimate right of control over Cable System capacity or a Channel position by initially designating it for PEG Access use.
- (2) Throughout the term of this Agreement, Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, provide and maintain existing Fiber Upstream links to enable character generated, pre-recorded, and live cablecasts between the Origination Points provided pursuant in Section 9.8 and any DAP headend facility to enable the distribution of PEG Access Programming to Subscribers on PEG Channels.

9.3 Standard Definition Channels

Grantee shall carry all components of the SD Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The DAP shall be responsible for providing the Access Channel Signal in a SD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for costs associated with the transport and distribution of the SD Access Channel on its side of the Demarcation point.

9.4 High Definition Channels

- (A) Within one hundred twenty (120) days of the Effective Date of this Agreement, or a later date mutually agreed upon by Grantee and Grantor, following written notice by the Grantor, Grantee shall activate one (1) of the existing Access Channels, as designated by the Grantor, in high definition ("HD") format and simultaneously carry that SD Access Channel Signal provided under Section 9.2.
- (B) Grantee shall carry all components of the HD format Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The DAP shall be

responsible for the costs associated with providing the Access Channel Signal in an HD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for actual costs associated with the transport and distribution of the HD Access Channel on its side of the Demarcation point, except that Grantee may offset its actual costs in an amount not to exceed Eight Thousand Dollars (\$8,000) per PEG Channel against the PEG capital fee in Section 13 for the one-time purchase of network equipment associated with the provision of HD PEG Programming.

(C) Additional HD PEG Access Channels.

- (1) No earlier than twelve (12) months after the Effective Date of this Agreement, and upon one hundred sixty (160) days written notice from Grantor, which notice may be sent prior to the twelfth (12th) month after the Effective Date, Grantee shall provide and activate one (1) more of the existing SD Access Channels provided under Section 9.2, as designated by written notice of the Grantor, in an HD format, and simultaneously carry the SD Signal of that Channel for a total of two (2) HD format Access Channels.
- (2) No earlier than four (4) years following the Effective Date of this Agreement, and upon one hundred sixty (160) days written notice from Grantor, Grantee shall provide and activate one (1) more of the existing SD Access Channels provided under Section 9.2, as designated by written notice of the Grantor, in an HD format, and simultaneously carry the SD Signal of that Channel for a total of three (3) HD format Access Channels (subject to the conditions in Section 9.4.C (3) below). The maximum number of PEG Access Channels to be provided under this Agreement after year four (4), whether in HD or SD, shall be eight (8).
- (3) Activation of the third (3rd) HD Access Channel under Section 9.4.C (2) above shall be subject to the following conditions:
 - (a) At least eighty percent (80%) of the basic tier Channels (or its equivalent tier), excluding the Access Channels, are provided in HD;
 - (b) On the SD Access Channel identified by the Grantor to be simulcast as the third (3rd) HD Channel, at least eighty percent (80%) of the Programming carried on that Access Channel is produced in HD format for the three (3) month time period prior to the notice provided under this Section; and
 - (c) On the SD Access Channel identified by the Grantor to be simulcast as the third (3rd) HD Channel, not more than fifty percent (50%) of the Access Programming content carried on that SD Access Channels is character-generated only Programming for the three (3) month time period prior to the notice provided under this Section.

- (D) Grantee shall have no more than one hundred twenty (120) days from the date of the written notices in this Section 9.4 to fully activate the Access Channels from the

DAP to Subscribers in the HD format. Grantee shall verify HD Channel Signal delivery to Subscribers with the DAP. Upon request, Grantor shall provide documentation to confirm that the criteria set forth above has been met.

- (E) At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels, are carried in HD, all remaining SD Access Channel Signals will also be carried by Grantee in HD, at which time the SD Channels will be discontinued and the maximum number of PEG Access Channels shall be five (5) HD Channels.
- (F) The Grantor acknowledges that receipt of HD format Access Channels may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 9.4.

9.5 Quality of SD and HD Access Channel Signals.

The Grantee shall not unreasonably discriminate against SD and HD Access Channels with respect to accessibility, functionality and to the application of any applicable FCC Rules and Regulations, including without limitation Subpart K Channel Signal standards. With respect to Signal quality, Grantee shall not be required to carry an Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall distribute the Access Channel Signal without degradation. There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD Signals so long as the requirements of this Agreement are otherwise met. Grantee may implement HD carriage of PEG Access Channels in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a Signal quality for the Subscriber that is reasonably comparable and functionally equivalent to similar commercial HD Channels carried on the Cable System. In the event the Grantor believes and provides evidence that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner. Disputes under this Section 9.5 shall be addressed through the Franchise enforcement procedures set forth in Section 15. Upon reasonable written request by a DAP, Grantee shall verify that Access Channel Signal delivery to Subscribers is consistent with the requirements of this Section 9.5.

9.6 Relocation of Access Channels

Grantee shall make reasonable efforts to coordinate the cablecasting of all Programming on the Cable System on the same Channel designations as such Programming is currently cablecast in the Franchise Area as set forth in Section 9.2 herein. If at any time during the duration of this Agreement, Grantee reassigns the location of an Access Channel on its Cable System, Grantee shall provide at least sixty (60) days advance notice to the Grantor and the DAP (s). Grantee shall make "best efforts" in the event of Channel relocation, to place the Access Channels within reasonable proximity from the Channel location for network affiliate. Grantee shall also make "best efforts" to assign the HD PEG Access Channel a number near the other HD local broadcast stations if such Channel positions are not already taken, or if that is not possible, near HD news/public affairs Programming Channels if such Channel positions are not already taken, or if not possible, as reasonably close as available Channel numbering will allow. Grantee shall ensure that Subscribers are notified of such reassignment in accordance with the notice requirements in Attachment A that include its customer messaging function, for at least fifteen (15) days prior to the change and fifteen (15) days after the change. In conjunction with any

reassignment of any SD Access Channels, Grantee shall provide either (1) a reimbursement up to Five Thousand Dollars (\$5,000) to the Grantors collectively or the Commission for actual costs associated with the change, or (2) Nine Thousand Dollars (\$9,000) of in-kind airtime on advertiser supported Channels to the Grantors collectively or the Commission for the purpose of airing multiple thirty (30) second public service announcements produced by DAP. The Grantor shall cooperate with the DAP and Grantee for such airing. All reimbursement, whether in cash or in-kind, shall be paid or provided on a per-event basis, regardless of the number of Channels affected by the change.

9.7 Access Interconnections

The Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, maintain for the duration of this Agreement any and all existing Interconnections of Access Channels with contiguous Cable Systems owned by the Grantee as of the Effective Date of this Agreement, in order to receive from and deliver to the DAP's headend, via the Grantee's Headend, all the Access Channels required by this Agreement and originating by the Grantor or its designee.

9.8 Origination Points

- (A) The existing Origination Points listed in Attachment C I will remain available, at the expense of Grantee, for use by the DAP to enable the distribution of PEG Access Programming on the Cable System during the term of this Agreement.
- (B) The additional permanent Origination Points required by the Grantor or DAP listed in Attachment C II shall be provided by Grantee within ninety (90) days following receipt of written notice from Grantor, at the expense of Grantee.
- (C) The additional Origination Points that may be required by the Grantor or a DAP at the future public sites listed on Attachment C III, shall be provided by Grantee within ninety (90) days following receipt of written notice from Grantor, at the expense of Grantee, up to a distance of one hundred twenty-five (125) feet from Grantee's existing outside plant facilities provided that Grantee can reach the Demarcation point using (1) existing conduit, (2) conduit provided by Grantor, or (3) an aerial connection. Grantor shall be responsible for any additional actual connection costs beyond the one hundred twenty-five (125) feet. Such additional costs may be paid for from the PEG capital fee in Section 13.
- (D) Additional permanent Origination Points requested by the Grantor or DAP in writing shall be provided by Grantee as soon as reasonably possible at the expense of Grantor or DAP. Such costs may be paid for from the PEG capital fee in Section 13.
- (E) There shall be no charge to the Grantor, to the Commission, to any other DAP, or to any other Person for the use of the Upstream Capacity from the program origination locations described in this Section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

9.9 Changes 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 affects the Signal quality or transmission of Access services or Programming or requires Grantor to obtain new equipment in

order to be compatible with such change for purposes of transport of and delivery of any Access Channels (SD or HD), Grantee shall, at its own expense and free of charge to Grantor and DAP, take necessary technical steps or provide necessary technical assistance, including the purchase or acquisition and maintenance of all necessary equipment, and training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

9.10 Technical Quality

The Grantee shall maintain all Upstream and Downstream Access services, Programming and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including transmitters/receivers, associated cable and equipment in use upon the Effective Date of this Agreement, necessary to carry a quality Signal to and from Demarcation at Grantor's or DAP's facilities.

9.11 PEG Access Program Listings On Cable System's Digital Channel Guide

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow Grantor or the DAP to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Grantor or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service. The cost for this service may be funded by the PEG capital fee as set forth in Section 13.

SECTION 10. GENERAL STREET USE AND CONSTRUCTION

10.1 Construction

- (A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction and maintenance necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within the Public Rights of Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Except as permitted in Section 10.1(D), prior to performing any construction or maintenance in the Public Rights of Way, Grantee shall apply for, and obtain, all necessary permits. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits and give appropriate notices to any other Cable Operators, licensees or permittees of the Grantor, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.
- (B) All construction shall be performed in compliance with this Agreement, all applicable Grantor ordinances and codes, and any permit issued by the Grantor. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, Cable Operators, and permittees so as to reduce as far as possible the number of Street cuts.

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

10.2 Location of Facilities

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

10.3 Relocation

- (A) Relocation for Grantor.
 - (1) Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Public Rights of Way when the public convenience requires such change, and the expense thereof shall be paid by Grantee (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party). Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Public Rights of Way, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights of Way.
 - (2) If public funds, which Grantor received, are available to any other user of the Public Rights of Way (except for Grantor) for the purpose of defraying the cost of relocating or removing facilities and Grantee relocates or removes its facilities as required by Grantor under this Agreement, the Grantor shall notify Grantee of such funding and will consider reimbursing Grantee for such costs to the extent permitted or allowed by the funding

source or applicable state law and to the extent other users of the Public Rights of Way are provided such funds.

- (B) Relocation by Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the Public Right of Way or on any other property of the Grantor in the case of fire, disaster, or other emergency, provided that Grantor shall be responsible for any damage to Grantee's facilities as a result of Grantor's negligence or gross negligence in performing work under this Section. The Grantor shall attempt to provide notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action.
- (C) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee and such other Franchise holder shall determine how costs associated with the removal or relocation required herein shall be allocated.
- (D) Movement for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require the permit holder to pay the full amount in advance.

10.4 Restoration of Public Rights of Way

Whenever Grantee excavates, damages, or disturbs the surface of any Public Right of Way for any purpose, including but not limited to relocation or undergrounding as required in this Section, Grantee shall promptly restore the Public Right of Way to the satisfaction of the Grantor in accordance with applicable Grantor ordinances and codes and any permit issued by the Grantor. In the event there is no applicable ordinance, code or permit, Grantee shall promptly restore the Public Right of Way to at least its prior condition. Unless otherwise provided in any permit issued by Grantor, when any opening is made by Grantee in a hard surface pavement in any Public Right of Way, Grantee shall refill within twenty-four (24) hours. Grantee shall be responsible for restoration and maintenance of the Public Right of Way and its surface affected by the excavation in accordance with applicable regulations of the Grantor. Grantor may, after providing notice to Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, refill or repave any opening made by Grantee in the Public Rights of Way, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove and/or repair any work done by Grantee that, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. All excavations made by Grantee in the Public Rights of Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor.

10.5 Maintenance and Workmanship

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

10.6 Reservation of Grantor Public Rights of Way

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

10.7 Use of Conduits by Grantor

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights of Way and other public places without charge to Grantor, to the extent space therein or thereon is reasonably available and feasible without compromising the integrity of the Cable System or facility, and pursuant to all applicable ordinances and codes. For the purposes of this Section 10.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes or provision of services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor except as otherwise may be authorized by federal law.

10.8 Public Rights of Way Vacation

If any Public Right of Way or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Public Right of Way, Grantee shall, without delay or expense to Grantor, remove its facilities from such Public Right of Way, and restore, repair or reconstruct the Public Right of Way where such removal has occurred, and place the Public Right of Way in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee,

after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Public Right of Way, Grantor may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Grantor, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

10.9 Discontinuing Use of Facilities

Whenever Grantee intends to discontinue using any facility within the Public Rights of Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Public Rights of Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Rights of Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

10.10 Hazardous Substances

- (A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Public Rights of Way.
- (B) Grantee shall maintain and inspect its Cable System located in the Public Rights of Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Public Rights of Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.
- (C) Grantee agrees to forever indemnify the Grantor, its officers, boards, commissions, duly authorized agents, and employees, from and against any claims, costs and expenses of any kind, pursuant to and in accordance with applicable State or federal laws, rules and regulations, for the removal or remediation of any leaks, spills, contamination or residues of hazardous substances attributable to Grantee's Cable System in the Public Rights of Way.

10.11 Undergrounding of Cable

- (A) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines at no additional expense to the Grantor or Subscribers, to the extent permitted by law and applicable safety codes. Cable must be installed underground where: (1) all existing utility lines are placed underground, (2) statute, ordinance, policy, or other regulation of an individual

Grantor or Commission requires utility lines to be placed underground, or (3) all overhead utility lines are placed underground.

- (B) Related Cable System equipment such as pedestals must be placed in accordance with applicable code requirements and underground utility rules; provided, however, nothing in this Agreement shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, pedestals, power supplies, or other related equipment. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.
- (C) For purposes of this Section 10.11, "utility lines" and "utility wiring" does not include high voltage electric lines.

10.12 Tree Trimming

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

10.13 Construction, Building and Zoning Codes

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

10.14 Standards

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

SECTION 11. SYSTEM DESIGN AND STANDARDS

11.1 Subscriber Network

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

11.2 Test and Compliance Procedures

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

11.3 Standby Power

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

SECTION 12. INSTITUTIONAL NETWORK SERVICES.

12.1 History

Grantee has constructed and provided managed network services through an institutional network known as the Public Communications Network ("PCN"). The PCN was provided by the Grantee to the Grantor and the Grantor-authorized Users of the PCN, including public agencies/Schools, public universities, Pacific University, and the Virginia Garcia Health Centers, or their successor agencies ("PCN Users"). Grantor and Grantee have agreed to transition the PCN Users to the managed services provided by Grantee's Metro-E network ("Managed Services").

12.2 Grantee Responsible for Providing Institutional Network Service

- (A) Grantee or an Affiliate shall be fully responsible for and at all times shall operate, repair, maintain, manage and ensure provision of the Managed Services to all eligible PCN Users in accordance with the terms of the Master Services Agreement and all attachments and amendments, including the First Amendment

and the Rate Card, copies of which are attached hereto as Attachment D (collectively the "MSA") and the provisions of this Section 12. The parties agree that regardless of whether Grantee or an Affiliate provides the Managed Services, these Managed Services comprise an institutional network required under this Agreement as authorized by Section 611 of the Cable Act, and Grantee is ultimately responsible for the provision, operation and management of the Managed Services pursuant to the MSA. During the term of this Agreement, Grantee shall not terminate nor legally challenge the requirement to provide the Managed Services as provided in the MSA.

- (B) Should any designated Affiliate of the Grantee be unable or unwilling to provide the Managed Services described in this Section and the MSA, the parties agree that Grantee is fully and unconditionally responsible for continued provision of the Managed Services, including the assumption of responsibilities of PCN User contracts and the MSA.

12.3 Master Services Agreement

Subject to the transition plan set forth in Section 12.4 below, Grantee, or its Affiliate, shall at all times provide the Managed Services to PCN Users in accordance with an executed MSA. Grantee shall not offer, and shall not cause any Affiliate to offer, to any PCN User or eligible PCN User a Managed Services agreement other than the MSA. Where the MSA conflicts with any term or condition of this Agreement, the MSA shall prevail. If Grantor or any PCN User terminates in any manner the Managed Services provided under its MSA prior to the expiration date of this Agreement, such termination shall not affect any other rights or obligations under this Agreement or obligate Grantee to provide any other managed network or institutional network services to Grantor or any PCN User.

12.4 Transition/Upgrade to Master Services Agreement

- (A) Prior to any transition of a PCN User to services under the MSA, Grantee shall continue providing PCN services to PCN Users as agreed to under its existing Grantor-approved PCN User contract. Grantee or its Affiliate shall transition PCN Users to Managed Services under the MSA within twenty four (24) months from the Effective Date of this Agreement, but shall implement rates consistent with the Rate Card no later than January 1, 2016. This will include an upgrade of current Grantee supplied equipment at PCN User sites at no cost to PCN Users that sign contracts with a term greater than one (1) year.
- (B) Grantee shall develop a proposed transition plan that shall be provided to a current PCN User no later than three (3) months prior to the proposed transition date. The PCN User shall have thirty (30) days to review and comment on the proposed plan. Upon receipt of any comments from the PCN User on the proposed transition plan, Grantee shall confer with the PCN User and shall provide a mutually agreed upon transition plan to such User no later than thirty (30) days prior to the transition. If the PCN User does not comment on the proposed transition plan, the date of the transition shall be that set forth in the proposed plan.
- (C) For network cutover and transition work that will result in service outages, Grantee shall schedule the work between the hours of 12:00 a.m. and 5:00 a.m., or at another time agreed to in writing by the affected PCN Users. Grantee shall provide shorter windows for those cutover activities that can be performed in less than two

(2) hours. When scheduled work has the potential to use the full five (5) hour window, Grantee will clearly communicate this to affected PCN Users.

12.5 Breach of the Master Service Agreement

The parties intend that day-to-day issues regarding the provision of Managed Services shall be addressed and resolved with reference solely to the MSA. If there is a sustained and ongoing material failure by the Grantee, or its Affiliate, to provide the Managed Services pursuant to the terms of the MSA, such failure may be deemed a breach of this Agreement and shall be subject to the fines and procedures set forth in Section 15 of this Agreement. All other breaches of the MSA shall be subject to the remedies set forth in the MSA.

12.6 Grantor/User Meetings

Grantee and any Affiliate providing the Managed Services agree to meet at least once annually with the members of the Broadband Users Group ("BUG") or its successor organization, to discuss planned improvements or changes to the Managed Services provided under a MSA, and to hear the comments and concerns of the BUG.

12.7 Annual Report to Grantor

Within forty-five (45) days of the end of each calendar year, Grantee shall provide Grantor with a report listing each PCN User site under the MSA, along with that site's address and the level of service provided at that site.

12.8 Security

Grantee agrees to abide by all privacy and security requirements in applicable state and federal laws and regulations with respect to Managed Services provided for in this Section 12.

SECTION 13. PEG ACCESS AND PCN GRANT FUND

Grantee shall support the continued viability of Institutional Network and Public, Educational and Government (PEG) Programming, through the following funding:

13.1 Fund Payments

During the term of this Agreement, Grantee agrees to collect and pay Grantor Eighty Cents (\$0.80) per Subscriber, per month to support the Capital equipment and facility needs of PEG Access and the Grantor institutional network (previously known as the PCN), which funds shall be used in accordance with applicable federal law. Nothing in this Section 13 shall be viewed as a waiver of Grantor's rights to use the funds provided to Grantor in this Section 13.1 for any lawful purpose permitted under applicable federal law. Grantee shall make such payments Quarterly, following the Effective Date of this Agreement, for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days after the end of each Quarter.

13.2 Annual Grant Award Report

- (A) Grantor shall provide a report annually to the Grantee on the use of the funds provided by to the Grantor under this Section. Reports shall be submitted to the Grantee within one hundred twenty (120) days of the close of Grantor's fiscal year.

- (B) Grantee may reasonably review Records of the Grantor (and of the DAP) related to the use of funds in such reports to confirm that funds are used in accordance with federal law and this Agreement. Grantee will notify the Grantor in writing at least thirty (30) days prior to the date of such a review and identify the relevant financial Records of Grantor (and the DAP) that Grantee wants to review. The time period of the review shall be for the fund payments received no more than thirty-six (36) months prior to the date the Grantee notifies Grantor of its intent to perform a review. The Grantor shall make such Records available for inspection and copying during normal business hours at the office of the Grantor (or the DAP).

13.3 **PEG Access Not Franchise Fees**

- (A) Grantee agrees that financial support for the PEG Access and PCN Grant Fund, and all other Grantee PEG and PCN obligations set forth in this Agreement shall in no way modify or otherwise affect Grantee's obligations to pay Franchise fees to Grantor. Grantee agrees that although the sum of Franchise fee and the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any past, present or future Franchise fee payments under this Agreement so long as such fees are used in a manner consistent with this Agreement and federal law.
- (B) 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 Grantee has the right and ability to include Franchise fees and certain other commitments on the bills of cable Subscribers (47 C.F.R. Section 76.922).

SECTION 14. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

14.1 **Equivalent Service**

It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions, subject to federal law. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

14.2 **Service Availability**

- (A) Service to New Subdivisions. Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.
- (B) Grantee shall provide such service:
 - (1) With no line extension charge except as specifically authorized elsewhere in this Agreement.

- (2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor; and at nondiscriminatory monthly rates for residential Subscribers, subject to federal law.
- (C) Required Extensions of Service. Whenever the Grantee shall receive a request for service from at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such potential Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation of the Cable System.
- (D) Customer Charges for Extensions of Service. No potential Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a potential Subscriber's request to locate a cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to such Subscriber, or a density of less than ten (10) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and potential Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1320) cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscriber be paid in advance.
- (E) Enforcement. Failure to meet these standards shall subject Grantee to enforcement actions on a per Subscriber basis in Section 15.

14.3 Connection of Public Facilities

As a voluntary initiative, Grantee shall, at no cost to Grantor, provide one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to public use buildings, as designated by the Grantor, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, Grantee agrees to provide, at no cost, one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to all such future public buildings if the drop line to such building does not exceed one hundred and twenty five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one hundred twenty five (125) feet, including the cost of such excess labor and materials. Outlets of basic and digital economy tier (or its functional equivalent) Programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without

causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of Grantor.

SECTION 15. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

15.1 Procedure for Remedying Franchise Violations

- (A) If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.
- (B) The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall, with Grantee's consent, decide whether to accept, reject, or modify the remedial plan presented by the Grantee. Fines shall be assessed only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 15 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Grantee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation. Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:
- (1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection (E) below, or;
 - (2) Cure the violation, or;
 - (3) Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation, including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (C) below.
- (C) In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Grantor, who may waive all or part of the fines for such extended cure period in accordance with the criteria set forth in subsection (G) below.
- (D) In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (C), the Grantor shall set a hearing to determine what fines, if any, shall be applied.

- (E) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (B)(1) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.
- (F) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.
- (G) The fines set forth in Section 15.2 of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:
 - (1) Whether the violation was unintentional;
 - (2) The nature of the harm which resulted;
 - (3) Whether there is a history of prior violations of the same or other requirements;
 - (4) Whether there is a history of overall compliance, and/or;
 - (5) Whether the violation was voluntarily disclosed, admitted or cured.
- (H) If, after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:
 - (1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - (2) Establish the amount of fine set forth in Section 15.2, taking into consideration the criteria provided for in subsection (G) of this Section as appropriate in Grantor's discretion;
 - (3) Revoke this Agreement, and/or;
 - (4) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- (I) Fines shall not be imposed in an amount in excess of seventy-five thousand dollars (\$75,000) for the Grantors collectively within any twelve (12) month consecutive period.
- (J) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.

15.2 Fines

- (A) Failure to comply with provisions of this Agreement may result in injury to Grantor. Grantor and Grantee recognize it will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this Agreement are intended as a reasonable forecast of compensation to the Grantors collectively for the harm caused by violation of this Agreement, including but not limited to administrative expense, legal fees, publication of notices, and holding of a hearing or hearings as provided herein.
- (1) For violating aggregate performance telephone answering standards for a Quarterly measurement period:
- (a) \$10,000 for the first such violation;
 - (b) \$20,000 for the second such violation, unless the violation has been cured;
 - (c) \$30,000 for any and all subsequent violations, unless the violation has been cured;
- A cure is defined as meeting the Subscriber telephone answering standards for two (2) consecutive Quarterly measurement periods;
- (2) For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: \$250 per violation, per day;
- (3) For all other violations of this Agreement, except as otherwise provided herein, (for example, but not limited to, Record submissions under Section 7): \$250/day for each violation for each day the violation continues.
- (B) The fines set forth in Section 15.2(A) may be reduced at the sole discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of violation as reflected by one or more of the following factors:
- (a) whether the violation was unintentional;
 - (b) the nature of the harm which resulted;
 - (c) whether there is a history of prior violations of the same or other requirements;
 - (d) whether there is a history of overall compliance, and/or;
 - (e) whether the violation was voluntarily disclosed, admitted or cured.
- (C) Collection of Fines. The collection of fines by the Grantor shall in no respect affect:
- (1) Compensation owed to Subscribers; or

- (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
- (3) Other remedies available to the Grantors provided, however, that collection of fines shall be the exclusive remedy for the Grantors for the particular incident or for the particular time period for which it is imposed other than reasonable attorney fees and costs, if applicable. If the violation continues beyond the particular time period, Grantor shall have the right to pursue other remedies under this Agreement.

15.3 Revocation

- (A) Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 15.1, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- (B) At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.
- (C) Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.
- (D) Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

15.4 Relationship of Remedies

- (A) Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the

exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed except as otherwise provided in Section 15.2. By way of example and not limitation, the collection of fines by Grantor shall in no respect affect:

- (1) Refunds or credits owed to Subscribers; or
 - (2) Grantee's obligation to comply with the provisions of this Agreement or applicable law.
- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's performance bond, or the recovery of amounts under the insurance, indemnity or penalty provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for fines or otherwise, except as provided in Section 15.2; or an excuse of faithful performance by Grantee.

15.5 **Removal**

- (A) In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Rights of Way use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights of Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.
- (B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs and Grantor may recover the costs through the Performance Bond provided by Grantee.

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

- (A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:
- (1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment, or;
 - (2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the

receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

- (B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:
- (1) Grantor has approved the transfer of this Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and
 - (2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

15.7 No Recourse Against Grantor

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.

15.8 Nonenforcement By Grantor

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

SECTION 16. ABANDONMENT

16.1 Effect of Abandonment

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

16.2 What Constitutes Abandonment

- (A) The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:
- (1) The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.7; or
 - (2) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

SECTION 17. FRANCHISE RENEWAL AND TRANSFER

17.1 Renewal

- (A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
- (B) In addition to the procedures set forth in the Cable Act, the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

17.2 Transfer of Ownership or Control

- (A) The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.
- (B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a ten percent

(10%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to revocation unless and until the Grantor shall have consented thereto.

- (C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- (D) The Grantor shall render a final written decision on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.
- (E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- (F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.
- (G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.
- (H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 18. SEVERABILITY

If any Section, subsection, paragraph, term, or provision of this Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term, or provision directly involved in the controversy in which

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

SECTION 19. MISCELLANEOUS PROVISIONS

19.1 Preferential or Discriminatory Practices Prohibited

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

19.2 Dispute Resolution

- (A) The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the Grantor and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.
- (B) If the parties are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

19.3 Notices

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

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

with copy to:

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

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

Metropolitan Area Communications Commission
15201 NW Greenbrier Parkway, C-1
Beaverton, OR 97006

19.4 **Binding Effect**

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

19.5 **Authority to Amend**

This Agreement may be amended at any time by written agreement between the parties.

19.6 **Governing Law**

This Agreement shall be governed in all respects by the laws of the State of Oregon.

19.7 **Guarantee**

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

19.8 **Captions**

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

19.9 **Entire Agreement**

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

19.10 **Construction of Agreement**

The provisions of this Agreement shall be liberally construed to promote the public interest.

Agreed to this _____ day of _____, 2015

COMCAST OF OREGON II, INC.

METROPOLITAN AREA
COMMUNICATIONS COMMISSION

By: _____

Division President

By: _____

Administrator

Attachment A CUSTOMER SERVICE

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

1. Definitions

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

2. Telephone Availability

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

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

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

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

- (D) Under Normal Operating Conditions, calls received by the Grantee shall be answered within thirty (30) seconds during Normal Business Hours. The Grantee shall meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Franchise Area Subscribers, as measured on a cumulative Quarterly calendar basis. Measurement of this standard shall include all calls received by the Grantee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after thirty (30) seconds of call waiting. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.
- (E) Under Normal Operating Conditions, callers to the Grantee shall receive a busy signal no more than three (3%) percent of the time during any calendar Quarter.
- (F) Forty-five (45) days following the end of each Quarter, the Grantee shall report to Grantor, the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:
 - (1) Percentage of calls answered within thirty (30) seconds as set forth in subsection 2(D) of this Attachment A; and
 - (2) Percentage of time Subscribers received a busy signal when calling the Grantee's service center as set forth in Section 2(E) of this Attachment A.
- (G) At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change not less than thirty (30) days in advance.

3. **Installations and Service Appointments**

- (A) All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding/bonding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Grantee-supplied equipment and Cable Service.
- (B) The Standard Installation shall be performed within seven (7) business days of Subscriber request. Grantee shall meet this standard for ninety-five percent (95%)

of the Standard Installations it performs, as measured on a calendar quarter basis, excluding those requested by the Subscriber outside of the seven (7) day period.

- (C) Grantee shall provide Grantor with a report forty-five (45) days following the end of the Quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request.
- (D) At Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change not less than thirty (30) days in advance.
- (E) Grantee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Grantee's discretion, Grantee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.
 - (1) Grantee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.
 - (2) If Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.
- (F) Grantee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Grantee representative go to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a local business office within the Franchise Area. If requested by a mobility-limited Subscriber, the Grantee shall arrange for pickup and/or replacement of converters or other Grantee equipment at Subscriber's address or by a satisfactory equivalent.

4. **Service Interruptions and Outages**

- (A) Grantee shall promptly notify Grantor of any Significant Outage of the Cable Service.
- (B) Grantee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Grantee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after Grantor and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Grantee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m., which may interrupt

service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

- (C) Grantee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.
- (D) Under Normal Operating Conditions, Grantee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:
 - (1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.
 - (2) Grantee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or Grantor of a Cable Service problem.
- (E) Under Normal Operating Conditions, Grantee shall complete Service Calls within seventy-two (72) hours of the time Grantee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.
- (F) Grantee shall meet the standard in Section 4(E) of this Attachment A for ninety percent (90%) of the Service Calls it completes, as measured on a Quarterly basis.
- (G) Grantee shall provide Grantor with a report within forty-five (45) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period, not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section 4.G. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request. At the Grantee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. The Grantee shall notify the Grantor of such a change at least thirty (30) days in advance.
- (H) At Grantee's option, the above measurements may be changed for calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change at least thirty (30) days in advance.
- (I) Under Normal Operating Conditions, Grantee shall provide a credit upon Subscriber request when all Channels received by that Subscriber experience the loss of picture or sound for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Grantee to verify the problem if requested by Grantee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

- (J) Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Grantee shall issue a credit upon request to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit upon request to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Grantee, provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

5. **Subscriber Complaints Referred by Grantor**

Under Normal Operating Conditions, Grantee shall begin investigating Subscriber complaints referred by Grantor within twenty-four (24) hours. Grantee shall notify Grantor of those matters that require more than seventy-two (72) hours to resolve, but Grantee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. Grantor may require Grantee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Grantee shall inform Grantor in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section 5 of this Attachment A, "resolve" means that Grantee shall perform those actions, which, in the normal course of business, are necessary to investigate the Subscriber's complaint and advise the Subscriber of the results of that investigation.

6. **Billing**

- (A) Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Grantee shall without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes, PEG capital fees, and/or other governmental-imposed fees. Grantee shall maintain records of the date and place of mailing of bills.
- (B) Every Subscriber with a current account balance sending payment directly to Grantee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.
- (C) A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Section 6(B) of this Attachment A.
- (D) Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved, provided that:
 - (1) The Subscriber pays all undisputed charges;
 - (2) The Subscriber provides notification of the dispute to Grantee within five (5) days prior to the due date; and

- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
- (4) It shall be within Grantee's sole discretion to determine when the dispute has been resolved.
- (E) Under Normal Operating Conditions, Grantee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.
- (F) Grantee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Grantee.
- (G) Grantee shall forward a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to Grantor.
- (H) Grantee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Grantee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Grantee, the payment alternative may be limited.

7. Deposits, Refunds and Credits

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

- (E) Bills shall be considered paid when appropriate payment is received by Grantee or its authorized agent. Appropriate time considerations shall be included in Grantee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

8. Rates, Fees and Charges

- (A) Grantee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Grantee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Grantee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Grantee's equipment (for example, a dog chew).
- (B) Grantee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice. Such late fees are subject to ORS 646.649.
- (C) All of Grantee's rates and charges shall comply with applicable law. Grantee shall maintain a complete current schedule of rates and charges for Cable Services on file with the Grantor throughout the term of this Agreement.

9. Disconnection/Denial of Service

- (A) Grantee shall not terminate Cable Service for nonpayment of a delinquent account unless Grantee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.
- (B) Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Cable Service Interruption was reported by the Subscriber.
- (C) Nothing in these standards shall limit the right of Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Grantee's equipment, abusive and/or threatening behavior toward Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.
- (D) Charges for Cable Service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Grantee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Grantee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the

Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Grantee. For purposes of this subsection 9(D) of this Attachment A, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Grantee and to receive Cable Service or other multi-channel video service from another Person or entity.

10. Communications with Subscribers

- (A) All Grantee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Grantee shall wear a clearly visible identification card bearing their name and photograph. Grantee shall make reasonable efforts to account for all identification cards at all times. In addition, all Grantee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Grantee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Grantee vehicles shall have Grantee's logo plainly visible. The vehicles of those contractors and subcontractors working for Grantee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Grantee.
- (B) All contact with a Subscriber or potential Subscriber by a Person representing Grantee shall be conducted in a courteous manner.
- (C) Grantee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Grantee may be referred to Grantor. A copy of the annual notice required under this subsection 6.10(C) of this Attachment A will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers.
- (D) Grantee shall provide the name, mailing address, and phone number of Grantor on all Cable Service bills in accordance with 47 C.F.R. §76.952(a).
- (E) All notices identified in this Section 10 shall be by either:
 - (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
 - (2) A separate electronic notification.
- (F) Grantee shall provide reasonable notice to Subscribers and Grantor of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including Channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Grantee. If the change is not within Grantee's control, Grantee shall provide an explanation to Grantor of the reason and expected length of delay. Grantee shall provide a copy of the notice to Grantor including how and where the notice was given to Subscribers.
- (G) Grantee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Section 10(E), at least thirty (30) days prior

to making significant changes in the information required by this Section if within the control of Grantee:

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Grantee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address, and telephone number of Grantor, but with a notice advising the Subscriber to initially contact Grantee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;
- (7) The availability of a parental control device;
- (8) Grantee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of Grantee's office to which complaints may be reported.

A copy of notices required in this Section 10(G) will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of Grantee and as soon as possible if not with the control of Grantee.

- (H) Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.
- (I) Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific Channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.
- (J) Every notice of termination of Cable Service shall include the following information:
 - (1) The name and address of the Subscriber whose account is delinquent;
 - (2) The amount of the delinquency for all services billed;

- (3) The date by which payment is required in order to avoid termination of Cable Service; and
 - (4) The telephone number for Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.
- (K) Grantee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C. §551.

Attachment B
COMMISSION FRANCHISE STATISTICS - QUARTERLY REPORT
Due By: April 15, July 15, October 15 and January 15

To: _____ From: _____

TELEPHONE ANSWERING ACTIVITY	1 st Qtr Total	2 nd Qtr Total	3 rd Qtr Total	4 th Qtr Total
TOTAL CALLS ANS'D W/IN 30 SECS.				
AVERAGE HOLD TIME (measured in seconds)				
% ANS W/IN 30 SECS.				
% ABANDONED				
% LINES AVAILABLE				
SUBSCRIBERS				
TOTAL SUBSCRIBERS				
EBU REPORTING #				
HOMES PASSED				
DIGITAL (including EBUs)				
TOTAL TRAD. PAYS				
(HBO, Showtime, The Movie Channel, Cinemax)				
TOTAL DISCO's				
TECH DISCO's				
NON-PAY DISCO's				
CONSTRUCTION ACTIVITY				
NEW HOMES PASSED				
MARKETABLE PASSINGS				
TECHNICAL ACTIVITY				
SERVICE CALLS				
OUTAGES				
TOTAL TIME OUT FOR OUTAGES				
AVERAGE DURATION OF OUTAGES				

Equivalent Billing Unit: Commercial and bulk account revenues that may be adjusted below or above the standard (basic + expanded) cable rate are either counted as greater than a full subscriber or less than a full subscriber by dividing the actual revenues for bulk and commercial accounts by the standard cable rate. Example: If an apartment unit is being charged 50% off the standard rate and there are 500 customers, the EBU number is 250.

Confidential and Proprietary- Comcast
 Information is confidential under Oregon Public Records Law as it is a compilation of information which is not patented, which is known only to certain individuals within the company and is used in the business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it

**Attachment C I
EXISTING LIVE ORINATION SITES**

Beaverton City Hall
12725 SW Millikan Way
Beaverton, OR 97005

Beaverton Police/Courts Headquarters
4755 SW Griffith Drive
Beaverton, OR 97076

Washington County Public Services Bldg.
155 N. First Ave.
Hillsboro, OR 97123

Hillsboro Civic Center
150 E. Main St.
Hillsboro, OR 97123

Lake Oswego City Hall
380 "A" Ave
Lake Oswego, OR 97034

Tigard City Hall
13125 SW Hall Blvd
Tigard, OR 97223

Forest Grove Auditorium
1915 Main St.
Forest Grove, OR 97116

Pacific University
2043 College Way
Forest Grove, OR 97116

West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

West Linn-Wilsonville School District 3JT
22210 SW Stafford Road
Tualatin, OR 97062

Clackamas Community College
19600 Molalla Avenue
Oregon City, OR 97045

**- Attachment C II
New Public Meeting Sites -**

Cornelius City Hall
1310 N. Adair
Cornelius, OR 97113

PCC Rock Creek – Event Center
17705 NW Springville Rd.
Portland, OR 97229

Tualatin Hospital Auditorium
335 SE 8th Ave.
Hillsboro, OR 97123

Tualatin Valley Water District Board Room
1850 SW 170th Ave.
Beaverton, OR 97006

COH Brookwood Library Auditorium/Community Meeting Room
2850 Brookwood Parkway
Hillsboro, OR 97124

- New Community Event Sites -

COH Civic Center Courtyard
150 E. Main St.
Hillsboro, OR 97123

**Attachment C III
Future Public Sites –**

Beaverton Performing Arts Center

Tualatin Council Building

Attachment D
MASTER SERVICE AGREEMENT AND ATTACHMENTS

COMCAST ENTERPRISE SERVICES MASTER SERVICES AGREEMENT (MSA)

MSA ID#: OR-401816-ETorg	MSA Term: 60 months	Account Name: MACC
CUSTOMER INFORMATION		
Primary Contact: Bruce Crest		<u>Primary Contact Address Information</u>
Title:	Address 1:	
Phone: (503) 645-7365	Address 2:	
Cell:	City:	
Fax:	State:	
Email: bruce.crest@maccor.org	Zip Code:	

This Master Service Agreement ("Agreement") sets forth the terms and conditions under which Comcast Cable Communications Management, LLC and its operating affiliates ("Comcast") will provide communications and other services ("Services") to the above Customer. The Agreement consists of this fully executed Master Service Agreement Cover Page ("Cover Page"), the Enterprise Services General Terms and Conditions ("General Terms and Conditions"), any written amendments to the Agreement executed by both parties ("Amendments"), the Product-Specific Attachment for the applicable Services ("PSA(s)") and each Sales Order accepted hereunder ("Sales Orders"). In the event of any inconsistency among these documents, precedence will be as follows: (1) this Cover Page (2) General Terms and Conditions, (3) PSA(s), and (4) Sales Orders. This Agreement shall be legally binding when signed by both parties and shall continue in effect until the expiration date of any Service Term specified in a Sales Order referencing the Agreement, unless terminated earlier in accordance with the Agreement.

The Customer referenced above may submit Sales Orders to Comcast during the Term of this Agreement ("MSA Term"). After the expiration of the initial MSA Term, Comcast may continue to accept Sales Orders from Customer under the Agreement, or require the parties to execute a new MSA.

The Agreement shall terminate in accordance with the General Terms and Conditions. The General Terms and Conditions and PSAs are located at <http://business.comcast.com/enterprise-terms-of-service/index.aspx> (or any successor URL). Use of the Services is also subject to the High-Speed Internet for Business Acceptable Use Policy ("AUP") located at <http://business.comcast.com/customer-notifications/acceptable-use-policy> (or any successor URL), and the High-Speed Internet for Business Privacy Policy ("Privacy Policy") located at <http://business.comcast.com/customer-notifications/customer-privacy-statement> (or any successor URL). Comcast may update the General Terms and Conditions, PSAs, AUP and Privacy Policy from time to time upon posting to the Comcast website.

Services are only available to commercial customers in wired and serviceable areas in participating Comcast systems (and may not be transferred). Minimum Service Terms are required for most Services and early termination fees may apply. Service Terms are identified in each Sales Order, and early termination fees are identified in the applicable Product Specific Attachments.

BY SIGNING BELOW, CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

CUSTOMER SIGNATURE (by authorized representative)	
Signature:	
Name:	
Title:	
Date:	
COMCAST USE ONLY (by authorized representative)	
Signature:	Sales Rep: Eric Torgeson
Name:	Sales Rep Email: eric_torgeson@cable.comcast.com
Title:	Region: Portland
Date:	Division: West

FIRST AMENDMENT

to

Comcast Enterprise Services Master Services Agreement No. OR-401816-ETorg

This First Amendment ("Amendment") is concurrently entered into on _____ ("Effective Date") in conjunction with the Comcast Enterprise Services Master Services Agreement No. OR-401816-etorg ("Agreement") by and between Comcast Cable Communications Management, LLC ("Comcast") and _____ ("Customer"). In the event of an explicit conflict between this Amendment and the Agreement, the terms and conditions of this Amendment shall take precedence in the interpretation of the explicit matter in question. Unless otherwise set forth herein, all capitalized terms set forth herein shall have the same meaning as set forth in the Agreement.

Whereas, the Parties desire to amend the Agreement by this writing to reflect the amended or additional terms and conditions to which the Parties have agreed to;

Now, therefore, in consideration of the mutual covenants, promises, and consideration set forth in this Amendment, the Parties agree as follows:

1. The Definition for "Confidential Information" as set forth in the Enterprise Services General Terms and Conditions ("General Terms and Conditions") is hereby modified to read as follows:

"Confidential Information: To the extent permitted by law, all information regarding either Party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential" or which reasonably should be known by the receiving party to be proprietary or confidential information. Confidential Information shall not include, even if marked, the Agreement, rate information, discount information, network operation information (about outages and planned maintenance) and invoices, as well as the Parties' communications regarding such items."

2. Article 1 of the General Terms and Conditions is hereby modified to read as follows:

"Comcast may change or modify its acceptable use policies and privacy policies from time to time ("Revisions") by posting such Revisions to the Comcast Website. The Revisions are effective upon posting to the Website. Customer will receive notice of the Revisions in the next applicable monthly invoice. Customer shall have sixty (60) calendar days from the invoice notice of such Revisions to provide Comcast with written notice that the Revisions adversely affect Customer's use of the Service(s). If after notice Comcast is unable to reasonably mitigate the Revision's impact on such Services, then Customer may terminate the impacted Service(s) without further obligation to Comcast beyond the termination date, including Termination Charges, if any. This shall be Customer's sole and exclusive remedy."

3. Article 9.1 of the General Terms and Conditions is hereby modified to read as follows:

"Disclosure and Use. To the extent permitted by law, all Confidential Information disclosed by either Party shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using the Services, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each Party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care. Notwithstanding anything to the contrary in this Agreement, all of Customer's obligations under this Agreement are subject to the Oregon Public Records Laws, ORS 192.410-192.505. Customer may disclose Confidential Information to the extent disclosure is required by Oregon Public Records Laws, court order or government order."

4. Article 9.3 of the General Terms and Conditions is hereby modified to read as follows:

“**Publicity.** The Agreement provides no right to use any Party’s or its affiliates’ trademarks, service marks, or trade names, or to otherwise refer to the other Party in any marketing, promotional, or advertising materials or activities. Neither Party shall issue any publication or press release relating to the terms and conditions of any contractual relationship between Comcast and Customer, except as permitted by the Agreement or otherwise consented to in writing by the other Party.”

5. Article 11.15 is hereby added to the General Terms and Conditions to read as follows:

“**Non-Appropriation of Funds.** In the event Customer is unable to secure funds or if funds are not appropriated by the applicable local or state agency for performance during any fiscal period of the term of a Sales Order, such Sales Order may be terminated (“Termination”) by the Customer upon written notification to Comcast, to include a copy of the non-appropriation of funds notification, as of the beginning of the fiscal year for which funds are not appropriated or otherwise secured. In the event Customer terminates a Sales Order under this “Non-Appropriation of Funds” provision, neither Party shall have any further obligation to the other Party, including any applicable Termination Charges (whether in the PSA(s) or Sales Orders) excepting Customer shall be responsible for the payment of any and all unpaid charges for Services rendered and for Comcast equipment, and, any and all unpaid construction charges accounted for in the applicable Sales Order, all of which are to be paid by Customer to Company within thirty (30) days from the Company provided invoice date. Customer hereby agrees to notify Comcast in writing as soon as it has knowledge that funds are not available for the continuation of the performance as set forth in the Sales Order, for any fiscal period under the applicable Sales Order Term.”

6. The “Service Level Agreement (SLA)” provision set forth in Schedule A-2 of the Comcast Enterprise Services Product-Specific Attachment for Ethernet Transport Services (“ETS PSA”) is hereby modified to read as follows:

“Company’s liability for any Service Interruption (individually or collectively, “Liability”), shall be limited to the amounts set forth in the Tables below. For the purposes of calculating credit for any such Liability, the Liability period begins when the Customer reports to Company an interruption in the portion of the Service, provided that the Liability is reported by Customer during the duration of the Liability, and, a trouble ticket is opened; the Liability shall be deemed resolved upon closing of the same trouble ticket or the termination of the interruption, if sooner, less any time Company is awaiting additional information or premises testing from the Customer. In no event shall the total amount of credit issued to Customer’s account on a per-month basis exceed 50% of the total monthly recurring charge (“MRC”) associated with the impacted portion of the Service set forth in the Sales Order. Service Interruptions will not be aggregated for purposes of determining credit allowances. To qualify, Customer must request the Credit from Comcast within thirty (30) days of the interruption. Customer will not be entitled to any additional credits for Service Interruptions. Comcast shall not be liable for any Liability caused by force majeure events, Planned Service Interruptions or Customer actions, omission or equipment. The foregoing notwithstanding, in accordance with this SLA provision, upon Customer opening a trouble ticket, Comcast will provide credits for any verifiable degradation in Services, (to include non-performance against transit delay, jitter, or packet loss).”

7. Paragraph 2b of the SLA is hereby modified to read as follows:

“b. **Maintenance.** Comcast’s standard maintenance window for On-Net Services is Sunday to Saturday from 12:00am to 6:00am local time. Scheduled maintenance for On-Net Services is performed during the maintenance window and will be coordinated between Comcast and the Customer. Comcast provides a minimum forty eight (48) hour notice for non-service impacting maintenance. Comcast provides a minimum of seven (7) days’ notice for On-Net Service impacting planned maintenance. Emergency maintenance is performed as needed without advance notice to Customer. Maintenance for Off-Net Services shall be performed in accordance with the applicable third party service provider rules. Therefore, Off-Net Service may be performed without advance notice to Customer.”

8. The following provision is hereby added and incorporated into the ETS PSA to read as follows:

“Customer may elect to reduce the contracted bandwidth at up to 5% of the total Service Location(s), or, terminate Services at up to three (3) total Service Location(s), whichever is greater, without incurring any Termination Charges, penalties or price modifications.”

9. The rates set forth in Exhibit A to this First Amendment shall apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the day and year written below and the persons signing covenant and warrant that they are duly authorized to sign for and on behalf of the respective Parties. Except as otherwise modified by this Amendment, all other terms and conditions set forth in the Agreement shall remain in full force and effect.

Comcast Cable Communications Management, LLC

Signature:		Signature:	
Printed Name:		Printed Name:	
Title:		Title:	
Date:		Date:	

Ethernet Network Services - Port and Bandwidth						
Bandwidth	1 Year		3 Year		5 Year	
	Monthly	Install	Monthly	Install	Monthly	Install
10Mbps	\$300.00	\$1,500.00	\$300.00	\$0.00	\$300.00	\$0.00
100Mbps	\$621.60	\$1,500.00	\$480.00	\$0.00	\$360.00	\$0.00
200Mbps	\$884.10	\$1,500.00	\$684.00	\$0.00	\$513.00	\$0.00
300Mbps	\$957.95	\$1,500.00	\$741.00	\$0.00	\$555.75	\$0.00
400Mbps	\$1,027.95	\$1,500.00	\$795.00	\$0.00	\$596.25	\$0.00
500Mbps	\$1,101.80	\$1,500.00	\$852.00	\$0.00	\$639.00	\$0.00
600Mbps	\$1,171.80	\$1,500.00	\$906.00	\$0.00	\$679.50	\$0.00
700Mbps	\$1,245.65	\$1,500.00	\$963.00	\$0.00	\$722.25	\$0.00
800Mbps	\$1,315.65	\$1,500.00	\$1,017.00	\$0.00	\$762.75	\$0.00
900Mbps	\$1,389.85	\$1,500.00	\$1,074.00	\$0.00	\$805.50	\$0.00
1Gbps	\$1,459.85	\$1,500.00	\$1,128.00	\$0.00	\$846.00	\$0.00
2Gbps	\$2,067.10	\$1,500.00	\$1,587.00	\$0.00	\$1,190.25	\$0.00
3Gbps	\$2,374.05	\$1,500.00	\$1,824.00	\$0.00	\$1,368.00	\$0.00
4Gbps	\$2,755.20	\$1,500.00	\$2,118.00	\$0.00	\$1,588.50	\$0.00
5Gbps	\$3,021.90	\$1,500.00	\$2,331.00	\$0.00	\$1,748.25	\$0.00
6Gbps	\$3,225.95	\$1,500.00	\$2,481.00	\$0.00	\$1,860.75	\$0.00
7Gbps	\$3,749.20	\$1,500.00	\$2,892.00	\$0.00	\$2,169.00	\$0.00
8Gbps	\$4,647.30	\$1,500.00	\$3,585.00	\$0.00	\$2,693.75	\$0.00
9Gbps	\$5,763.45	\$1,500.00	\$4,446.00	\$0.00	\$3,334.50	\$0.00
10Gbps	\$7,935.20	\$1,500.00	\$6,114.00	\$0.00	\$4,585.50	\$0.00

All Pricing Stated Will Include Premium Service Levels For All Circuits

Ethernet Virtual Private Line - Spoke - Port and Bandwidth						
Bandwidth	1 Year		3 Year		5 Year	
	Monthly	Install	Monthly	Install	Monthly	Install
10Mbps	\$300.00	\$1,500.00	\$300.00	\$0.00	\$300.00	\$0.00
100Mbps	\$621.60	\$1,500.00	\$480.00	\$0.00	\$360.00	\$0.00
200Mbps	\$884.10	\$1,500.00	\$684.00	\$0.00	\$513.00	\$0.00
300Mbps	\$957.95	\$1,500.00	\$741.00	\$0.00	\$555.75	\$0.00
400Mbps	\$1,027.95	\$1,500.00	\$795.00	\$0.00	\$596.25	\$0.00
500Mbps	\$1,101.80	\$1,500.00	\$852.00	\$0.00	\$639.00	\$0.00
600Mbps	\$1,171.80	\$1,500.00	\$906.00	\$0.00	\$679.50	\$0.00
700Mbps	\$1,245.65	\$1,500.00	\$963.00	\$0.00	\$722.25	\$0.00
800Mbps	\$1,315.65	\$1,500.00	\$1,017.00	\$0.00	\$762.75	\$0.00
900Mbps	\$1,389.85	\$1,500.00	\$1,074.00	\$0.00	\$805.50	\$0.00
1Gbps	\$1,459.85	\$1,500.00	\$1,128.00	\$0.00	\$846.00	\$0.00
2Gbps	\$2,067.10	\$1,500.00	\$1,587.00	\$0.00	\$1,190.25	\$0.00
3Gbps	\$2,374.05	\$1,500.00	\$1,824.00	\$0.00	\$1,368.00	\$0.00
4Gbps	\$2,755.20	\$1,500.00	\$2,118.00	\$0.00	\$1,588.50	\$0.00
5Gbps	\$3,021.90	\$1,500.00	\$2,331.00	\$0.00	\$1,748.25	\$0.00
6Gbps	\$3,225.95	\$1,500.00	\$2,481.00	\$0.00	\$1,860.75	\$0.00
7Gbps	\$3,749.20	\$1,500.00	\$2,892.00	\$0.00	\$2,169.00	\$0.00
8Gbps	\$4,647.30	\$1,500.00	\$3,585.00	\$0.00	\$2,693.75	\$0.00
9Gbps	\$5,763.45	\$1,500.00	\$4,446.00	\$0.00	\$3,334.50	\$0.00
10Gbps	\$7,935.20	\$1,500.00	\$6,114.00	\$0.00	\$4,585.50	\$0.00

Ethernet Virtual Private Line - Hub Site - Port only						
Port Speed	1 Year		3 Year		5 Year	
	Monthly	Install	Monthly	Install	Monthly	Install
10/100Mbps	\$100.00	\$1,500.00	\$75.00	\$0.00	\$50.00	\$0.00
1Gbps	\$250.25	\$1,500.00	\$195.00	\$0.00	\$146.25	\$0.00
10Gbps	\$787.50	\$1,500.00	\$600.00	\$0.00	\$450.00	\$0.00

Ethernet Private Line - 2 Ports and Bandwidth						
	1 Year		3 Year		5 Year	
	Monthly	Install	Monthly	Install	Monthly	Install

Exhibit A to Attachment D (II)

Bandwidth	Monthly	Install	Monthly	Install	Monthly	Install
10Mbps	\$400.00	\$1,500.00	\$350.00	\$0.00	\$300.00	\$0.00
100Mbps	\$625.10	\$1,500.00	\$483.00	\$0.00	\$362.25	\$0.00
200Mbps	\$1,052.80	\$1,500.00	\$816.00	\$0.00	\$612.00	\$0.00
300Mbps	\$1,095.50	\$1,500.00	\$849.00	\$0.00	\$636.75	\$0.00
400Mbps	\$1,138.20	\$1,500.00	\$882.00	\$0.00	\$661.50	\$0.00
500Mbps	\$1,180.90	\$1,500.00	\$915.00	\$0.00	\$686.25	\$0.00
600Mbps	\$1,223.95	\$1,500.00	\$948.00	\$0.00	\$711.00	\$0.00
700Mbps	\$1,266.65	\$1,500.00	\$981.00	\$0.00	\$735.75	\$0.00
800Mbps	\$1,309.35	\$1,500.00	\$1,014.00	\$0.00	\$760.50	\$0.00
900Mbps	\$1,352.05	\$1,500.00	\$1,047.00	\$0.00	\$785.25	\$0.00
1Gbps	\$1,398.95	\$1,500.00	\$1,083.00	\$0.00	\$812.25	\$0.00
2Gbps	\$2,819.60	\$1,500.00	\$2,160.00	\$0.00	\$1,620.00	\$0.00
3Gbps	\$3,192.70	\$1,500.00	\$2,448.00	\$0.00	\$1,836.00	\$0.00
4Gbps	\$3,675.00	\$1,500.00	\$2,820.00	\$0.00	\$2,115.00	\$0.00
5Gbps	\$4,347.70	\$1,500.00	\$3,339.00	\$0.00	\$2,504.25	\$0.00
6Gbps	\$5,288.85	\$1,500.00	\$4,065.00	\$0.00	\$3,048.75	\$0.00
7Gbps	\$6,218.45	\$1,500.00	\$4,782.00	\$0.00	\$3,336.50	\$0.00
8Gbps	\$7,194.60	\$1,500.00	\$5,535.00	\$0.00	\$4,151.25	\$0.00
9Gbps	\$8,205.40	\$1,500.00	\$6,315.00	\$0.00	\$4,736.25	\$0.00
10Gbps	\$9,135.00	\$1,500.00	\$7,032.00	\$0.00	\$5,274.00	\$0.00
Ethernet Private Line - 2 Ports and Bandwidth via EoHFC (Coax)						
4Mbps	\$293.30	\$1,000.00	\$266.00	\$500.00	\$239.40	\$0.00
6Mbps	\$363.60	\$1,000.00	\$329.00	\$500.00	\$296.10	\$0.00
8Mbps	\$400.00	\$1,000.00	\$350.00	\$500.00	\$300.00	\$0.00

All Pricing Stated Will Include Premium Service Levels For All Circuits

NOTES:

- ◆ No charge for installation and construction for current PCN lit sites as of 3/1/15 if 3 or 5 year terms are selected for all sites per contract.
- ◆ Installation charge required for current PCN sites as of 3/1/15 with selection of 1 year term
- ◆ For new sites not identified in current PCN involving, the following installation charges apply:
 - 10 to 500 Mb --
 - Installation charges will be on an individual case basis
 - 500 Mb to 1000 Mb --
 - no charge for construction costs for under 500 ft.
 - 50% of construction costs charged for 500-1000 ft.
 - 100% of construction costs for 1000 ft or more.
 - 1000 Mb or greater bandwidth --
 - no construction costs for under 1000 ft.
 - 50% of construction costs charged for greater than 1000 ft.
- ◆ All Ethernet Network Interfaces included in the pricing tables are commensurate with subscribed bandwidth. (e.g. 1000M EVC w/ 1000M ENI)
- ◆ By MEF design, an Ethernet Virtual Private Line's service multiplexed hub bandwidth equals the aggregate of its remote sites
- ◆ Selection of an upgraded Ethernet Network Interface adds the Monthly Rate listed below to the MRC for any given Interface

Default Physical Interface	Upgraded Physical Interface	Additional Monthly Rate		
		1 year	3 year	5 year
100BaseTX	1000BaseT 1000BaseSX 1000BaseLX	\$192.50	\$150.00	\$112.50
1000BaseT 1000BaseSX 1000BaseLX	10GBaseSR 10GBaseLR	\$537.25	\$405.00	\$303.75

- ◆ Pricing as proposed above requires purchase of all sites and does not include any local, state or federal taxes, fees or other charges. Individual sites may be purchased separately but will require a new pricing proposal. Tax exemption certificates
- ◆ Taxes, Surcharges, and Other Similar Charges (Miscellaneous)
- ◆ Description: taxes, surcharges, and other similar charges refer generally to additional fees that are a necessary component of the cost of a product or service.
- ◆ Eligibility: Federal taxes, state taxes, and other similar, reasonable charges incurred in obtaining eligible Telecommunications Services, Internet Access, and Internal Connections are eligible. Such eligible charges include reasonable administrative recovery by a service provider for participation in the Universal Service Support mechanism. Administrative cost added by parties other than the service provider, are not eligible.

**COMCAST ENTERPRISE SERVICES
GENERAL TERMS AND CONDITIONS**

VERSION: 1.2

DEFINITIONS

Affiliate: Any entity that controls, is controlled by or is under common control with Comcast.

Agreement, Enterprise Services Master Services Agreement or MSA: Consists of the Enterprise Master Services Agreement Cover Page executed by the Customer and accepted by Comcast, these Enterprise Services General Terms and Conditions ("General Terms and Conditions"), the then current Product-Specific Attachment for each ordered Service ("PSA"), any written amendments to the Agreement executed by both Parties including any supplemental terms and conditions ("Amendment(s)"), and each Sales Order accepted by Comcast under the Agreement.

Amendment(s): Any written amendment to the Agreement, executed by both Parties, including any supplemental terms and conditions.

Comcast: The operating company affiliate or subsidiary of Comcast Cable Communications Management, LLC that provides the Services under the Enterprise Services Master Service Agreement. References to Comcast in the Limitation of Liability, Disclaimer of Warranties and Indemnification Articles shall also include its directors, officers, employees, agents, Affiliates, suppliers, licensors, successors, and assigns, as the case may be.

Comcast Website or Website: The Comcast website where the General Terms and Conditions, PSAs and other Comcast security and privacy policies applicable to the Agreement will be posted. The current URL for the Website is <http://business.comcast.com/enterprise-terms-of-service>. Comcast may update the Website documents and/or URL from time to time.

Comcast Equipment: Any and all facilities, equipment or devices provided by Comcast or its authorized contractors at the Service Location(s) that are used to deliver any of the Services including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks. Notwithstanding the above, inside telephone wiring within the Service Location, whether or not installed by Comcast, shall not be considered Comcast Equipment.

Confidential Information: All information regarding either Party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential," or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, the Agreement, all Licensed

Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the Parties' communications regarding such items.

Customer: The company, corporation, or other entity named on the Enterprise Services Master Service Agreement Cover Page and a Sales Order.

Customer-Provided Equipment (CE): Any and all facilities, equipment or devices supplied by Customer for use in connection with the Services.

Demarcation Point: The point of interconnection between the Network and Customer's provided equipment located at a Service Location. In some cases the Demarcation Point shall be the User to Network Interface (UNI) port on Comcast Equipment at a Service Location.

General Terms and Conditions: These Enterprise Services General Terms and Conditions.

Licensed Software: Computer software or code provided by Comcast or required to use the Services, including without limitation, associated documentation, and all updates thereto.

Network: Consists of the Comcast Equipment, facilities, fiber optic cable associated with electronics and other equipment used to provide the Services.

Party: A reference to Comcast or the Customer; and in the plural, a reference to both companies.

Product Specific Attachment(s) (PSA): The additional terms and conditions applicable to Services ordered by Customer under the Agreement.

Revenue Commitment: A commitment by Customer to purchase a minimum volume of Service during an agreed term, as set forth in a Sales Order.

Sales Order: A request for Comcast to provide the Services to a Service Location(s) submitted by Customer to Comcast (a) on a then-current Comcast form designated for that purpose or (b) if available, through a Comcast electronic order processing system designated for that purpose.

Service(s): A service provided by Comcast pursuant to a Sales Order. All Services provided under the Agreement are for commercial use only. Services available under this Agreement are identified on the Website.

Attachment D (III)

Service Commencement Date: The date(s) on which Comcast first makes Service available for use by Customer. A single Sales Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.

Service Location(s): The Customer location(s) where Comcast provides the Services, to the extent the Customer owns, leases, or otherwise controls such location(s).

Service Term: The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in a Sales Order.

Tariff: A federal or state Comcast tariff and the successor documents of general applicability that replace such tariff in the event of detariffing.

Termination Charges: Charges that may be imposed by Comcast if, prior to the end of the applicable Service Term (a) Comcast terminates Services for cause or (b) Customer terminates Services without cause. Termination Charges are as set forth in each PSA, and are in addition to any other rights and remedies under the Agreement.

ARTICLE 1. CHANGES TO THE AGREEMENT
TERMS

Comcast may change or modify the Agreement, and any related policies from time to time ("Revisions") by posting such Revisions to the Comcast Website. The Revisions are effective upon posting to the Website. Customer will receive notice of the Revisions in the next applicable monthly invoice. Customer shall have thirty (30) calendar days from the invoice notice of such Revisions to provide Comcast with written notice that the Revisions adversely affect Customer's use of the Service(s). If after notice Comcast is able to verify such adverse affect but is unable to reasonably mitigate the Revision's impact on such Services, then Customer may terminate the impacted Service(s) without further obligation to Comcast beyond the termination date, including Termination Charges, if any. This shall be Customer's sole and exclusive remedy.

ARTICLE 2. DELIVERY OF SERVICE

2.1 Orders. Customer shall submit to Comcast a properly completed Sales Order to initiate Service to a Service Location(s). A Sales Order shall become binding on the Parties when (i) it is specifically accepted by Comcast either electronically or in writing, (ii) Comcast begins providing the Service described in the Sales Order or (iii) Comcast begins Custom Installation (as defined in Article 2.7) for delivery of the Services described in the Sales Order, whichever is earlier. When a Sales Order becomes effective it shall be deemed part of, and shall be subject to, the Agreement.

2.2 Access. In order to deliver certain Services to Customer, Comcast may require access, right-of-way, conduit, and/or common room space ("Access"), both within and/or outside each Service Location. Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and

maintenance of the Comcast Equipment used to provide the Services within the Service Location(s). Customer shall be responsible for securing, and maintaining on an initial and ongoing basis during the applicable Service Term and/or Renewal Term, such Access within each Service Location unless Comcast has secured such access prior to this Agreement. In the event that Customer fails to secure or maintain such Access within a particular Service Location, Comcast may cancel or terminate Service at such particular Service Location, without further liability, upon written notice to Customer. In such event, if Comcast has incurred any costs or expense in installing or preparing to install the Service that it otherwise would not have incurred, a charge equal to those costs and expenses shall apply to Customer's final invoice for that particular Service Location. If Comcast is unable to secure or maintain Access outside a particular Service Location, which Access is needed to provide Services to such Service Location, Customer or Comcast may cancel or terminate Service at such particular Service Location, without further liability beyond the termination date, upon a minimum thirty (30) days' prior written notice to the other party. In such event, if Comcast has incurred any costs or expense in installing or preparing to install the Service that it otherwise would not have incurred, Comcast shall be responsible for such costs or expenses. Any other failure on the part of Customer to be ready to receive Service, or any refusal on the part of Customer to receive Service, shall not relieve Customer of its obligation to pay charges for any Service that is otherwise available for use.

2.3 Hazardous Materials. If the presence of asbestos or other hazardous materials exists or is detected at a Service Location or within the building where the Service Location is located, Comcast may immediately stop providing Services until such a time as such materials are removed. Alternatively Customer may notify Comcast to install the applicable portion of the Service in areas of any such Service Location not containing such hazardous material. Any additional expense incurred by Comcast as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer. Customer shall use reasonable efforts to maintain its property and Service Locations in a manner that preserves the integrity of the Services.

2.4 Comcast Equipment. At any time Comcast may remove or change Comcast Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Comcast Equipment or permit others to do so, and shall not use the Comcast Equipment for any purpose other than that authorized by the Agreement. Comcast shall maintain Comcast Equipment in good operating condition during the term of this Agreement; provided, however, that such maintenance shall be at Comcast's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the Comcast Equipment. Customer is responsible for damage to, or loss of, Comcast Equipment caused by its acts or omissions, and its noncompliance with this Article, or by fire, theft or other casualty at the Service Location(s), unless caused by the gross negligence or willful misconduct of Comcast.

2.5 Ownership, Impairment and Removal of Network.

The Network is and shall remain the property of Comcast regardless of whether installed within or upon the Service Location(s) and whether installed overhead, above, or underground and shall not be considered a fixture or an addition to the land or the Service Location(s) located thereon. Customer agrees that it shall take no action that directly or indirectly impairs Comcast's title to the Network, or any portion thereof, or exposes Comcast to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Nothing in this Agreement shall preclude Comcast from using the Network for services provided to other Comcast customers. For a period of twelve (12) months following Comcast's discontinuance of Service to the Service Location(s), Comcast retains the right to remove the Network including, but not limited to, that portion of the Network that is located in the Service Location. To the extent Comcast removes such portion of the Network it shall be responsible for returning the Service Location(s) to its prior condition, reasonable wear and tear excepted.

2.6 Customer-Provided Equipment ("CE"). Comcast shall have no obligation to install, operate, or maintain CE. Customer shall have sole responsibility for providing maintenance, repair, operation and replacement of all CE, inside telephone wiring and other Customer equipment and facilities on the Customer's side of the Demarcation Point. Neither Comcast nor its employees, Affiliates, agents or contractors will be liable for any damage, loss, or destruction to CE, unless caused by the gross negligence or willful misconduct of Comcast. CE shall at all times be compatible with the Network as determined by Comcast in its sole discretion. In addition to any other service charges that may be imposed from time to time, Customer shall be responsible for the payment of service charges for visits by Comcast's employees or agents to a Service Location when the service difficulty or trouble report results from the use of CE or facilities provided by any party other than Comcast.

2.7 Engineering Review. Each Sales Order submitted by Customer may be subject to an engineering review. The engineering review will determine whether and to what extent the Network must be extended, built or upgraded ("Custom Installation") in order to provide the ordered Services at the requested Service Location(s). Comcast will provide Customer written notification in the event Service installation at any Service Location will require an additional non-recurring installation fee ("Custom Installation Fee"). Custom Installation Fees may also be referred to as Construction Charges on a Sales Order or Invoice. Customer will have five (5) days from receipt of such notice to reject the Custom Installation Fee and terminate, without further liability, the Sales Order with respect to the affected Service Location(s). For certain Services, the Engineering Review will be conducted prior to Sales Order submission. In such case, Customer will have accepted the designated Custom Installation Fee upon submission of the applicable Sales Order.

2.8 Service Acceptance. Except as may otherwise be identified in the applicable PSA, the Service Commencement Date shall be the date Comcast completes installation and connection of the necessary facilities and equipment to provide the Service at a Service Location.

2.9 Administrative Website. Comcast may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Website. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Comcast if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Website. Customer shall be solely responsible for all use of the Administrative Website, and Comcast shall be entitled to rely on all Customer uses of and submissions to the Administrative Website as authorized by Customer. Comcast shall not be liable for any loss, cost, expense or other liability arising out of any Customer use of the Administrative Website or any information on the Administrative Website. Comcast may change or discontinue the Administrative Website, or Customer's right to use the Administrative Website, at any time. Additional terms and policies may apply to Customer's use of the Administrative Website. These terms and policies will be posted on the site.

ARTICLE 3. BILLING AND PAYMENT

3.1 Charges. Except as otherwise provided in the applicable PSA, Customer shall pay Comcast one hundred percent (100%) of the Custom Installation Fee prior to the installation of Service. Customer further agrees to pay all charges associated with the Services, as set forth or referenced in the applicable PSA, Sales Order(s) or invoice from Comcast. These charges may include, but are not limited to standard and custom non-recurring installation charges, monthly recurring service charges, usage charges including without limitation charges for the use of Comcast Equipment, per-call charges, pay-per-view charges, charges for service calls, maintenance and repair charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). Some Services such as measured and per-call charges, pay-per-view movies or events, and interactive television (as explained in the applicable PSA) may be invoiced after the Service has been provided to Customer. Except as otherwise indicated herein or in the applicable PSA(s) monthly recurring charges for Ethernet, Video and Internet Services that are identified on a Sales Order shall not increase during the Service Term. Except as otherwise indicated herein or in the Sales Order(s), Voice Service pricing, charges and fees can be found in the applicable PSA.

3.2 Third-Party Charges. Customer may incur charges from third party service providers that are separate and apart from, or based on the amounts charged by Comcast. These may include, without limitation, charges resulting from wireless services including roaming charges, accessing on-line services, calls to parties who charge for their telephone based

services, purchasing or subscribing to other offerings via the Internet or interactive options on certain Video services, or otherwise. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility. In addition, Customer is solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

3.3 Payment of Bills. Except as otherwise indicated herein or in a PSA, Comcast will invoice Customer in advance on a monthly basis for all monthly recurring charges and fees arising under the Agreement. All other charges will be billed monthly in arrears, including without limitation certain usage based charges and third party pass through fees. Payment is due upon presentation of an invoice. Payment will be considered timely made to Comcast if received within thirty (30) days after the invoice date. Any charges not paid to Comcast within such period will be considered past due. If a Service Commencement Date is not the first day of a billing period, Customer's first monthly invoice shall include any pro-rated charges for the Services, from the date of installation to the start of the next billing period. In certain cases, Comcast may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between the third party and Customer and/or Comcast. Comcast shall not be responsible for any dispute regarding these charges between Customer and such third party. Customer must address all such disputes directly with the third party.

3.4 Partial Payment. Partial payment of any bill will be applied to the Customer's outstanding charges in amounts and proportions solely determined by Comcast. No acceptance of partial payment(s) by Comcast shall constitute a waiver of any rights to collect the full balance owed under the Agreement.

3.5 Credit Approval and Deposits. Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide Comcast with credit information requested by Comcast. Customer authorizes Comcast to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's records. Customer represents and warrants that all credit information that it provides to Comcast will be true and correct. Comcast, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Additionally, subject to applicable regulations, Comcast may require Customer to make a deposit (in an amount not to exceed an estimated two months charge for the Services) as a condition to Comcast's provision of the Services, or as a condition to Comcast's continuation of the Services. The deposit will not, unless explicitly required by law, bear interest and shall be held by Comcast as security for payment of Customer's charges. Comcast may apply the deposit to any delinquent Customer charges upon written notice to Customer. If Comcast uses any or all of the deposit to pay an account delinquency, Customer will replenish the deposit by that amount within five (5) days of its receipt of written notice from Comcast. If the provision of Service to Customer is terminated, or if Comcast determines in its sole discretion that

such deposit is no longer necessary, then the amount of the deposit (plus any required deposit interest) will be credited to Customer's account or will be refunded to Customer, as determined by Comcast.

3.6 Taxes and Fees. Except to the extent Customer provides a valid tax exemption certificate prior to the delivery of Service, Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes or fees (however designated). Customer also will be responsible to pay any Service fees, payment obligations and taxes that become applicable retroactively.

3.7 Other Government-Related Costs and Fees. Comcast reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees, right of way fees and Universal Service Fund charges (if any), regardless of whether Comcast or its Affiliates pay the fees directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. Taxes and other government-related fees and surcharges may be changed with or without notice. In the event that any newly adopted law, rule, regulation or judgment increases Comcast's costs of providing Services, Customer shall pay Comcast's additional costs of providing Services under the new law, rule, regulation or judgment.

3.8 Disputed Invoice. If Customer disputes any portion of an invoice by the due date, Customer must pay fifty percent (50%) of the disputed charges, in addition to the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Customer's claim, to Comcast for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve any billing dispute. Comcast will refund/credit all valid disputes resolved in Customer's favor as of the date the disputed charges first appeared on the Customer's invoice.

3.9 Past-Due Amounts. Any payment not made when due will be subject to a late charge of 1.5% per month or the highest rate allowed by law on the unpaid invoice, whichever is lower. If Customer's account is delinquent, Comcast may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or any Comcast Equipment which Customer fails to return in accordance with the Agreement. If Comcast is required to use a collection agency or attorney to collect any amount owed by Customer or any unreturned Comcast Equipment, Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Comcast under the Agreement or at law or in equity.

3.10 Rejected Payments. Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution.

3.11 **Fraudulent Use of Services.** Customer is responsible for all charges attributable to Customer with respect to the Service(s), even if incurred as the result of fraudulent or unauthorized use of the Service. Comcast may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. Comcast reserves the right to restrict, suspend or discontinue providing any Service in the event of fraudulent use of Customer's Service.

ARTICLE 4. TERM; REVENUE COMMITMENT

4.1 **Agreement Term.** Upon execution of the Agreement, Customer shall be allowed to submit Sales Orders to Comcast during the term referenced on the Master Service Agreement Cover Page ("MSA Term"). After the expiration of the initial MSA Term, Comcast may continue to accept Sales Orders from Customer under the Agreement, or require the Parties to execute a new agreement. This Agreement shall continue in effect until the expiration or termination date of the last Sales Order entered under the Agreement, unless terminated earlier in accordance with the Agreement.

4.2 **Sales Order Term/Revenue Commitment.** The applicable Service Term and Revenue Commitment (if any) shall be set forth in the Sales Order. Unless otherwise stated in these terms and conditions or the applicable PSA, if a Sales Order does not specify a term of service, the Service Term shall be one (1) year from the Service Commencement Date. In the event Customer fails to satisfy a Revenue Commitment, Customer will be billed a shortfall charge pursuant to the terms of the applicable PSA.

4.3 **Sales Order Renewal.** Upon the expiration of the Service Term, and unless otherwise agreed to by the Parties in the Sales Order, each Sales Order shall automatically renew for successive periods of one (1) year each ("Renewal Term(s)"), unless otherwise stated in these terms and conditions or prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the Service Term or the then current Renewal Term. Effective at any time after the end of the Service Term and from time to time thereafter, Comcast may, modify the charges for Ethernet, Internet and/or Video Services subject to thirty (30) days prior written notice to Customer. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing.

ARTICLE 5. TERMINATION WITHOUT FAULT; DEFAULT

5.1 **Termination for Convenience.** Notwithstanding any other term or provision in this Agreement, Customer shall have the right, in its sole discretion, to terminate any or all Sales Order(s) at any time during the Service Term(s), upon thirty (30) days prior written notice to Comcast and subject to payment to Comcast of all outstanding amounts due for the

Services, any and all applicable Termination Charges, and the return of all applicable Comcast Equipment. Comcast may terminate the Agreement if Customer does not take any Service under a Sales Order for twelve (12) consecutive months or longer.

5.2 **Termination for Cause.** If either Party breaches any material term of the Agreement, other than a payment term, and the breach continues un-remedied for thirty (30) days after written notice of default, the other Party may terminate for cause any Sales Order materially affected by the breach. If Customer is in breach of a payment obligation (including failure to pay a required deposit) and fails to make payment in full within ten (10) days after receipt of written notice of default, Comcast may, at its option, terminate the Agreement, terminate the affected Sales Orders, suspend Service under the affected Sales Orders, and/or require a deposit, advance payment, or other satisfactory assurances in connection with any or all Sales Orders as a condition of continuing to provide Service; except that Comcast will not take any such action as a result of Customer's non-payment of a charge subject to a timely billing dispute, unless Comcast has reviewed the dispute and determined in good faith that the charge is correct. A Sales Order may be terminated by either Party immediately upon written notice if the other Party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors. Termination by either Party of a Sales Order does not waive any other rights or remedies that it may have under this Agreement. The non-defaulting Party shall be entitled to all available legal and equitable remedies for such breach.

5.3 Effect of Expiration/Termination of a Sales Order.

Upon the expiration or termination of a Sales Order for any reason:

- A. Comcast shall disconnect the applicable Service;
- B. Comcast may delete all applicable data, files, electronic messages, or other information stored on Comcast's servers or systems;
- C. If Customer has terminated the Sales Order prior to the expiration of the Service Term for convenience, or if Comcast has terminated the Sales Order prior to the expiration of the Service Term as a result of material breach by Customer, Comcast may assess and collect from Customer applicable Termination Charges (if any);
- D. Customer shall, permit Comcast to retrieve from the applicable Service Location any and all Comcast Equipment. If Customer fails to permit such retrieval or if the retrieved Comcast Equipment has been damaged and/or destroyed other than by Comcast or its agents, normal wear and tear excepted, Comcast may invoice Customer for the manufacturer's list price of the relevant Comcast Equipment, or in the event of minor damage to the retrieved Comcast Equipment, the cost of repair, which amounts shall be immediately due and payable; and

E. Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return all Licensed Software to Comcast.

5.4 Resumption of Service. If a Service has been discontinued by Comcast for cause and Customer requests that the Service be restored, Comcast shall have the sole and absolute discretion to restore such Service. At Comcast's option, deposits, advanced payments, nonrecurring charges, and/or an extended Service Term may apply to restoration of Service.

5.5 Regulatory and Legal Changes. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement upon its execution are based on applicable law and regulations as they exist on the date of execution of this Agreement. The Parties agree that in the event of any subsequent decision by a legislative, regulatory or judicial body, including any regulatory or judicial order, rule, regulation, decision in any arbitration or other dispute resolution or other legal or regulatory action that materially affects the provisions or ability to provide Services on economic terms of the Agreement, Comcast may, by providing written notice to the Customer, require that the affected provisions of the Agreement be renegotiated in good faith. If Customer refuses to enter such renegotiations, or the Parties can't reach resolution on new Agreement terms, Comcast may, in its sole discretion, terminate this Agreement, in whole or in part, upon sixty (60) days written notice to Customer.

ARTICLE 6. LIMITATION OF LIABILITY;
DISCLAIMER OF WARRANTIES; WARNINGS

6.1 Limitation of Liability.

A. THE AGGREGATE LIABILITY OF COMCAST FOR ANY AND ALL LOSSES, DAMAGES AND CAUSES ARISING OUT OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE, AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO COMCAST DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED. THIS LIMITATION SHALL NOT APPLY TO COMCAST'S INDEMNIFICATION OBLIGATIONS AND CLAIMS FOR DAMAGE TO PROPERTY AND/OR PERSONAL INJURIES (INCLUDING DEATH) ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF COMCAST WHILE ON THE CUSTOMER SERVICE LOCATION.

B. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY

LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY COMCAST OR FOR TERMINATION CHARGES.

6.2 Disclaimer of Warranties.

A. Services shall be provided pursuant to the terms and conditions in the applicable PSA and Service Level Agreement, and are in lieu of all other warranties, express, implied or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMCAST EXPRESSLY DISCLAIMS ALL SUCH EXPRESS, IMPLIED AND STATUTORY WARRANTIES.

B. Without limiting the generality of the foregoing, and except as otherwise identified in a PSA or Service Level Agreement, Comcast does not warrant that the Services, Comcast Equipment, or Licensed Software will be uninterrupted, error-free, or free of latency or delay, or that the Services, Comcast Equipment, or Licensed Software will meet customer's requirements, or that the Services, Comcast Equipment, or Licensed Software will prevent unauthorized access by third parties.

C. In no event shall Comcast, be liable for any loss, damage or claim arising out of or related to: (i) stored, transmitted, or recorded data, files, or software; (ii) any act or omission of Customer, its users or third parties; (iii) interoperability, interaction or interconnection of the Services with applications, equipment, services or networks provided by Customer or third parties; or (iv) loss or destruction of any Customer hardware, software, files or data resulting from any virus or other harmful feature or from any attempt to remove it. Customer is advised to back up all data, files and software prior to the installation of Service and at regular intervals thereafter.

6.3 Disruption of Service. Notwithstanding the performance standards identified in a PSA, the Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required.

6.4 Customer's sole and exclusive remedies are expressly set forth in the Agreement. Certain of the above exclusions may not apply if the state in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Comcast is limited to the maximum extent permitted by law.

ARTICLE 7. INDEMNIFICATION

7.1 Comcast's Indemnification Obligations. Comcast shall indemnify, defend, and hold harmless Customer and its parent company, affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) ("Claims") incurred as a result of: infringement of U.S. patent or copyright relating to the Comcast Equipment or Comcast Licensed Software hereunder; damage to tangible personal property or real property, and personal injuries (including death) arising out of the gross negligence or willful misconduct of Comcast while working on the Customer Service Location.

7.2 Customer's Indemnification Obligations. Customer shall indemnify, defend, and hold harmless Comcast from any and all Claims arising on account of or in connection with Customer's use or sharing of the Service provided under the Agreement, including with respect to: libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the Service; for patent infringement arising from Customer's combining or connection of CE to use the Service; for damage arising out of the gross negligence or willful misconduct of Customer with respect to users of the Service.

7.3 Indemnification Procedures. The Indemnifying Party agrees to defend the Indemnified Party for any loss, injury, liability, claim or demand ("Actions") that is the subject of this Article 7. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The Indemnifying Party shall assume the defense of any Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ its own counsel in any such case, and shall pay such counsel's fees and expenses. The Indemnifying Party shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 8. SOFTWARE & SERVICES

8.1 License. If and to the extent that Customer requires the use of Licensed Software in order to use the Service supplied under any Sales Order, Customer shall have a personal, nonexclusive, nontransferable, and limited license to use such Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. All Licensed Software provided to Customer, and each revised version thereof, is licensed (not sold) to Customer by Comcast only for use in conjunction with the Service. Customer may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto), and Customer shall execute any documentation reasonably required by Comcast,

including, without limitation, end-user license agreements for the Licensed Software. Comcast and its suppliers shall retain ownership of the Licensed Software, and no rights are granted to Customer other than a license to use the Licensed Software under the terms expressly set forth in this Agreement.

8.2 Restrictions. Customer agrees that it shall not: (i) copy the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Comcast; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

8.3 Updates. Customer acknowledges that the use of Service may periodically require updates and/or changes to certain Licensed Software resident in the Comcast Equipment or CE. If Comcast has agreed to provide updates and changes, such updates and changes may be performed remotely or on-site by Comcast, at Comcast's sole option. Customer hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by Comcast. If Customer fails to agree to such updates, Comcast will be excused from the applicable Service Level Agreement and other performance credits, and any and all liability and indemnification obligations regarding the applicable Service.

8.4 Export Law and Regulation. Customer acknowledges that any products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations. Customer agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by Comcast, Customer also agrees to sign written assurances and other export-related documents as may be required for Comcast to comply with U.S. export regulations.

8.5 Ownership of Telephone Numbers and Addresses. Customer acknowledges that use of certain Services does not give it any ownership or other rights in any telephone number or Internet/on-line addresses provided, including but not limited to Internet Protocol ("IP") addresses, e-mail addresses and web addresses.

8.6 Intellectual Property Rights in the Services. Title and intellectual property rights in the Services are owned by Comcast, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, bundling or publication of the Services, in whole or in part, without express prior written consent from Comcast or other owner of such material, is prohibited.

ARTICLE 9. CONFIDENTIAL INFORMATION AND PRIVACY

9.1 Disclosure and Use. All Confidential Information disclosed by either Party shall be kept by the receiving party in

strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using the Services, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each Party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

9.2 Exceptions. Notwithstanding the foregoing, each Party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law or regulation.

9.3 Publicity. The Agreement provides no right to use any Party's or its affiliates' trademarks, service marks, or trade names, or to otherwise refer to the other Party in any marketing, promotional, or advertising materials or activities. Neither Party shall issue any publication or press release relating to, or otherwise disclose the existence of, the terms and conditions of any contractual relationship between Comcast and Customer, except as permitted by the Agreement or otherwise consented to in writing by the other Party.

9.4 Passwords. Comcast may furnish Customer with user identifications and passwords for use in conjunction with certain Services, including, without limitation, for access to certain non-public Comcast website materials. Customer understands and agrees that such information shall be subject to Comcast's access policies and procedures located on Comcast's Web Site.

9.5 Remedies. Notwithstanding any other Article of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests pursuant to this Article 9, including, but not limited to, injunctive relief.

9.6 Monitoring of Services. Except as otherwise expressly set forth in a PSA, Comcast assumes no obligation to pre-screen or monitor Customer's use of the Service, including without limitation postings and/or transmission. However, Customer acknowledges and agrees that Comcast and its agents shall have the right to pre-screen and monitor such use from time to time and to use and disclose such results to the extent necessary to operate the Service properly, to ensure compliance with applicable use policies, to protect the rights and/or property of Comcast, or in emergencies when physical safety is at issue, and that Comcast may disclose the

same to the extent necessary to satisfy any law, regulation, or governmental request. Comcast shall have no liability or responsibility for content received or distributed by Customer or its users through the Service, and Customer shall indemnify, defend, and hold Comcast and its directors, officers, employees, agents, subsidiaries, affiliates, successors, and assigns harmless from any and all claims, damages, and expenses whatsoever (including reasonable attorneys' fees) arising from such content attributable to Customer or its users. For the avoidance of doubt, the monitoring of data described in this Section 9.6 refers to aggregate data and types of traffic (protocol, upstream/downstream utilization, etc.). Comcast does not have access to the content of encrypted data transmitted across Comcast networks.

9.7 Survival of Confidentiality Obligations. The obligations of confidentiality and limitation of use described in this Article 9 shall survive the expiration and termination of the Agreement for a period of two (2) years (or such longer period as may be required by law).

ARTICLE 10. USE OF SERVICE; USE AND PRIVACY POLICIES

10.1 Prohibited Uses and Comcast Use Policies. Customer is prohibited from using, or permitting the use of, any Service (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of any Use Policy (as defined below); (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, and permits; or (iv) to interfere unreasonably with the use of Comcast service by others or the operation of the Network. Customer is responsible for assuring that any and all of its users comply with the provisions of the Agreement. Comcast reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if Comcast determines that such use is prohibited as identified herein, or information does not conform with the requirements set or Comcast reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. Furthermore, to the extent applicable, Services shall be subject to Comcast's acceptable use policies ("Use Policies") that may limit use. The Use Policies and other security policies concerning the Services are posted on the Website, and are incorporated into this Agreement by reference. Comcast may update the Use Policies from time to time, and such updates shall be deemed effective immediately upon posting, with or without actual notice to Customer. Comcast's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other users' use or information.

10.2 Privacy Policy. In addition to the provisions of Article 9, Comcast's commercial privacy policy applies to Comcast's handling of Customer confidential information. Comcast's privacy policy is available on the Website.

10.3 Privacy Note Regarding Information Provided to Third Parties. Comcast is not responsible for any information provided by Customer to third parties. Such information is not subject to the privacy provisions of this Agreement. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

10.4 Prohibition on Resale. Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof.

10.5 Violation. Any breach of this Article 10 shall be deemed a material breach of this Agreement. In the event of such material breach, Comcast shall have the right to restrict, suspend, or terminate immediately any or all Sales Orders, without liability on the part of Comcast, and then to notify Customer of the action that Comcast has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

ARTICLE 11. MISCELLANEOUS TERMS

11.1 Force Majeure. Neither Party (and in the case of Comcast, Comcast affiliates and subsidiaries) shall be liable to the other Party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way or materials, or other causes beyond the Party's reasonable control, except that Customer's obligation to pay for Services provided under the Agreement shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.

11.2 Assignment or Transfer. Customer shall not assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of Comcast, which shall not be unreasonably withheld. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Nothing herein is intended to limit Comcast's use of third-party consultants and contractors to perform Services under a Sales Order.

11.3 Notices. Any notice sent pursuant to the Agreement shall be deemed given and effective when sent by facsimile (confirmed by first-class mail), or when delivered by overnight express or other express delivery service, in each case as follows: (i) with respect to Customer, to the address set forth on any Sales Order; or (ii) with respect to Comcast, to: Vice President/Enterprise Sales, One Comcast Center, 1701 JFK Blvd., Philadelphia, PA 19103, with a copy to Cable Law Department, One Comcast Center, 50th Floor, 1701 JFK Blvd., Philadelphia, PA 19103. Each Party shall notify the other Party in writing of any changes in its address listed on any Sales Order.

11.4 Entire Understanding. The Agreement, together with any applicable Tariffs, constitutes the entire understanding of the Parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the Parties' rights or obligations relating to Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not embodied in the Agreement are of no effect. No subsequent agreement among the Parties concerning Service shall be effective or binding unless it is made in writing by authorized representatives of the Parties. Terms or conditions contained in any Sales Order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect.

11.5 Tariffs. Notwithstanding anything to the contrary in the Agreement, Comcast may elect or be required to file with regulatory agencies tariffs for certain Services. In such event, the terms set forth in the Agreement may, under applicable law, be superseded by the terms and conditions of the Tariffs. Without limiting the generality of the foregoing, in the event of any inconsistency with respect to rates, the rates and other terms set forth in the applicable Sales Order shall be treated as individual case based arrangements to the maximum extent permitted by law, and Comcast shall take such steps as are required by law to make the rates and other terms enforceable. If Comcast voluntarily or involuntarily cancels or withdraws a Tariff under which a Service is provided to Customer, the Service will thereafter be provided pursuant to the Agreement and the terms and conditions contained in the Tariff immediately prior to its cancellation or withdrawal. In the event that Comcast is required by a governmental authority to modify a Tariff under which Service is provided to Customer in a manner that is material and adverse to either Party, the affected Party may terminate the applicable Sales Order upon a minimum thirty (30) days' prior written notice to the other Party, without further liability.

11.6 Construction. In the event that any portion of the Agreement is held to be invalid or unenforceable, the Parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the Parties, and the remainder of the Agreement shall remain in full force and effect.

11.7 Survival. The rights and obligations of either Party that by their nature would continue beyond the termination or expiration of a Sales Order shall survive termination or expiration of the Sales Order.

11.8 Choice of Law. The domestic law of the state in which the Service is provided shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law.

11.9 No Third Party Beneficiaries. This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

Attachment D (III)

11.10 Parties' Authority to Contract. The persons whose signatures appear below are duly authorized to enter into the Agreement on behalf of the Parties name therein.

11.11 No Waiver; Etc. No failure by either Party to enforce any right(s) hereunder shall constitute a waiver of such right(s). This Agreement may be executed in counterpart copies.

11.12 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This

Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

11.13 Article Headings. The article headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

11.14 Compliance with Laws. Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

**COMCAST ENTERPRISE SERVICES
PRODUCT-SPECIFIC ATTACHMENT
ETHERNET TRANSPORT SERVICES**

ATTACHMENT IDENTIFIER: Ethernet Transport, Version 1.5

The following additional terms and conditions are applicable to Sales Orders for Comcast's Ethernet Transport Services:

DEFINITIONS

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the General Terms and Conditions.

"Estimated Availability Date" means the target date for delivery of Service.

"Interconnection Facilities" means transmission capacity provided by Comcast, Customer or a third-party supplier to extend the Comcast Equipment from a Comcast terminal to any other location (e.g., a local loop provided by a local exchange company or other communications company).

"Off-Net" means geographical locations that are outside of Comcast's service area and/or geographical locations that are within Comcast's service area generally, but are not readily accessible by Comcast Network facilities. All Off-Net Services are provided by third-party service providers.

"On-Net" means geographical locations where Comcast currently provides Services through its Comcast Network. On-Net Services may be provisioned over a fiber optic network, or via a hybrid fiber coax network ("On-Net HFC"), as available through Comcast.

"Services" means Ethernet Transport Services.

ARTICLE 1. SERVICES

This attachment shall apply to Ethernet Transport Services. A further description of these Services is set forth in Schedule A-1. hereto which is incorporated herein by reference.

ARTICLE 2. PROVIDER

On-Net Service shall be provided by Comcast Business Communications, LLC.

On-Net Service provided over the On-Net HFC and Off-Net Services are available in a number of Comcast markets. For information on service availability, call 866-429-0152.

ARTICLE 3. REGULATORY APPROVAL; TRAFFIC MIX

Comcast's pricing for Service may be subject to FCC, public service commission or other regulatory approval. Further, Customer represents that its use of Service hereunder will be jurisdictionally interstate. Customer agrees to indemnify and hold Comcast harmless from any claims by third parties resulting from or arising out of Customer's failure to properly represent or certify the jurisdictional nature of its use of Service.

ARTICLE 4. CUSTOM INSTALLATION FEE

Once Comcast accepts a Sales Order for Service, Comcast will invoice Customer for all Custom Installation Fee(s). Customer will pay the Custom Installation Fee(s) within thirty (30) days of the invoice date unless a payment schedule is specified in the applicable Service Order.

ARTICLE 5. PROVISIONING INTERVAL

Following its acceptance of a Sales Order, Comcast shall notify Customer of the Estimated Availability Date applicable to that Sales Order. Comcast shall use commercially reasonable efforts to provision the Service on or before the Estimated Availability Date; provided, however, that Comcast's failure to provision by said date shall not constitute a breach of the Agreement.

ARTICLE 6. SERVICE COMMENCEMENT DATE

Comcast shall inform Customer when Service is available and performing in accordance with the "Performance Standards" set forth in Schedule A-1 hereto ("Availability Notification"). Charges for Service shall begin to accrue as of the Service Commencement Date. The Service Commencement Date shall be earliest of: (A) the date on which Customer confirms receipt of and concurrence with the Availability Notification; (B) five (5) business days following the date of the Availability Notification, if Customer fails to notify Comcast that the Service does not comply materially with the specifications set forth in Schedule A-1 hereto; or (C) the date on which Customer first uses the Service.

ARTICLE 7. TERMINATION CHARGES; PORTABILITY; UPGRADES

7.1 The charges set forth or referenced in each Sales Order have been extended to Customer in reliance on the Service Term set forth therein. To the extent that a Service Term has not been expressly set forth in a Sales Order, the minimum Service Term for Services is twelve (12) months.

7.2 **Termination Charges for On-Net Services.**

A. In the event On-Net Service is terminated following Comcast's acceptance of the applicable Sales Order but prior to the Service Commencement Date, Customer shall pay Termination Charges equal to the costs and expenses incurred by Comcast in installing or preparing to install the On-Net Service plus twenty percent (20%).

B. In the event that On-Net Service is terminated on or following the Service Commencement Date but prior to the end of the applicable Service Term, Customer shall pay Termination Charges equal to a percentage of the monthly recurring charges remaining for the unexpired portion of the then-current Service Term, calculated as follows:

- i. 100% of the monthly recurring charges with respect to months 1-12 of the Service Term; plus
- ii. 80% of the monthly recurring charges with respect to months 13-24 of the Service Term; plus
- iii. 65% of the monthly recurring charges with respect to months 25 through the end of the Service Term; plus
- iv. 100% of any remaining, unpaid Custom Installation Fees.

Termination Charges shall be immediately due and payable upon cancellation or termination and shall be in addition to any and all accrued and unpaid charges for the Service rendered by Comcast through the date of cancellation or termination.

C. Termination Charges for Off-Net Services. In the event Customer terminates Off-Net Service following Comcast's acceptance of the applicable Sales Order but prior to the end of the applicable Service Term, Customer shall pay Termination Charges equal to 100% of the monthly recurring charges remaining through the end of the Service Term plus 100% of any remaining, unpaid Custom Installation Fees. Customer shall, pursuant to Article 3.2 of the General Terms and Conditions, also pay any third-party charges, incurred by Comcast as a result of the early termination of service by the Customer.

7.3 Exclusions. Termination Charges shall not apply to Service terminated by Customer (a) as a result of Comcast's failure to provision Service within the intervals specified in Article 5 of this attachment or (b) as a result of Comcast's material and uncured breach in accordance with Article 5.2 of the General Terms and Conditions.

7.4 Portability. Customer may terminate an existing On-Net Service (an "Existing Service") and turn up a replacement On-Net Service (i.e., having different termination points on Comcast's network) (a "Replacement Service") without incurring Termination Charges with respect to the Existing Service, provided that (a) the Replacement Service must have a Service Term equal to or greater than the remaining Service Term of the Existing Service; (b) the Replacement Service must have monthly recurring charges equal to or greater than the monthly recurring charges for the Existing Service; (c) Customer submits a Sales Order to Comcast for the Replacement Service within ninety (90) days after termination of the Existing Service and that order is accepted by Comcast; (d) Customer reimburses Comcast for any and all installation charges that were waived with respect to the Existing Service; and (e) Customer pays the actual costs incurred by Comcast in installing and provisioning the Replacement Service.

7.5 Upgrades. Customer may upgrade the speed or capacity of an Existing Service without incurring Termination Charges, provided that (A) the upgraded Service (the "Upgraded Service") must assume the remaining Service Term of the Existing Service; (B) the Upgraded Service must have the same points of termination on Comcast's network as the Existing Service; (C) Customer submits a Sales Order to Comcast for the Upgraded Service and that order is accepted by Comcast; (D) Customer pays Comcast's applicable nonrecurring charges for the upgrade; and (E) Customer agrees to pay the applicable monthly recurring charges for the Upgraded Service commencing with the upgrade. Upgrades to Off-Net Services are subject to the applicable third party service provider rules and availability. Comcast has no obligation to upgrade Customer's Off-Net Service.

ARTICLE 8. ADDITIONAL INFORMATION

As necessary for the interconnection of the Service with services provided by others, Comcast may request (as applicable), and Customer will provide to Comcast, circuit facility assignment information, firm order commitment information, and design layout records necessary to enable Comcast to make the necessary cross-connection between the Service and Customer's other service provider(s). Comcast may charge Customer nonrecurring and monthly recurring cross-connect charges to make such connections.

ARTICLE 9. TECHNICAL SPECIFICATIONS AND PERFORMANCE STANDARDS; SERVICE LEVEL AGREEMENT

The technical specifications and performance standards applicable to the Service are set forth in Schedule A-1 hereto. The service level agreement applicable to the Service is set forth in a Schedule A-2 hereto.

COMCAST ENTERPRISE SERVICES
PRODUCT-SPECIFIC ATTACHMENT
ETHERNET TRANSPORT SERVICES

SCHEDULE A-1
SERVICE DESCRIPTIONS, TECHNICAL SPECIFICATIONS AND PERFORMANCE STANDARDS
COMCAST ETHERNET TRANSPORT SERVICES

Ethernet Transport Version 1.5

Comcast's Ethernet Transport Services ("Service(s)") will be provided in accordance with the service descriptions, technical specifications and performance standards set forth below:

Definitions

1. Latency. Latency, also known as Frame Delay, is defined as the maximum delay measured for a portion of successfully delivered service frames over a 30 day period.
2. Jitter. Jitter, also known as Frame Delay Variation, is defined as the short-term variations measured for a portion of successfully delivered service frames over a 30 day period.
3. Packet Loss. Packet Loss, also known as Frame Loss, is the difference between the number of service frames transmitted at the Ingress UNI and the total number of service frames received at the egress UNI over a 30 day period.

Service Descriptions

1. Ethernet Network Service (ENS). ENS enables customers to connect physically distributed locations across a Metropolitan Area Network (MAN) or Wide Area Network (WAN) as if they are on the same Local Area Network (LAN). The service provides VLAN transparency enabling customers to implement their own VLANs without any coordination with Comcast. ENS offers three Classes of Service (CoS), as described below. The service is offered with 10/100Mbps, 1Gbps or 10Gbps Ethernet User-to-Network Interfaces (UNI) and is available in increments starting at 1Mbps. The ENS Service is not available over On-Net HFC.
2. Ethernet Private Line (EPL). EPL service enables customers to connect their Customer Premises Equipment (CPE) using an Ethernet interface. EPL service enables customers to use any VLANs or Ethernet control protocol across the service without coordination with Comcast. EPL service provides one Ethernet Virtual Connection (EVC) between two customer locations. EPL offers three Classes of Service (CoS), as described below. EPL service is offered with 10/100Mbps, 1Gbps, or 10 Gbps Ethernet User-to-Network Interfaces (UNI) and is available in speed increments starting at 1Mbps.
3. Ethernet Virtual Private Line (EVPL). EVPL service provides an Ethernet Virtual Connection (EVC) between two customer locations similar to Ethernet Private Line service but supports the added flexibility to multiplex multiple services (EVCs) on a single UNI at a customer's hub or aggregation site. The service multiplexing capability is not available at sites served by the Comcast On-Net HFC. EVPL offers three Classes of Service (CoS), as described below. CoS options enable customers to select the CoS that best meets their applications' performance requirements. The service is offered with 10/100Mbps, 1Gbps, or 10 Gbps Ethernet User-to-Network Interfaces (UNI) and is available in speed increments starting at 1Mbps.

4. **Off-Net Service Limitations.** The above categories of Service are available as Off-Net Services, with the following limitations:

- Only available with Basic CoS;
- 10Gbps Ethernet UNIs are not available with Off-Net Services;
- Service multiplexing capability is not available on Off-Net EVPL UNIs;
- When ordering 10/100Mbps Off-Net Ethernet UNIs, speed increments may only be ordered in increments of 10 Mbps, up to a maximum size of 90Mbps; when ordering 1 Gbps Off-Net Ethernet UNIs, speed increments may only be ordered in increments of 100Mbps, up to a maximum size of 900Mbps

Ethernet Virtual Circuit (EVC) Area Types

Comcast Ethernet Transport Services are available both within and between certain major metropolitan areas throughout the United States. Each EVC is assigned an EVC Area Type based upon the locations of respective A and Z locations.

- a. Metro. EVC enables connectivity between customer locations within a Comcast defined Metro.
- b. Regional. EVC enables connectivity between customer locations that are in different Comcast defined Metro's, but within Comcast defined geographic Regions.
- c. Continental. EVC enables connectivity between customer locations that are in different Comcast defined geographic Regions.

Technical Specifications and Performance Standards for Services

1. **User-to-Network Interface.** The Services provides the bidirectional, full duplex transmission of Ethernet frames using a standard IEEE 802.3 Ethernet interface. Figure 1 provides a list of available UNI physical Interfaces and their available Committed Information Rate (CIR) bandwidth increments and Committed Burst Sizes (CBS). CIR increments of less than 10 Mbps are not available in conjunction with Off-Net Services.

UNI Speed	UNI Physical Interface	CIR Increments	CBS (bytes)
10 Mbps	10BaseT	1 Mbps	25,000
100 Mbps	100BaseT	10 Mbps	250,000
1 Gbps	1000BaseT or 1000BaseSX	100 Mbps	2,500,000
10 Gbps	10GBase-SR or 10GBase-LR	1000 Mbps	25,000,000

Figure 1: Available UNI Interface types and CBS values for different CIR increments

2. **Class of Service (CoS) Options.** As set forth in Figure 2, Comcast Ethernet Transport Services are available with three different classes of service. The CoS options allow for differentiated service performance levels for different types of network traffic. CoS is used to prioritize customer mission-critical traffic from lesser priority traffic in the network. The customer must specify a CIR for each CoS to indicate how much bandwidth should be assigned to each CoS. The performance metrics associated with each CoS are set forth in Attachment A-1.1 to the Product-Specific Attachment for Ethernet Service.

EVC Area Type	On-Net Fiber	On-Net HFC	Off-Net
Metro	Basic, Priority & Premium	Basic & Priority	Basic
Regional	Basic, Priority & Premium	Basic	Basic
Continental	Basic, Priority & Premium	Basic	Basic

Figure 2: Available CoS options by Access Type and EVC Area Type

3. **CoS Identification and Marking.** If a customer only implements a single CoS solution, they are not required to mark their packets using 802.1p CoS values. All packets, tagged or untagged, will be mapped into the subscribed CoS. If a customer implements a multi-CoS solution or for EVPL ports with service multiplexing, they must mark all packets using C-tag 802.1p CoS values as specified in Figure 3 to ensure the service will provide the intended CoS performance objectives specified in Figure 2. For multi-CoS solutions, untagged packets will be treated as if they are marked with a 0. Packets with other 802.1p values are mapped to the lowest subscribed CoS. In this case, C-tag VLAN ID values are not relevant as long as they are tagged with a VLAN ID in the range 1 to 4094. For EVPL ports with service multiplexing, untagged packets will be discarded and C-tag VLAN ID values are used to map traffic to applicable EVC's.

CoS	802.1p
Premium	5
Priority	2-3
Basic	0-1

Figure 3: CoS Marking

4. **Traffic Management.** Comcast's network traffic-policing policies restrict traffic flows to the subscribed CIR for each service class. If the customer-transmitted bandwidth rate for any CoS exceeds the subscription rate (CIR) and burst size (CBS), Comcast will discard the non-conformant packets. For packets marked with a non-conformant CoS marking, the service will transmit them using the Basic service class without altering the customer's CoS markings. Traffic management policies associated with Off-Net Services will conform to the policies enforced by the third-party service provider.
5. **Maximum Frame Size.** Services delivered On-Net support a Maximum Transmission Unit (MTU) packet size of 1600 bytes to support untagged or 802.1Q tagged packet sizes. Jumbo Frame sizes can be supported on an Individual Case Basis (ICB). For Services delivered On-Net HFC, frame sizes may not exceed 1518 MTU size (1522 with a single VLAN tag). All frames that exceed specifications shall be dropped. For Off-Net Services, MTU may vary by third-party provider.
6. **Customer Traffic Transparency.** All fields within customers Ethernet frames (unicast, multicast and broadcast, except L2CP) from the first bit of payload are preserved and transparently transported over UNI to UNI, as long as they are mapped into the EVC.
7. **Ethernet Service Frame Disposition.** Different types of Ethernet frames are processed differently by the Service. Frames may pass unconditionally through the network or may be limited as in the case of broadcast, unknown unicast and multicast frames to ensure acceptable service performance. Refer to Figure 7 for Comcast's service frame disposition for each service frame type.

Service Frame Type	EPL Frame Delivery	EVPL Frame Delivery	ENS Frame Delivery
Unicast	All frames delivered unconditionally	Frames delivered conditionally	All frames delivered unconditionally
Multicast	All frames delivered unconditionally	Frames delivered conditionally	Frames delivered conditionally
Broadcast	All frames delivered	Frames delivered	Frames delivered

	unconditionally	conditionally	conditionally
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Figure 7: Service Frame Delivery Disposition

COMCAST ENTERPRISE SERVICES
 PRODUCT-SPECIFIC ATTACHMENT
 ETHERNET TRANSPORT SERVICES

SCHEDULE A-2
 SERVICE LEVEL AGREEMENT

Ethernet Transport Version 1.5

Comcast's Ethernet Transport Services is backed by the following Service Level Agreement ("SLA"):

Definitions:

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Ethernet Transport Services PSA or the General Terms and Conditions.

"Planned Service Interruption" means any Service Interruption caused by planned work such as scheduled maintenance or planned enhancements or upgrades to the network.

"Service Interruption" means a complete loss of signal that renders the Service unusable.

Service Level Agreement (SLA)

Company's liability for any Service Interruption (individually or collectively, "Liability"), shall be limited to the amounts set forth in the Tables below. For the purposes of calculating credit for any such Liability, the Liability period begins when the Customer reports to Company an interruption in the portion of the Service, provided that the Liability is reported by Customer during the duration of the Liability, and, a trouble ticket is opened; the Liability shall be deemed resolved upon closing of the same trouble ticket or the termination of the interruption, if sooner, less any time Company is awaiting additional information or premises testing from the Customer. In no event shall the total amount of credit issued to Customer's account on a per-month basis exceed 50% of the total monthly recurring charge ("MRC") associated with the impacted portion of the Service set forth in the Sales Order. Service Interruptions will not be aggregated for purposes of determining credit allowances. To qualify, Customer must request the Credit from Comcast within thirty (30) days of the interruption. Customer will not be entitled to any additional credits for Service Interruptions. Comcast shall not be liable for any Liability caused by force majeure events, Planned Service Interruptions or Customer actions, omission or equipment.

TABLE 1: SLA for On-Net Services provided over a fiber optic network (99.99% Availability)

Length of Service Interruption:	Amount of Credit:
Less than 4 minutes	None
At least 4 minutes but less than 4 hours	5% of Total MRC
At least 4 hours but less than 8 hours	10% of Total MRC
At least 8 hours but less than 12 hours	20% of Total MRC
At least 12 hours but less than 16 hours	30% of Total MRC
At least 16 hours but less than 24 hours	40% of Total MRC
At least 24 hours or greater	50% of Total MRC

TABLE 2: SLA for On-Net Services provided over On-Net HFC (99.9% Availability)

Length of Service Interruption:	Amount of Credit:
Less than 40 minutes	None
At least 40 minutes but less than 4 hours	5% of Total MRC
At least 4 hours but less than 8 hours	10% of Total MRC
At least 8 hours but less than 12 hours	20% of Total MRC
At least 12 hours but less than 16 hours	30% of Total MRC
At least 16 hours but less than 24 hours	40% of Total MRC
At least 24 hours or greater	50% of Total MRC

TABLE 3: SLA for Off-Net Services (99.95% Availability)

Length of Service Interruption:	Amount of Credit:
Less than 20 minutes	None
At least 20 minutes but less than 4 hours	5% of Total MRC
At least 4 hours but less than 8 hours	10% of Total MRC
At least 8 hours but less than 12 hours	20% of Total MRC
At least 12 hours but less than 16 hours	30% of Total MRC
At least 16 hours but less than 24 hours	40% of Total MRC
At least 24 hours or greater	50% of Total MRC

THE TOTAL CREDIT ALLOWANCES PER MONTH IS CAPPED AT 50% OF THAT MONTH'S MRC FOR THE INTERRUPTED PORTIONS OF SERVICE. SEPARATELY OCCURRING SERVICE INTERRUPTIONS ARE NOT AGGREGATED FOR THE PURPOSES OF DETERMINING CREDIT ALLOWANCES.

On-Net Service Monitoring, Technical Support and Maintenance

1. Network Monitoring. Comcast monitors On-Net Services on a 24x7x365 basis.

Attachment D (IV)

2. **Technical Support.** Comcast provides a toll-free trouble reporting telephone number to the Enterprise Technical Support (ETS) center that operates on a 24x7x365 basis. Comcast provides technical support for service related inquiries. Technical support will not offer consulting or advice on issues relating to CPE or other equipment not provided by Comcast.

- a. Escalation. Reported troubles are escalated within the Comcast Business Services Network Operations Center (BNOC) to meet the response/restoration interval described below (Response and Restoration Standards). Service issues are escalated within the Comcast BNOC as follows: to a Supervisor at the end of the applicable time interval plus one (1) hour; to a Manager at the end of the applicable time interval plus two (2) hours, and to a Director at the end of the applicable time interval plus four (4) hours.
- b. Maintenance. Comcast's standard maintenance window for On-Net Services is Sunday to Saturday from 12:00am to 6:00am local time. Scheduled maintenance for On-Net Services is performed during the maintenance window and will be coordinated between Comcast and the Customer. Comcast provides a minimum forty eight (48) hour notice for non-service impacting maintenance. Comcast provides a minimum of seven (7) days' notice for On-Net Service impacting planned maintenance. Emergency maintenance is performed as needed without advance notice to Customer. Maintenance for Off-Net Services shall be performed in accordance with the applicable third party service provider rules. Therefore, Off-Net Service may be performed without advance notice to Customer.

3. Comcast provides certain Comcast Equipment for provisioning its services and the delivery of the UNI, which will reside on the Customer-side of the Demarcation Point. Comcast will retain ownership and management responsibility for this Comcast Equipment. This Comcast Equipment must only be used for delivering Services. Customers are required to shape their egress traffic to the Committed Information Rate ("CIR") identified in the Sales Order. Comcast will be excused from paying SLA credits if the Service Interruption is the result of Customer's failure to shape their traffic to the contracted CIR or utilizing Comcast Equipment for non-Comcast provided services.

Performance Standards

"Performance Standards" are set forth in Schedule A-1 to the Product-Specific Attachment for Ethernet Service.

Response and Restoration Standards

Comcast has the following response and restoration objectives:

CATEGORY	TIME INTERVAL	MEASUREMENT	REMEDIES
<i>Mean Time to Respond Telephonically to Call</i>	15 minutes	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore On-Net Comcast Equipment</i>	4 hours	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore Off-Net Equipment</i>	6 hours	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore On-Net Services</i>	6 hours	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore Off-Net Services</i>	9 hours	Averaged Over A Month	Escalation (see above)

Attachment D (IV)

Customer shall bear any expense incurred, e.g., dispatch/labor costs, where a Service Interruption is found to be the fault of Customer, its end users, agents, representatives or third-party suppliers.

Emergency Blocking

The parties agree that if either party hereto, in its reasonable sole discretion, determines that an emergency action is necessary to protect its own network, the party may, after engaging in reasonable and good faith efforts to notify the other party of the need to block, block any transmission path over its network by the other party where transmissions do not meet material standard industry requirements. The parties further agree that none of their respective obligations to one another under the Agreement will be affected by any such blockage except that the party affected by such blockage will be relieved of all obligations to make payments for charges relating to the circuit(s) which is so blocked and that no party will have any obligation to the other party for any claim, judgment or liability resulting from such blockage.

Remedy Processes

All claims and rights arising under this Service Level Agreement must be exercised by Customer in writing within thirty (30) days of the event that gave rise to the claim or right. The Customer must submit the following information to the Customer's Comcast account representative with any and all claims for credit allowances: (a) Organization name; (b) Customer account number; and (c) basis of credit allowance claim (including date and time, if applicable). Comcast will acknowledge and review all claims promptly and will inform the Customer by electronic mail or other correspondence whether a credit allowance will be issued or the claim rejected, with the reasons specified for the rejection.

Exceptions to Credit Allowances

A Service Interruption shall not qualify for the remedies set forth herein if such Service Interruption is related to, associated with, or caused by: scheduled maintenance events; Customer actions or inactions; Customer-provided power or equipment; any third party not contracted through Comcast, including, without limitation, Customer's users, third-party network providers, any power, equipment or services provided by third parties; or an event of force majeure as defined in the Agreement.

Other Limitations

The remedies set forth in this Service Level Agreement shall be Customer's sole and exclusive remedies for any Service Interruption, outage, unavailability, delay, or other degradation, or any Comcast failure to meet the service objectives.

Attachment D (IV)

COMCAST ENTERPRISE SERVICES
PRODUCT-SPECIFIC ATTACHMENT
ETHERNET TRANSPORT SERVICES

Attachment A-1.1
PERFORMANCE OBJECTIVES
COMCAST ETHERNET TRANSPORT SERVICES

Ethernet Transport Version 1.5

Comcast Ethernet Transport Services are available both within and between major metropolitan areas throughout the United States. The performance objectives associated with traffic flows between any two customer sites are dependent upon the locations of respective A and Z sites.

Access Types

1. **On-Net Access.** If On-Net A and Z sites reside within the same Market, Performance Tier 1 objectives will apply. If the sites are in different markets, another Performance Tier will apply. Applicable Performance Tier will appear on/with respective Comcast Sales Order Form.
2. **Off-Net Access.** In addition to On-Net Access, Comcast enables Off-Net Access to Ethernet Transport Services via multiple third party providers. The Performance Tier for Off-Net Access is based upon the location of the Off-Net site, the location of the Network to Network Interface (NNI) between Comcast and the third party provider and the performance commitment from the third party provider. Comcast will specify applicable Performance Tier on the Comcast Sales Order Form for applicable Off-Net site. Standard Off-Net Access will have an assigned home market and will include the same performance metrics associated with On-Net connectivity within the respective market and between markets. Extended Off-Net Access provides customer with network connectivity, but at a higher performance Tier. Applicable Performance Tier will appear on/with respective Comcast Sales Order Form.

Performance Tiers

1. Performance Measurement

Comcast collects continuous in-band performance measurements for its Ethernet Transport Services. All latency, Jitter and Packet Loss Performance Metrics are based upon sample one-way measurements taken during a calendar month.

2. Performance Tier 1 (PT1) Objectives – Within Market

Performance Metric	Class of Service (CoS)		
	Basic	Priority	Premium
Latency (Network Delay)	45ms	23ms	12ms
Jitter (Network Delay Variation)	20ms	10ms	2ms
Packet Loss	<1%	<0.01%	<0.001%

Attachment D (IV)

3. Performance Tier 2 (PT2) Objectives

Performance Metric	Class of Service (CoS)		
	Basic	Priority	Premium
Latency (Network Delay)	80ms	45ms	23ms
Jitter (Network Delay Variation)	25ms	15ms	5ms
Packet Loss	<1%	<.02%	<.01%

4. Performance Tier 3 (PT3) Objectives

Performance Metric	Class of Service (CoS)		
	Basic	Priority	Premium
Latency (Network Delay)	100ms	80ms	45ms
Jitter (Network Delay Variation)	30ms	20ms	10ms
Packet Loss	<1%	<.04%	<.02%

5. Performance Tier 4 (PT4) Objectives

Performance Metric	Class of Service (CoS)		
	Basic	Priority	Premium
Latency (Network Delay)	120ms	100ms	80ms
Jitter (Network Delay Variation)	35ms	25ms	15ms
Packet Loss	<1%	<.05%	<.04%

**(COMCAST LETTERHEAD)
SIDE LETTER MACC RENEWAL**

July 1, 2015

Metropolitan Area Communications Commission
15201 NW Greenbrier Parkway, C-1
Beaverton, OR 97006

Dear _____:

The purpose of this letter agreement is to set forth commitments between Comcast of Oregon II, Inc. ("Comcast") and the communities participating in the Metropolitan Area Communications Commission ("Commission") that are in addition to the obligations contained in the Cable Television Franchise Agreement between Comcast and the Commission to take effect on July 1, 2015 (hereinafter the "Franchise"). These items set forth herein: 1) have been negotiated in good faith and mutually agreed to by the parties as part of the informal franchise renewal process pursuant to 47 U.S.C. 546(h); 2) are provided by Comcast in consideration of the grant of the Franchise by the Commission; and 3) specifically relate to unique community needs that exist in the communities participating in the Commission.

CAN and PCC If Comcast discontinues carriage of CAN channel 27 or PCC channel 11 on all of Comcast's cable systems located in the Portland Oregon Designated Market Area, Comcast may also discontinue carriage of these channels on the cable system in the Franchise Area, as the term Franchise Area is defined in the Franchise.

PEG Capital Funds Under Section 13 of the Franchise, Comcast is required to provide support for the capital requirements for PEG access and the institutional network activities of the Commission and its member communities under Section 12 of the Franchise. These activities under the prior franchise included uses of the Public Communications Network ("PCN") by certain identified communities. Without determining whether these uses constitute "capital" or "operating" expenditures for Franchise compliance purposes, and subject to the indemnity provisions of the Franchise, Comcast agrees to not pursue any action against the Commission or its member communities asserting that Commission expenditures for these identified uses violate Sections 13.1 and 13.3 of the Franchise to the extent such uses are consistent with Commission and individual community practices as of the effective date of the Franchise.

MOU Superseded Comcast and the Commission entered into a Memorandum of Understanding dated February 12, 2003 ("MOU") that sets forth additional terms and condition for the PCN, including the provision, without cost, of certain fiber optic links. Because the PCN has been replaced with a Managed Service Agreement ("MSA") under Section 12 of the Franchise, Comcast and the Commission agree that the Franchise supersedes the terms and conditions of the MOU and that the parties' rights and obligations under the MOU will end on the effective date of the Franchise.

Fiber Links Comcast agrees to continue providing the current two (2) fiber optic links to and from the Lake Oswego/MACC ISP (which ends at the Tigard Hub – 15245 SW 74th Avenue, Tigard, OR 97224) and the HIC/MACC ISP (which ends at the Beaverton Headend – 1750 NW 173rd Avenue, Beaverton, OR 97006) without charge for the term of the Franchise. For purposes of this section only, the term "without charge" also means that Comcast shall not offset, deduct or otherwise credit against any past, present or future franchise fee payments payable under the Franchise its costs in providing the two (2) fiber optic links described above. The Commission will pay for the remaining six (6) fiber optic links previously provided by Comcast under the MOU at the rates and according to the terms set forth in the MSA, which cost shall be equal to the Rate Card in Exhibit A to Attachment D of the Franchise and shall not exceed \$40,000 annually if these fibers are contracted for a five (5) year term for such links. If fewer than six (6) fiber links are required to interconnect due to design changes, the Commissions' costs shall be reduced accordingly. In accordance with the terms of the previous paragraph on PEG capital funds, and subject to the indemnity provisions of the Franchise, Comcast will not pursue any action against the Commission or its member communities if PEG capital funds are used to pay for these fiber optic links.

The terms and conditions of this letter agreement are binding upon the Commission and its member communities and Comcast and their successors and assigns. Enforcement of the terms of this letter agreement shall be consistent with the enforcement procedures set forth in the Franchise.

COMCAST OF OREGON II, INC.

By: _____

Its: _____

Acknowledged and agreed to this ____ day of _____, 2015.

METROPOLITAN AREA COMMUNICATIONS COMMISSION

By: _____

Its: _____