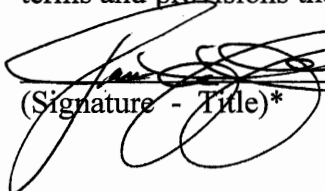


ACCEPTANCE

July 19, 2001

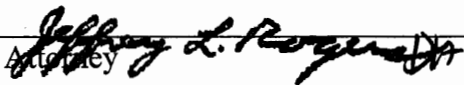
Auditor of the City of Portland
City Hall Room 140
1221 SW 4th Avenue
Portland, Oregon 97204

This is to advise the City of Portland, Oregon that I hereby accept the terms and provisions of Ordinance No. 175793, passed by the Portland City Council on July 18, 2001, Grant a franchise to Portland General Distribution LLC, doing business as Portland General Broadband, for a period of ten years, and in consideration of the benefits received thereunder by me I hereby agree to abide by and perform each and all of the terms and provisions thereof applicable to me.

 PRESIDENT *BLW*
(Signature - Title)*

Jim Lobdell
Portland General Distribution LLC,
dba Portland General Broadband
121 SW Salmon Street
Portland OR 97204

Approved as to form:
APPROVED AS TO FORM


City Attorney

CITY ATTORNEY

*When an acceptance is signed by an officer of a firm or corporation, his or her official title must be stated.

BUDGET/FINANCIAL COUNCIL ACTION IMPACT STATEMENT

INITIATORS'S SUMMARY OF COUNCIL ACTION(Deliver original to the Bureau of Financial Planning. Retain copy)

1. Name of Initiator Bureau/Office /Dept David Soloos	2. Bldg./Room No. 106/704	3. Tel. No. 823-5359	4. Bureau Cable/Franchise Mgt.
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5. To be filed	A. Date June 6, 2001	b. Calendar(circle one) XXXX Regular Consent 4/5ths	6. Date Submitted to OF&A Budget Analyst May 21, 2001
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7 Fund Name General Fund

Category 2 Routine and Budgeted Items
Please check appropriate box and list \$ amount

- Contracts
- supply contract
- Grants
- Claims Payment
- Call for bid on purchasing contracts
- Creation of a Local Improvement Districts
- Reports to Council regarding completion of projects
- Other

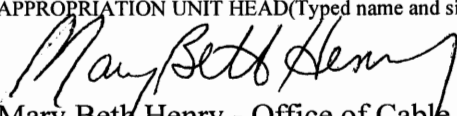
Category 3

Non-Routine or Unbudgeted Items **Telecommunications Franchise for Portland General Distribution LLC doing business as Portland General Broadband**

SUMMARY OF ACTION: In concise terms, describe what is to take place through the enactment of this council action. Where applicable, narrative should include answers to the following questions:

- a. What action(s) is proposed?
A: Grant a 10 year Franchise to Portland General Distribution (PGD) to construct, operate and maintain a system to provide of telecommunications services in the City.
- b. Who will be affected by the action proposed? Other City Bureaus? Citizens? The business community?
A: There are no others directly affected by this action.
- c. What will the action cost? In this fiscal year? Subsequent year(s)? How much revenue will it generate? In this fiscal year? In subsequent fiscal years? If there are indirect costs or future commitments implied as a necessary accompaniment or result of this action, include an estimate of these costs even if the action does not formally authorize any expenditure.
A: There is no cost of this action. The Franchise requires a minimum compensation of 5% of gross revenue or \$10,000 in the first year. The company estimates franchise fee payments of approximately \$100,000 annually once the system is complete. In addition PGD will construct ducts for the City wherever they build underground in the right of way and provide river crossings for the Integrated Regional Network Enterprise (IRNE) managed by the City's Communications Division.
- d. Is the cost included in the current year's budget? If so, which Fund or AU? If not, identify funding sources and amounts(i.e., interagency, contingency/unforeseen, grants, administrative transfer, etc).
A: The cost of staff negotiating this franchise was included in the FY 00-01 budget.
- e. Have alternatives to this action been explored?
A: Not applicable.

Please put any additional information on the opposite side of the form

APPROPRIATION UNIT HEAD(Typed name and signature)

Mary Beth Henry - Office of Cable Communications and Franchise Management

Budget Impact Statement

The first reading of an Ordinance granting a franchise to Portland General Distribution LLC, doing business as Portland General Broadband ("PGB"), is on the Council Regular Agenda for Wednesday, June 13, 2001. The City granted PGB a temporary revocable permit on March 21, 2001 to allow it to begin construction of its telecommunications system immediately. The City Charter requires a 4-month approval process for franchises, which includes publication of the franchise and two readings before Council. The schedule for the franchise approval process is outlined below.

Highlights of the Franchise

Term of Franchise

The Franchise term is 10 years.

Compensation

The Franchise requires a minimum compensation of 5% of gross revenue or \$10,000 in the first year. The minimum compensation increases by \$1,000 each year of the franchise. The company estimates franchise fee payments of approximately \$100,000 annually once the system is complete.

Ducts for City Use

PGB will construct ducts for the City wherever they build underground in the right of way and provide river crossings for the Integrated Regional Network Enterprise (IRNE) managed by the City's Communications Division.

Timeline for PGB Franchise

March 14, 2001	Final Agreement reached on Franchise terms and Permit language (substantially the same as franchise language) with PGB
May 7, 2001	Publication of Franchise in the Daily Journal of Commerce and Oregonian
June 6, 2001	File Franchise with Auditor
June 13, 2001	First Reading of Franchise (minimum 20 days after publication)
July 18, 2001	Second Reading of Franchise at City Council (minimum 30 days after First Reading)
September 16, 2001	Franchise takes effect (minimum 60 days after passage at Council)



James F. Lobdell
Vice President

March 9, 2001,

David C. Olson, Director
City of Portland
Office of Cable Communications and Franchise Management
1120 SW Fifth Ave., Rm. 704
Portland, OR 97204



Re: Portland General Broadband Franchise and Permit

As we discussed with you at our meeting of February 16th, PGB understands that its pending telecommunications franchise agreement (and pending operating permit) with the City authorizes PGB to transport data and/or voice signals over its facilities located in the City rights of way, but does not authorize PGB to transport video programming (i.e. cable services) either directly or through third party users of PGB's telecommunications system.

As we mentioned to you, PGB has already informed at least one potential local client of this limitation. In that particular case, the potential client stated that they understood this limitation, and that they had in fact arranged to carry any video portions of their proposed service package in Portland by means of satellite dish technology utilizing private property only, not public rights of way (e.g. by means of PGB's proposed system).

This letter is provided in response to your request that we place PGB's understanding, as expressed at our meeting, in writing, and furnish it to the City.

Hopefully this letter meets your requirements so that our revocable permit can be placed on the next available agenda for Council's consideration. Should you need to discuss this matter further please feel free to contact me directly at (503) 464-2723.

Best regards,

A handwritten signature in black ink, appearing to be "James F. Lobdell", written over a printed name.

James F. Lobdell

cc: Deane Funk, PGE Government Affairs
Barbara Halle, PGE Legal Department

ORDINANCE No. 175793

Grant a franchise to Portland General Distribution LLC, doing business as Portland General Broadband, for a period of ten years.

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT:

A. Grant of Franchise.

1. The City of Portland, does hereby grant to Portland General Distribution LLC, dba Portland General Broadband, an Oregon corporation qualified to do business in the State of Oregon, and to Portland General Distribution LLC, dba Portland General Broadband's successors and assigns, as approved by the City of Portland under Section 15 of this Franchise, a franchise to construct, operate and maintain a telecommunications system, with all necessary Facilities, in, under, and over the surface of the City of Portland's Streets. Portland General Distribution LLC, dba Portland General Broadband intends to use its Telecommunications System to provide Telecommunications Services. To the extent that Portland General Distribution LLC, dba Portland General Broadband's use of its Telecommunications System changes, the City of Portland may reopen this Franchise pursuant to the provisions of Section 19(I), hereof.
2. Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City", and Portland General Distribution LLC, dba Portland General Broadband, shall be referred to as the "Grantee".
3. This Franchise does not authorize the Grantee to operate a cable system or provide video programming, as defined by 47 U.S.C.A §522. Grantee has acknowledged this limitation by letter dated March 9, 2001, a copy of which is attached hereto as Exhibit A and hereby incorporated by reference.

B. Duration of Franchise. The term of this Franchise, and all rights and obligations pertaining thereto, shall be ten years from the effective date of the Franchise unless terminated sooner as provided herein.

C. Effective Date. The effective date of this Franchise shall be 60 days after passage of the Franchise by the City Council unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 20 herein, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof, as stamped by the Council Clerk.

D. Franchise Not Exclusive. This Franchise is not exclusive. The City expressly reserves the right to grant rights or Franchises to other Persons, as well as the right in its own

name as a municipality, to use the Streets for similar or different purposes allowed Grantee hereunder, by Franchise, permit or otherwise.

- E. Charter and General Ordinances to Apply. To the extent authorized by law, this Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), are hereby incorporated by reference and made a part of this Franchise, to the extent authorized by law. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

Section 2. DEFINITIONS:

- A. Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.
- B. Definitions. For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.
1. "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video, or data transmission.
 2. "City" means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
 3. "City Council" means the Council of the City of Portland.
 4. "Conduit" means any structure, or section thereof, containing two or more ducts used for telecommunications fiber or co-axial cable.
 5. "Conduit Facility" means any structure, or section thereof, containing one or more ducts, conduits, manholes, handhole or other such facilities in the Grantee's Telecommunications System.
 6. "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.
 7. "Facility" means any tangible component of the Telecommunications System.

8. "Franchise" means this Franchise agreement, as approved by the City Council and accepted by the Grantee, according to the terms of Section 20 of this Franchise.
9. "Gross Revenues" shall mean any and all gross revenues derived by Grantee for the provision of any and all products, services or charges, originating or terminating in Portland, Oregon or billed to a circuit, switch or address in Portland, Oregon, including revenues from dedicated private networks. Gross revenues shall include any and all revenue from leases and IRUs for the Portland portion of Grantee's system.
10. Indefeasible Right of User Interest (IRU) means a form of acquired capital in a telecommunications system, in which the holder of the interest possesses a right to use the telecommunications system, but not the right to control, maintain, construct or revise the telecommunications system.
11. "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Streets. For the purposes of Section 12, the Grantee shall not be construed to be a "Licensee" as defined herein.
12. "Minimum Annual Franchise Fee" shall mean \$10,000 in the first year of this Franchise, and shall increase by \$1,000 annually, until reaching a minimum of \$20,000 in year ten (10) of this Franchise.
13. "OC-3" means an Optical Carrier 3 level of telecommunications service.
14. "Optical Fiber" means a filament of transparent dielectric material, usually glass or plastic, and usually circular in cross section, that guides light, and is used to convey modulated information.
15. "Penalties" means any and all monetary penalties provided for in this Franchise.
16. "Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.
17. "Streets" means the surface of, and the space above and below, any public street, road, alley or highway, within the City, used or intended to be used by the general public for travel, to the extent the City has the right to allow the Grantee to use them.
18. "Surplus ducts or conduits" are Conduit Facilities other than those occupied by the Grantee or any prior Licensee, one unoccupied duct held by Grantee as an emergency use spare, and other unoccupied ducts that the Grantee reasonably expects to use within the next 18 months.

19. "Telecommunications Services" means:

- a. Services interconnecting interexchange carriers, competitive carriers, and/or wholesale telecommunications providers for the purpose of voice, video, or data transmission.
- b. Services connecting interexchange carriers and/or competitive carriers to telephone companies providing local exchange services for the purpose of voice, video, or data transmission.
- c. Services connecting interexchange carriers or competitive carriers to any entity, other than another interexchange carrier, competitive carrier, or telephone company that provides local exchange services, for the purpose of voice, video, or data transmission.
- d. Services interconnecting any entities, other than interexchange carriers, competitive carriers, or telephone companies providing local exchange services, for the purpose of voice, video, or data transmission.
- e. This Franchise does not authorize the Grantee to operate as a telecommunications provider. The Grantee represents that it has applied for and received all necessary regulatory authority.
- f. Nothing in this Franchise shall preclude the Grantee from entering into a contract for the use of any portion of its Telecommunications System with any Person or other entity for any services, whether specified herein or not, provided that said Person or entity is another Franchisee, licensee, or permittee and has assumed responsibility for obtaining any required authority from the City.

20. "Telecommunications System" means all wires, cables, ducts, conduits, vaults, poles, Optical Fiber and other necessary Facilities owned or used by the Grantee for the purpose of providing Telecommunications Services and located in, under and above City Streets, excluding ducts, conduits and vaults leased from another City franchisee, licensee or permittee.

21. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 3. COMPENSATION AND AUDITING:

A. Amount of compensation.

1. As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets of the City, the Grantee shall pay as a Franchise fee to the City, through the duration of this Franchise, the greater of either:

- a. The Minimum Annual Franchise Fee
 - b. An amount equal to five percent (5%) of the Grantee's Gross Revenues. However, revenues derived from the sale of facilities and subject to Section 3(A)(2), shall be excluded from the Gross Revenues calculation of franchise fees under this Subsection 3(A)(1).
2. As additional compensation to the amounts set forth in Section 3(A)(1):
- a. In the event Grantee sells any portion of its Telecommunications System, Grantee shall pay a one-time Franchise fee to the City of one percent (1%) of the sales price.
 - b. The calculation of the one percent (1%) franchise fee on sales shall be based on the sale price of the Portland, Oregon portion of the Telecommunications System or the minimum annual fee of \$10,000, whichever is greater. The calculations of the one percent franchise fee on sales revenues shall be calculated under the following formula:

Franchise fee = (.01) x Ts x (Fp÷Ft), where:

Ts = Total sales price for the facility(ies);

Fp = the length of the facilities sold located within the City, expressed in fiber-miles; and,

Ft = the total length of the facilities sold, expressed in fiber-miles.

An illustrative example of this calculation would be as follows: Out of a fiber optic bundle of twenty four (24) fibers in a forty mile loop, Grantee sells two (2) fibers to a purchaser for a total sales price of five hundred thousand dollars (\$500,000). Ten miles of the fiber optic loop are located within the City of Portland. The calculation would be as follows: Franchise fee = (.01) X \$500,000 X (2 x 10) ÷ (2 x 40) = \$1,250.

B. City Use of Telecommunications Services and/or Telecommunications System.

1. If the City requests Telecommunications Services from the Grantee, which Telecommunications Services are provided by the Grantee in the ordinary course of Grantee's business, other than as provided under Section 9, Grantee may deduct the charges for such services from Franchise fee payments. Grantee shall charge the City Grantee's most favorable rate offered at the time of the City's request charged to a similar user within Oregon for a similar volume of service, subject to any of Grantee's tariffs and regulations on file with the Oregon Public Utility Commission. Other terms and conditions of such services shall be specified in a separate agreement between the City and Grantee.

2. As specifically provided elsewhere in this Franchise, Grantee may deduct charges for installation and maintenance services requested by the City from the Grantees Franchise fee.

C. Franchise Fee Payments.

1. Grantee's Minimum Annual Franchise Fee payable under Section 3(A)(1) shall be paid to the City annually following the effective date of this Franchise. Each annual payment shall be made for the immediately preceding calendar year ending December 31. Each annual payment of the Grantee's Minimum Annual Franchise Fee shall be paid on or before the forty-fifth (45th) day following December 31st.
2. The Gross Revenue based Franchise fee payable under Section 3(A)(1), together with Franchise fees based upon revenues from sales under Section 3(A)(2), shall be computed and paid on or before the forty-fifth (45th) day following each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) during the term of this Franchise.
3. Franchise fee payments not received by the City on or before the due date shall be assessed interest based on the average prime interest rate set by the City's bank on December 31st of the previous year, plus 300 basis points (3%). At no time shall the annual interest rate be reduced to less than 12%.

D. Reports.

Each payment shall be accompanied by a written report to the City, verified by an officer or other authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues, together with Franchise fees based upon revenues from sales, IRUs and leases under Section 3(A) and the computation basis and method. Such reports shall be in a form satisfactory to the City.

- E. Cost of Pre-franchising and Publication. Grantee has paid the City Five thousand Dollars (\$5,000) for its pre-franchising costs, including publication of this Franchise, as such publication is required by the City Charter.

F. Acceptance of Payment and Recomputation.

1. No acceptance of any payment by Grantee shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid under Section 3 shall be subject to confirmation and recomputation by the City, provided that such audit and computation is completed within five (5) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the five (5) year period, then any

claim that the City might have had for additional compensation shall be forever waived and relinquished. The Grantee agrees to reimburse the City for:

- a. The reasonable costs of such confirmation if the City's recomputation discloses that the Grantee has paid 95% or less of the Franchise fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit.
 - b. One-half of the reasonable costs of such confirmation if the City's recomputation discloses that the Grantee had paid more than 95% but less than 98% of the Franchise fees owing for the period at issue.
 - c. The City's costs which may be reimbursed under this Section 3(F) shall not exceed \$5,000.00 per audit or financial review.
 - d. If the City determines that Grantee made any underpayment, and that the underpayment exceeded 5% of the amount due, Grantee shall pay interest compounded at the rate of one percent (1%) over the existing prime rate as set by the bank with which the City contracts for its banking services, compounded monthly. Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received.
- G. If the Grantee disputes the City's determination of underpayment, the Grantee shall place the disputed amount in an escrow account until final resolution.
- H. The City and its agents and representatives shall have authority to arrange for and conduct reviews of the relevant financial obligations payable hereunder. The City may determine the scope of review in each instance. All amounts paid by Grantee shall be subject to review by the City, provided that such review be completed within five (5) years from the date payment was due. City requests for reviews shall be in writing. If Grantee has not provided copies of all information reasonably within the scope of the review to the City within 30 days from the date of the written request, Grantee shall provide access within the Portland metropolitan region, during normal business hours, upon 48 hours prior written notice. If the City requests in writing that the Grantee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and the Grantee fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee fails to provide, or fails to cause to be provided, such requested information.

Section 4. GENERAL FINANCIAL AND INSURANCE PROVISIONS:

A. Insurance

1. The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City, as well as the City's officers, agents, and

employees, from the claims referred to in Section 5. The insurance shall provide coverage at all times of not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$50,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$500,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Section 4(A)(1) shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this franchise.

2. The Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The certificate of insurance shall be reviewed and approved as to form by the City Attorney.
3. In the alternative to providing a certificate of insurance to the City, certifying liability insurance coverage as required in this Section, Grantee may provide the City with a statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the City, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 4(A)(3), any failure by the Grantee to maintain adequate self-insurance shall be cause for termination of this Franchise under Section 16.

B. Faithful Performance Bond.

1. Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of \$100,000, conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Franchise, including, if necessary, the time required for removal of all of Grantee's Telecommunications System installed in the City's Streets. The bond shall contain a

provision that it shall not be terminated or otherwise allowed to expire without 30 days prior written notice first being given to the City Auditor. The bond shall be reviewed and approved as to form by the City Attorney.

2. During the term of this Franchise, Grantee shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section 4(B)(2) if a bona fide, good faith dispute exists between the City and the Grantee.

C. Construction Bond

During all times when Grantee is performing any construction work in or under the Streets requiring a street opening permit, Grantee shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the City, with good and sufficient surety approved by the City, in the sum of \$100,000. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section 6. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the City Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the City Auditor a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the reasonable approval of the City Attorney as to its adequacy under the requirements of this Section.

Section 5. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS:

1. Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Telecommunications System in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.
2. Grantee also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting from

Grantee's failure to remove, adjust or relocate any of its Facilities in the Streets in a timely manner in accordance with a relocation schedule furnished to Grantee by the City Engineer, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

Section 6. CONSTRUCTION AND RELOCATION:

- A. Subject to applicable regulations of the City, Grantee may perform all necessary construction to construct, operate and maintain its Telecommunications System. All construction and maintenance of any and all Telecommunications System Facilities within Streets incident to Grantee's provision of Telecommunications Services shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any Telecommunications System Facilities within City Streets. Grantee shall pay all applicable fees due for City construction permits.
1. Maps
 - a. Prior to beginning construction, Grantee shall provide the City's Office of Cable Communications and Franchise Management with an initial construction schedule for work in the Streets and the estimated total cost of such work. As the Grantee's construction in the Streets is completed, Grantee shall provide the City with maps showing the location of its installed Telecommunications System in the Streets, as built. Such as-built maps shall be in a form acceptable to the City Engineer.
 - b. One year after the effective date of this Franchise, and annually thereafter, Grantee shall provide a map to the City's Office of Cable Communications and Franchise Management, or its successor, showing the location of Grantee's optical fibers, conduit and ducts in, over or through the Streets on a scale of Three thousand five hundred feet (3,500') per inch or whatever standard scale the City adopts for general use. Grantee shall also provide such maps in an electronic format acceptable to the City and the Grantee.
 2. Grantee may make excavations in the City Streets for any Facility needed for the maintenance or extension of the Grantee's Telecommunications System, subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any further Franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government, owning or maintaining facilities which may be affected by the proposed excavation.
 3. In the event that emergency repairs are necessary for Grantee's Facilities in the Streets, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency.

- Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.
- B. Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law (ORS 757.542 to 757.562 and 757.993 (1999)) and the rules and regulations promulgated thereunder.
 - C. Relocation. The City shall have the right to require Grantee to change the location of its Telecommunications System within the Streets when the public convenience requires such change, and the expense thereof shall be paid solely by Grantee. The City shall provide the Grantee with the standard notice given under the circumstances to other franchisees, licensees, or permittees. Should Grantee fail to remove, or relocate such facilities by the date established by the City, the City may cause and/or effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all direct, indirect and/or consequential costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the City's Streets, the City will make a reasonable effort to provide Grantee with an alternate location for its facilities within the City's Streets.
 - D. Grantee's Telecommunications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits or other facilities that may have been laid in the Streets by or under the City's authority.
 - E. Within thirty (30) days following Grantee's acquisition of any Telecommunications System Facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee retains any such Facilities in the Streets, the Grantee shall submit to the City a written statement describing all Facilities involved, whether authorized by franchise or any other form of prior right, and specifying the location of all such Facilities. At the City's sole option, as expressed by ordinance adopted by the City Council, Facilities acquired by Grantee shall immediately be subject to the terms of this Franchise, within a reasonable period of time to bring such acquired Facilities into compliance with this Franchise.

Section 7. RESTORATION OF STREETS:

- A. Whenever Grantee disturbs the surface of any unimproved Street for any purpose, Grantee shall promptly restore the street to at least its prior condition to the satisfaction of the City Engineer, to the extent reasonably practicable. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer, in accordance with standards developed and adopted by the City Engineer.
- B. If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration of the Street and its surface within the area affected by the excavation. The City may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in

the Street, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 7 shall be done in strict compliance with all applicable rules, regulations and ordinances of the City.

C. Tree Trimming

1. After obtaining a written permit from the City Forester, Grantee may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree in or overhanging the Streets which interferes with Grantee's Telecommunications System. Except in emergencies, Grantee may not prune trees at a point below 30 feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. For the purposes of this Section 7.3, an emergency exists when it is necessary to prune to protect the public from imminent danger. The owner or occupant shall have seven days from receipt of Grantee's notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense.
2. The City Forester may, at his or her own discretion, waive the notification and permit process in the case of single trees, if Grantee adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by Grantee shall be subject to the approval of the City Forester. The City Forester shall have the discretion to cancel the permit if, at any time, the Grantee or its agents, fails to use proper arboricultural practices.

Section 8. RESERVATION OF CITY STREET RIGHTS:

Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street or laying down, 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 to not obstruct, injure or prevent the unrestricted use and operation of the Telecommunications Systems of the Grantee under this Franchise. However, if any of the Grantee's Telecommunications System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's System shall be removed or replaced in the manner the City shall direct; provided, however, the City will cooperate with the Grantee to identify alternate locations within the Streets. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall

be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

Section 9. USE OF NETWORK CAPACITY AND DUCTS BY CITY:

- A. Upon written notice to and upon written request by the City, Grantee shall provide conduit to the City, for municipal purposes. Grantee shall provide maps to the City of the route of any planned duct construction. Such maps shall be provided at least thirty (30) days prior to the beginning of construction. After receipt of the maps, the City will notify Grantee if it does not desire any ducts along the planned route.
- B. Ducts. In the case of any new construction by the Grantee in the Streets, after prior written notice to and upon written request by the City, Grantee shall install for the City one two inch (2") duct for each duct that the Grantee installs, up to four ducts, or one single four inch (4") duct, for municipal purposes. Notwithstanding the foregoing, Grantee shall install up to two 1.25 inch (1.25") ducts for the City's use for any river crossing by the Grantee's Facilities. If Grantee is joint trenching its ducts with another franchisee, the parties may jointly satisfy the requirements of this section through the provision of one duct for each duct installed, up to four ducts, or one single four-inch (4") duct. The cost of such ducts shall not be deducted from Franchise fees payable to the City, or otherwise be charged to the City. Within ten (10) working days, upon completing installation and construction of the ducts in the Streets, Grantee shall submit to the City a deed or other form of ownership documentation, in a form acceptable to the City Attorney, indicating City ownership of such ducts. Upon written request from the City, Grantee shall facilitate access to the City's ducts at the City's expense.
1. City Use of Surplus Ducts or Conduits. The City may, as a Common User and in accordance with Section 12 of this Agreement, install or affix, and maintain wires and equipment for municipal purposes within any of Grantee's surplus ducts or conduits, as defined in Section 12(A). Grantee shall not be responsible for any damages resulting to the wires or property of the City occurring as a result of the City's use of Grantee's surplus ducts or conduits. The City shall not have access to Grantee's surplus ducts and conduits without Grantee's prior approval, except in the event of an emergency requiring that the City obtain immediate access to those conduits or ducts. In such an emergency, the City shall exercise its best efforts to notify the Grantee as soon as possible of the emergency and the City's need for immediate access. All work to attach, install, and/or maintain City wires and equipment in such surplus ducts shall be performed by Grantee, at City expense, at a charge not to exceed Grantee's direct incremental costs of material and labor plus ten percent (10%). Grantee's charges for attaching, installing or maintaining such City wires and equipment may be deducted from Franchise fees payable to the City, or may otherwise be separately charged by the Grantee to the City.
 2. The value of the City's use of Grantees surplus conduits or ducts shall not be charged to the City, or be deducted from Grantee's Franchise fee, or other fees or charges payable to the City.

C. Network Capacity

1. Grantee shall provide the City with access to Grantee's lit optical fiber network within the geographic area of the City, up to an OC-3 level of capacity, if such capacity is currently available in the area requested, as specifically requested in writing by the City, for municipal purposes only. Grantee shall provide the City with a reliable level of service, repair and maintenance, comparable to that which the Grantee makes available to commercial customers of its lit optical fiber network. The City shall be responsible for obtaining any necessary authority for Grantee to enter any premises necessary for building and installing the connections requested by the City. The City shall have no rights of physical access to Grantee's lit optical fiber lines for construction, interconnection or splicing without the Grantee's prior written consent.
 2. The Grantee may charge the City for costs of any design, installation, provisioning or connection of the City to the lit optical fiber network. However, such charges shall not exceed Grantee's direct incremental costs of labor and materials, plus ten percent (10%). Grantee's charges for designing, installing, provisioning, or connecting the City to the lit optical fiber network may be deducted from Franchise fees payable to the City, or may otherwise be separately charged to the City. The other terms and conditions of such services shall be specified in a separate agreement between the City and Grantee, not inconsistent with this Franchise, including but not limited to, the demarcation point for maintenance responsibilities, system monitoring, and system usage.
 3. The Grantee shall not deduct the cost of building or installing its optical fiber network from Grantee's franchise fee or other fees or charges payable to the City. Grantee shall not charge the City for the value of the City's use of Grantee's lit fiber optic network, or deduct such value from Grantee's franchise fees or other fees or charges payable to the City.
- D. For the purposes of Section 9, the term "municipal purposes" includes, but is not limited to, the use of the Grantee's structures, Facilities, and installations for the City's fire, police, traffic, water, and users of City's data, video, telephone, and/or signal systems. The term "municipal purposes" does not include:
1. The sale or lease of Telecommunications Services, or of the Telecommunications System, to non-governmental third parties.
 2. The transfer of any rights by the City to third parties for the purpose of providing the City with access to interexchange carriers.
 3. The transportation of water or wastewater. However, nothing in this Franchise shall be construed to require the Grantee to provide any two-way switched access services to the City. City installations under this Section shall meet all local, state and federal clearance and other safety requirements, and be properly grounded and anchored.

Section 10. STREET VACATION:

If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without expense to the City, forthwith remove its Telecommunications System Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City Council which shall be no better than the condition of such Street immediately prior to removal. In the event of any failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City Council, to repair, improve or maintain such Street, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by the City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City will cooperate with Grantee to identify alternative locations within the Streets.

Section 11. MAINTENANCE OF FACILITIES:

Grantee shall provide and put in use all Telecommunications System Facilities necessary to control and carry Grantee's Telecommunications Services so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, solely at its own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its Telecommunications System in a manner that requires any customer, except the City, or any entity franchised by the City to install cables, ducts, conduits, or other facilities, in, under or over the City's Streets.

Section 12. COMMON USERS:

- A. Grantee acknowledges that the Streets have a finite capacity for containing conduits, ducts and other Facilities. Therefore, Grantee agrees that whenever the City Engineer determines it is impracticable to permit construction of an underground conduit system by any other Person which may at the time have authority from the City to construct or maintain conduits or ducts in the Streets, unless safety or engineering concerns cannot reasonably be mitigated or eliminated the City Engineer may require Grantee to afford to such Person the right to use Grantee's surplus ducts or conduits in common with the Grantee, pursuant to the terms and conditions of an agreement for use of surplus conduits and ducts being entered into by the Grantee and the Licensee. If the Grantee and the Licensee are unable to mutually agree upon the terms and conditions of the use of surplus conduits and ducts, the parties shall submit the matter to final and binding arbitration. Such arbitration shall be conducted according to the procedures set forth under ORS 36.300 through 36.365 (1999). The cost of the arbitration, including the costs of witnesses and compensation of the arbitrators, shall be taxed against the losing party. However, each party shall separately bear its own costs of attorneys' fees.

- B. A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.
- C. Grantee shall give a Licensee and the City 120 written days notice of its need to occupy licensed conduit and shall propose that the Licensee take the first feasible action listed:
1. Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the Grantee's space needs.
 2. Pay revised conduit rent based on the cost of new conduit constructed to meet the Grantee's space needs.
 3. Vacate ducts that are no longer surplus.
 4. Construct and maintain sufficient new conduit to meet the Grantee's space needs.
 5. Grantee shall provide a written copy of such notice to the City at the same time such notice is provided to the Licensee.
- D. When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all Licensees shall bear the revised cost.
- E. All attachments shall meet local, state, and federal clearance and other safety requirements, be properly grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. The Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Grantee for any fines, fees, damages, or other reasonable costs the Licensee's attachments cause the Grantee to incur.

Section 13. DISCONTINUED USE OF FACILITIES:

Whenever Grantee intends to discontinue use of its Telecommunications System within all or part of a particular portion of the Streets and does not intend to use said Facilities again in the future, Grantee shall submit to the City Engineer for the City Engineer's approval a completed application describing the Facility and the date on which the Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefor. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require the Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such

removal or modification in accordance with a schedule set by the City Engineer. Until such time as Grantee removes or modifies the Facility as directed by the City Engineer, 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 restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

Section 14. HAZARDOUS SUBSTANCES:

1. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Telecommunications System in the City Streets. For purposes of this Section, "Hazardous Substances" shall have the meaning given by ORS 465.200(15) (1999).
2. Grantee shall maintain and inspect its Telecommunications System located in the City Streets. Upon reasonable notice to Grantee and in the presence of an authorized representative of Grantee, the City may inspect Grantee's Facilities in the Streets to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's Telecommunications System Facilities.
 - a. In removing or modifying Grantee's Facilities as provided in Sections 6(C), 8 and 13 of this Franchise, Grantee shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto. The City shall provide Grantee with information within the City's possession which identifies potentially responsible parties for the purposes of recovering such removal costs.
3. Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of Hazardous Substances caused by Grantee's ownership or operation of a Telecommunications System in the Streets.

Section 15. CITY'S WRITTEN CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE:

- A. Except as otherwise permitted by Section 15(B) hereof, neither this Franchise nor any of Grantee's Telecommunications System located in the Streets by authority of this Franchise shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall give written notice to the City of any transfers to entities under such common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Section 15 shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantees

Telecommunications System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's Telecommunications System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this Franchise.

1. In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.
 2. No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section 4, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the Auditor an executed counterpart or certified copy thereof.
- B. Grantee shall not lease any of its Facilities without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 15(A), hereof, Grantee may lease any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. A lessee of Grantee's Facilities shall not obtain any rights under this Franchise. For the purposes of this Subsection, a capital lease shall be treated as a lease under this Subsection until the conclusion of the lease, when transfer of ownership occurs. At that point in time, the capital lease shall be treated as a sale under Section 15(B)(2).
1. Notwithstanding Section 15(A)(1), Grantee may grant Indefeasible Right of User Interests in any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. The holder of any IRU in Grantee's Facilities shall not obtain any rights under this Franchise. For the purposes of this Subsection, if a transfer of ownership of the Facilities occurs at the conclusion of the IRU, it shall be treated as a sale under Section 15(B)(2) at that point in time.
 2. Notwithstanding Section 15(A)(1), Grantee may sell portions of its Telecommunications System in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as Grantee complies with the following conditions:

- a. The sale is to the holder of a current existing, valid telecommunications franchise with the City.
- b. Within fourteen days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the portions of the Telecommunications System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Section 6(A)(2)), and providing an executed counterpart or certified copy of the sales documents.
- c. Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Telecommunications System.
- d. Within fourteen days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid franchise. The purchaser shall not obtain any of the Grantee's rights under this Franchise.

Section 16. FORFEITURE AND REMEDIES:

- A. Forfeiture. In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, and all of Grantee's rights arising thereunder, in the event that:
 1. The Grantee violates any material provision of the Franchise
 - a. For purposes of this Section, the following are material provisions of this Franchise, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Franchise:
 - (1) The invalidation, failure to pay or any suspension of Grantee's payments of Franchise Fees to the City for use of the Streets under this Franchise
 - (2) Any failure by the Grantee to submit timely reports regarding the calculation of its Franchise Fees to the City
 - (3) Any failure by Grantee to maintain the liability insurance required under this Franchise
 - (4) Any failure by Grantee to maintain the performance bond required under this Franchise
 - (5) Any failure by Grantee to provide copies of requested information as provided under Section 3(H) above
 - (6) Any failure by Grantee to otherwise fully comply with the requirements of Section 3 through Section 17 of this Franchise.
 2. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City

3. There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Grantee's operation of its Telecommunications System within the City
 4. The Grantee's construction schedule is delayed for over 18 months and such delay has not been caused by the actions or omissions of the City, or Force Majeure
 5. The Grantee becomes unable or unwilling to pay its debts, or is adjudged a bankrupt.
- B. Additional Remedies. In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:
1. Impose a financial penalty of up to \$1,000.00 per Franchise violation
 2. Suspend the Grantee's Franchise rights, until the Grantee corrects or otherwise remedies the violation.
 3. Revocation. The City Council may revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the Franchise. The City shall exercise its revocation rights under this subsection consistent with the terms of Section 17 of this Franchise.
- C. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.
- D. Notice and Opportunity to Cure. The City shall give Grantee thirty (30) day's prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Grantee cures the stated reason within the thirty (30) day notice period, or if the Grantee initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section. However, in no event shall the City exercise its rights under this Section if a bona fide, good faith dispute exists between the City and the Grantee.

Section 17. RENEGOTIATION:

In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council or the Grantee expressly finds that such provision constituted a consideration material to entering into this Franchise, the City and the Grantee may mutually agree to

renegotiate the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have 90 days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 18. EXPIRATION:

Upon the expiration of this Franchise, on application made by the Grantee for Franchise renewal or additional authority to exercise the privileges, or any of them, hereby granted, the Grantee shall have the first and preferential right to take and receive such authority upon terms and conditions approved by the City. If the Grantee does not promptly apply for such renewal or additional authority, or if the Grantee rejects the terms and conditions of such authority offered by the City, the City may, within one year from the expiration of the prior Franchise, grant a permit or Franchise to any other Person. In the event of such a grant, such other Person taking such new or additional authority, shall in addition to any compensation to be paid to the City for such new or additional authority, pay to the Grantee, at or before the time such new or additional authority takes effect, and before the Grantee shall be deprived of the right to possess, maintain and operate its Telecommunications System located within the Streets, the fair and equitable valuation of Grantee's Telecommunications System located within the Streets. If the third party and Grantee cannot agree on the fair and equitable value of said Telecommunications System, the dispute shall be submitted for a declaratory determination by the courts of the State of Oregon. Until such time as the City exercises its rights as set forth in this Section, the Grantee's rights and responsibilities within the City shall continue to be controlled by the terms and conditions of this Franchise.

Section 19. MISCELLANEOUS:

A. Compliance with Laws

1. Both Grantee and the City shall comply with all applicable federal and state laws.
2. Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

B. Severability. If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected.

C. Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

D. Force Majeure

1. For purposes of this Section 19(D), the term Force Majeure shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, or other similar events which are not reasonably within the control of the parties hereto.
2. If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

E. Choice of Forum. Any litigation between the City and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

F. Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), or (3) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

1. If to the City: Office of Cable Communications and Franchise Management
City of Portland, Oregon
1120 SW 5th Avenue, Room 704
Portland, Oregon 97204
FAX (503) 823-5370

With a copy to: City Attorney's Office
City of Portland
Room 430, City Hall
1221 SW 4th Avenue
Portland, Oregon 97204
FAX (503) 823-3089

2. If to the Grantee: Attn: Jim Lobdell
Portland General Distribution LLC,
dba Portland General Broadband

121 SW Salmon Street
 Portland, OR 97204
 FAX: (503) 778-5566

With a copy to: Barbara W. Halle
 Assistant General Counsel
 Portland General Electric
 121 SW Salmon Street, 1WTC-13
 Portland, OR 97204
 FAX (503) 464-2200

3. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

G. Confidentiality. Grantee may identify information submitted to the City as confidential. Prior to submitting such information to the City, Grantee shall prominently mark any such information with the mark Confidential in letters at least one-half (1/2") inch in height. The City shall treat any information so marked as confidential and not subject to public disclosure, until the City receives any public records request for disclosure of such information. Within five (5) working days of receiving any such request, the City shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may release any of the requested confidential information. Whether the Grantee submits any written response to the City, the City shall retain final discretion to determine whether to release the requested confidential information, provided that the City shall give the Grantee at least five days written notice after receipt of any response from Grantee, prior to releasing such information.

H. Public Records

1. Some information submitted by the Grantee to the City may be relevant to the Grantee's obligation to pay franchise fees. Requiring such information to be submitted to the City in order to determine fees payable or paid to the City may qualify such information as being exempt from public disclosure under ORS 192.501(5) (1999) of the Oregon Public Records Law.
2. Some information submitted by the Grantee to the City may otherwise be used to conduct its business and known to certain individuals within the organization, with actual or potential commercial value, and giving Grantee a business advantage over its competitors. Such information may constitute trade secrets and be exempt from public disclosure under ORS 192.501(2) (1999) of the Oregon Public Record Law.

3. Identification of these exemptions under the Oregon Public Records Law, which may apply to information submitted by the Grantee to the City, is not an exhaustive list of those possibly applicable to such information.
1. Franchise Amendment. The City has negotiated this Franchise in good faith, in reliance upon the information provided by the Grantee regarding the scope of its authority to offer the Telecommunications Services described in Section 2(B)(19) above. In the event that Grantee actually receives authority to offer telecommunications services outside the scope of this Franchise, or otherwise begins offering telecommunications services outside the scope of those identified in Section 2(B)(19), Grantee shall immediately notify the City. Within 90 days of receiving such notice, the City may either enter into negotiations with the Grantee to revise or amend this Franchise to reflect such changed circumstances, or may proceed with early termination of this Franchise. The parties will negotiate in good faith to revise the franchise to authorize the expanded scope of services.

Section 20. WRITTEN ACCEPTANCE:

On or before the thirtieth (30th) day after this ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by the Grantee, meeting the approval of the City Attorney. Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

Section 21. OTHER AUTHORITY SUPERSEDED:

Upon effectiveness of this Franchise, any and all authority to operate previously granted to Grantee by the City shall be superseded by this Franchise.

Passed by the Council JUL 18 2001
 Commissioner Erik Sten
 D. Soloos
 May 21, 2001

Gary Blackmer
 Auditor of the City of Portland
 By

Susan Parsons

Deputy

ORDINANCE NO. 175793

Title

Grant a franchise to Portland General Distribution LLC, doing business as Portland General Broadband, for a period of ten years. (Ordinance)

<p style="text-align: center;">INTRODUCED BY</p> <p style="font-size: 1.2em;">Commissioner Sten</p>	<p>DATE FILED: JUN 08 2001</p>
<p style="text-align: center;">NOTED BY COMMISSIONER</p>	<p style="text-align: center;">Gary Blackmer Auditor of the City of Portland</p> <p style="font-size: 1.5em; font-family: cursive;">[Signature]</p> <p>By: _____ Deputy</p> <p>For Meeting of: _____</p> <p>ACTION TAKEN: JUN 13 2001 PASSED TO SECOND READING JUN 18 2001 9:30 A.M.</p>
<p>Affairs</p>	
<p>Finance and Administration</p>	
<p>Safety</p>	
<p>Utilities</p>	
<p>Works <i>[Signature]</i></p>	
<p style="text-align: center;">BUREAU APPROVAL</p> <p>Bureau: Office of Cable Comm/Franchise Mgmt</p>	
<p>Prepared by Date</p> <p>Dave Soloos May 21, 2001</p>	
<p>Budget Impact Review:</p> <p><input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not Required</p>	
<p>Bureau Head: <i>MBH by D Soloos</i></p>	

AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
		YEAS	NAYS
Consent: Regular XXX	Francesconi	_____	
NOTED BY	Hales	✓	
City Attorney <i>Benjamin Walters</i>	Saltzman	✓	
City Auditor	Sten	✓	
City Engineer	Katz	✓	