

EXHIBIT A

MHCRC DRAFT 1-4-12

Redline from MHCRC draft 11-14-12 draft, with explanatory notes & highlights

ORDINANCE NO.

Grant a franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink. to operate a Cable System.

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT

1.1 Grant of Franchise.

(A) The City of Portland does hereby grant to Qwest Broadband Services, Inc. d/b/a CenturyLink who is qualified to do business in Oregon, and to its successors and assigns, a franchise to construct, operate and maintain a Cable System to provide Cable Services and I-Net Services in the Streets of the City.

(B) Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City" and Qwest Broadband Services, Inc d/b/a/CenturyLink shall be referred to as the "Grantee."

1.2 Term of Franchise. This Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall expire on XX DATE, unless terminated sooner as provided in this Franchise or extended as provided in Section 1.3. (NOTE: Agreed to have set expiration date; length of term yet to be decided)

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1.3 Franchise Term Extension.

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(A) The term of the Franchise under Section 1.2 hereof, and all rights, privileges, obligations and restrictions pertaining thereto, shall be extended:

- (1) An additional two (2) years to _____ if, at the end of the third year after the Effective Date or by _____, Grantee offers Cable Services to twenty percent (20%) or more of the Living Units in the Franchise Area and duly notifies the City with reasonable documentation; and
- (2) An additional three (3) years to _____ if, at the end of the sixth year after the Effective Date, or by _____, Grantee offers Cable Services to an additional thirty percent (30%) or more of the Living Units in the Franchise Area and duly notifies the City with reasonable documentation.

(B) The extension of the term of this Franchise under Section 1.3(A)(1) and (2) shall not become effective until after the City Council has accepted, by resolution, the Commission's report of Grantee's completion of the requirements of Section 1.3(A)(1) or Section 1.3(A)(2), as applicable.

1.4 Effective Date. The effective date of this Franchise shall be XX date, unless the Grantee fails to file an unconditional written acceptance of this Franchise, 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. (NOTE: Agreed 11/27/12 effective date coincide with current franchise expiration date)

Deleted: 60 days after passage of this Franchise by the City Council,

1.5 Non-Exclusive Franchise; Competitive Parity.

(A) This Franchise is not exclusive. The City expressly reserves the right, and may be required by federal law, 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.

(B) Authorization of Cable Franchises.

(1) The parties acknowledge that there is an incumbent cable operator already providing cable services with the City. The incumbent cable operator provides capacity on its cable system for PEG Access Channels, has existing assignments for the PEG Access Channels, provides PEG Access Capital funding and provides I-Net capacity and support. The parties acknowledge that this Agreement reflects their best, good faith efforts to reflect the PEG Access and I-Net obligations set forth in the incumbent cable operator's franchises with the City. The parties agree that the obligations set forth in Section 6, 7 and 8 are intended to require Grantee to provide PEG Access Channels, I-Net capacity and PEG Access Capital funding that is substantially equivalent to that required by the incumbent franchised cable operator.

(2) If, after the Effective Date of this Franchise, there are changes as to franchise requirements for the incumbent franchised cable operator relating to PEG Access Channels, PEG Access Capital funding and I-Net capacity, the parties agree that the corresponding obligations in this Franchise will be modified to substantially reflect the franchise obligations of the incumbent franchised cable operator. The parties agree that they will attempt in good faith to negotiate these modifications. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation in accordance with Section 21.3 or by arbitration in accordance with Section 21.2.

(C) (1) Nothing in Section 1.4(B) shall be construed as limiting, restricting or preventing the City from issuing any franchise, permit, license or other form of agreement for all of Grantee's Franchise Area or any portion thereof, that provides for equal or greater requirements or for a similar or higher level of Cable Services to Subscribers, than that required of Grantee under this Franchise.

(2) Grantee agrees and acknowledges that, solely for the purposes of Section 1.4(B), the provisions of any other franchise issued or administered by the City with respect to the provision of Cable Services and in effect as of the effective date of this Franchise, are reasonably non-discriminatory and competitively neutral.

1.5 Charter and General Ordinances. 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 materially in conflict with existing contractual rights of Grantee, now in effect or hereafter made effective, Sections 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. Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority. Nothing in this Section 1.5 shall be deemed a waiver by Grantee or the City of the rights of Grantee or the City under applicable law.

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1.6 Any Affiliate of the Grantee directly involved in the offering or delivery of Cable Services in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, shall comply with the obligations of this Franchise. However, the City and Grantee acknowledge that Qwest Corporation d/b/a CenturyLink ("QC"), an Affiliate of the Grantee, will be primarily responsible for the construction and installation of the facilities in the Streets which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Services to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Streets shall otherwise be subject to applicable laws and permit requirements. To the extent Grantee uses any third-parties (whether or not affiliated with the Grantee) to fulfill its obligations under this Franchise, Grantee will insure such parties comply with the terms and conditions of this Franchise. To the extent Grantee constructs and installs Facilities in the Streets, such installations and Facilities will be subject to the terms and conditions contained in this Franchise. (NOTE: MHCRC staff may need changes related to other Sections)

1.7. City Does Not Regulate Telecommunications. City's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of QC's telecommunications network to the extent the telecommunication network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending QC's existing telecommunications network for the provision of non-cable services.

Section 2. INTERGOVERNMENTAL AGREEMENT/ CABLE REGULATORY COMMISSION

2.1 Intergovernmental Agreement. The City has provided for regulation of this Franchise through a cable regulatory commission ("Commission") created through an Intergovernmental Agreement (attached as Exhibit A). The City has agreed to be bound by the decisions and actions taken by the Commission pursuant to powers, duties, and responsibilities delegated to the Commission under the Intergovernmental Agreement. Unless specifically stated otherwise herein, the Commission shall be the representative and agent of the City in dealing with Grantee under the terms of this Franchise. In fulfilling the terms of this Franchise, Grantee is expected to rely upon, look to, communicate with, and comply with the decisions and orders of the Commission, its agents, and employees on all cable matters with respect to which the City has lawfully delegated the exercise of the City's authority under this Franchise. Nothing in this Franchise is intended to empower the Commission to act contrary to the provisions of the Intergovernmental Agreement. The City retains all powers not expressly delegated to the Commission.

Section 3. DEFINITIONS

3.1 (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, and all Exhibits attached hereto, 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.

3.2 "Access" means the availability for use of the Cable System in accordance with the Franchise by various agencies, institutions, organizations, groups and individuals in the community to acquire, create,

and distribute Programming not intended to generate income which may be subject to federal, state, or local income taxes and not under the Grantee's editorial control, 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 or designated Programmers or users having editorial control over their Programming;

(B) "Educational Access" means Access where educational institutions are the primary or designated Programmers or users having editorial control over their Programming;

(C) "Government Access" means Access where governmental institutions are the primary or designated Programmers or users having editorial control over their Programming; and

(D) "PEG Access" means Public Access, Educational Access, and Government Access, collectively.

3.3 "Access Channel" means any Channel designated for Access purposes or otherwise made available to facilitate or transmit PEG Access Programming.

3.4 "Access Resources" means the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for PEG Access.

3.5 "Activation" or "Activated" means the status of any Capacity or part of the Cable System in which any Residential Service, Institutional Service or Access Resource requiring the use of that Capacity or part is made available, in accordance with the Franchise, without further installation, adjustment, modification or testing of Cable System equipment.

3.6 "Affiliated Entity" means any entity having ownership or control in common with the Grantee, in whole or in part, including, without limitation, any subsidiaries or affiliated corporate entities of Grantee. (NOTE: 11/27/12 Agreed)

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3.7 "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.

3.8 "Basic Service" is the level of Programming service which includes, at a minimum, all Broadcast Channels, all PEG Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

3.9 "Broadcast Channels" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

3.10 "Cable Regulatory Commission" means the Mt. Hood Cable Regulatory Commission, or its successor agency as designated by ordinance of the City Council.

3.11 "Cable Services" shall have the meaning provided under Federal law and regulations.

3.12 "Cable System" shall have the meaning provided under Federal law and regulations.

3.13 "Capacity" means the capability of the Cable System to carry Signals within a given format.
(NOTE: 11/27/12 Agreed)

3.14 "Capital" or "Capital Costs" means the expenditure of funds for services, products or other resources, whose useful life can be expected to exceed a period of one year or longer.

3.15 "Channel" means a time or frequency slot or technical equivalent on the Cable System, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.

3.16 "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.

3.17 "City Council" means the Council of the City of Portland.

3.18 "Designated Access Provider" means the entity or entities designated by the City under Section 5.1.

3.19 "Downstream" means the direction of Signals from the Headend to Subscribers or Interconnect points served by the Cable System.

(NOTE: Relates to discussion about Living Unit and Section 8)

3.21 "Expanded Basic Service Tier" is the most commonly-subscribed to tier of service and does not include the Basic Service Tier or pay per-view or pay-per-program services.

3.22 "Facility" means any tangible component of the Cable System.

3.23 "FCC" means the Federal Communications Commission.

3.24 "Fiber" means a transmission medium of optical fiber cable capable of carrying Signals by means of lightwave impulses.

3.25 "Franchise" means this franchise agreement, as fully executed by the City Council and the Grantee.

3.26 "Franchise Area" means the territory within the boundaries of the City of Portland.

3.27 "Gross Revenues" means all amounts, in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide Cable Services within the City, by the Grantee or by any Affiliated Entity only to the extent such amounts are earned from the operation of Grantee's Cable System within the City. "Gross Revenues" shall include, without limitation, amounts for the Basic Service Tier, any other programming service tiers, Pay Services, audio services, Subscriber installations and transactions, Leased Access, advertising, equipment rentals and all other revenues derived from the operation of Grantee's Cable System to provide Cable Services within the City. Grantee shall report Gross Revenues to the City using the accrual method of accounting, consistent with Generally Accepted Accounting Principles ("GAAP"). Nothing in this Section shall impair the City's ability to challenge Grantee's interpretation of GAAP. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. "Gross Revenues" shall also include amounts earned during any period regardless of whether: (1) the amounts are paid in cash, in trade or by means of some other benefit to the Grantee or any Affiliated Entity; (2)

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3.20 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is lawfully occupied for residential purposes. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

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the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; and (3) the amounts are initially recorded by the Grantee or an Affiliated Entity. "Gross Revenues" shall not be net of (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; 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 Affiliated Entity that represent a transfer of funds between the Grantee and the Affiliated Entity, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliated Entity, 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 Affiliated Entity and which may otherwise constitute revenue of the Affiliated Entity, shall not constitute additional Gross Revenues for purposes of this Franchise. "Gross Revenues" shall include amounts earned by Affiliated Entities 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 and recorded such types of revenue in its books and Records directly but for the existence of Affiliated Entities. "Gross Revenues" shall not include sales or other similar taxes imposed by law on Subscribers which the Grantee is not obligated to collect, nor amounts received from I-Net Institutions for use of the Institutional Network.

3.28 "Hazardous Substances" has the meaning given by ORS 465.200(16) (2009)

3.29 "Headend" means Grantee's Facility for reception and dissemination of Signals on the Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, 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.

3.30 "Incremental" costs means the amount actually expended by Grantee in meeting an obligation under this Franchise which Grantee would not otherwise have expended in order to operate and conduct the business of its Cable System or to meet another obligation of this Franchise.

3.31 "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 Franchise.

3.32 "Institutional Network" or "I-Net" means dedicated capacity to provide one-way and bi-directional communication services to and among PEG Institutions pursuant to 47 USC § 531 and § 541, and/or resources necessary to facilitate PEG Institution's effective use of I-Net capacity for conducting their business. (11/27/12 Agreed)

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3.37. "Living Unit" means a distinct address in the OC network inventory where OC currently has, had in the past or had planned to provide service to a customer. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations. (NOTE: MHCRC would like to further discuss as related to Section 8)

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3.38 "Pay Service" means video Signals delivered to Subscribers on a per program, per Channel, or other separate subscription basis for a fee or charge over and above the regular charges for other Grantee tiers of service.

3.XX "PEG Institution" means any School; agency of government, excluding federal governments; public library; or not-for-profit organization, with at least one physical site located within the Franchise Area. (11/27/12 Agreed)

3.39 "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.

3.40 "Programmer" means any Person responsible for Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides Programming for transmission on the Cable System.

3.41 "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.

3.42 "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, summaries or accounts of personal conversations or interviews, reports, notebooks, sketches, summaries or accounts of meetings or conferences, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, photographs and any other writings or recordings of every kind and description, including magnetic media, and all sound recordings, to the extent related to the enforcement or administration of this Franchise.

3.43 "Remote Terminal" or "RT" means a Digital Subscriber Line Access Multiplexer installed by Grantee and capable of providing Cable Service to Subscribers.

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3.XX "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies. (11/27/12 Agreed)

3.45 "Section" means a provision of this Franchise, unless specified as part of another document.

3.46 "Signal" means any analog or digital electrical or light impulses carried on the Cable System, whether one-way or bi-directional.

3.47 "Streets" means the surface of any public street, road, alley or highway, within the City, used or intended to be used by the general public for general transportation purposes to the extent the City has the right to allow the Grantee to use them, and the space above and below.

3.48 "Subscriber" means any Person who is lawfully receiving, for any purpose or reason, any Cable Services provided by Grantee by means of or in connection with the Cable System, whether or not a fee is paid for such service.

3.49 "Upstream" means the direction of Signals transmitted to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

Section 4. FRANCHISE AREA (NOTE: MHCRC staff would like further discuss this Section)

4. Service Area. Subject to the provisions of this Franchise, Grantee is authorized to provide Cable Services within the corporate boundaries of the City, as such boundaries may change from time to time

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3.46. "Service Date" means the date that Grantee first offers, or plans to offer, Cable Services on a commercial basis to one or more Subscribers in the Franchise Area. Grantee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall become a part of this Franchise. (NOTE: Moved from definition section; only used in this Section)

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4.2. Service Date. Grantee shall notify the City within eighteen (18) months from the Effective Date of this Franchise, of a Service Date as provided in Section 3.46.

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4.3. Redlining Prohibited. Grantee shall not deny Cable Services to any group of subscribers or potential Subscribers based upon the income level of residents of the local area in which such group resides, nor shall Grantee base decisions about construction or maintenance of its Cable System or Facilities based upon the income level of residents of the local area in which such group resides.

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Section 5. PEG ACCESS (NOTE: Section not included in this draft - On hold for separate discussion regarding PEG obligations)

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Section 6. INSTITUTIONAL NETWORK (MHCRC staff accepts CL language for this Section)

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6.1 Grantee acknowledges that the City has acquired I-Net capacity, facilities, interconnection, services and resources from a variety of existing franchised cable service providers to design, construct and operate an Institutional Network and to facilitate PEG Institutions' uses of the I-Net. The parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services provided under other cable services franchises.

(A) Grantee agrees that the City may use I-Net resources provided under this Franchise to support use by PEG Institutions of I-Net capacity, facilities, interconnects, services and resources not constructed, owned, controlled, operated or provided by Grantee.

(B) The City and Grantee may mutually agree on I-Net capacity, Interconnect, facilities and/or services to be provided by Grantee to meet identified I-Net needs of PEG Institutions. Grantee may deduct the agreed upon Incremental, direct costs or providing such I-Net capacity, facilities and/or services from I-Net funds provided under Section _____.

6.2. Interconnections. Upon request by the City based on an identified community need, Grantee shall provide an Activated Interconnection, within 180 days of such request, for the carriage and routing of I-Net Signals to and from any I-Net facilities provided by Grantee and I-Net facilities provided by other franchised cable service providers, including cable service providers, serving jurisdictions contiguous with the Franchise Area. If the City authorizes such Interconnection, Grantee may credit the Incremental, direct cost of such Interconnection against any payments made under Section _____.

Section 7. PEG ACCESS AND I-NET CAPITAL FUNDING

7.1 PEG and I-Net Capital Fee. Grantee shall pay to the City three percent (3%) of Grantee's Gross Revenues Annually (PEG/I-Net Fee).

(A) The PEG/I-Net Fee shall be allocated to provide support for Capital Costs related to PEG Access and I-Net.

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(B) The City shall provide Grantee with a report Annually describing the allocation of the PEG/I-Net Fee, containing sufficient detail to demonstrate that the funds under Section 7.1 are used in compliance with the terms of this Franchise. The City shall Annually submit the report to Grantee no later than December 31.

Deleted: The PEG/I-Net Fee shall not be paid to another cable operator in the Franchise Area for equipment to be owned by that cable operator or an affiliate.

(C) The City intends to use one percent (1%) of funds paid under Section 7.1 to provide support for Designated Access Provider Capital Costs; one percent (1%) for Capital Costs in the form of grants related to PEG Institutions use of Access Resources or the I-Net; and one percent (1%) to fund Capital Costs related to the I-Net and its use.

(D) The City shall work with the Grantee and recipients of the PEG/I-Net Fee to ensure that the contributions of the Grantee under this Franchise are appropriately acknowledged.

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7.2 Payments. Following the effective date of this Franchise, Grantee shall make quarterly payments of PEG/I-Net Fees to the City, under Section 7, for the preceding quarter-year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

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

7.4 Interest on Late Payments. Payments not received within forty-five (45) days from the quarter ending date shall be assessed in accordance with Section 12.3.

7.5 PEG Access Support not Franchise Fees; Applicable Federal Law. Grantee agrees that financial support for Access or I-Net Capital Costs arising from or relating to the obligations set forth in Section 7 shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the City. Grantee agrees that although the sum of franchise fees and the payments set forth in Section 7 may total more than five percent of Grantee's Gross Revenues in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any franchise fee payments under this Franchise.

7.6 Review of Records. Grantee may conduct a financial review or audit for the purpose of verifying whether use of the PEG/I-Net Fee is in accordance with this Franchise. The Grantee shall notify the City in writing at least thirty (30) days prior to the date of an audit or review and identify the relevant financial records of City and the Designated Access Provider that Grantee wants to review. The time period of the review or audit shall be for PEG/I-Net Fee payments received no more than thirty-six (36) months prior to the date the Grantee notifies the City of its intent to perform an audit or review. The City and recipients of the PEG/I-Net Fee shall make such documents available for inspection and copying. Documents shall be reviewed during normal business hours at a time and place made available by the City or the Designated Access Provider.

Grantee shall promptly provide the City with written notice of the audit or review's conclusions. The City shall have sixty (60) days to provide a written response. If the City disputes Grantee's conclusions, the parties shall attempt in good faith to reach a mutually acceptable resolution. If the parties are unable to agree, either party may submit the issue to arbitration under Section 20.2. If the conclusions become

final, determining that any PEG/I-Net Fee has not been used in accordance with this Franchise, then within 30 days, one of the following actions shall occur:

(A) If the City determines that the recipient has access to sufficient unrestricted funds, the City may require either:

(1) That the recipient expend its unrestricted funds to achieve the stated purposes of the original PEG/I-Net funding not spent in accordance with this Franchise; or,

(2) Upon demand, the recipient shall return the full amount of the PEG/I-Net funding amount not spent in accordance with this Franchise to the PEG/I-Net funding account.

(B) If the City determines that the recipient does not have access to sufficient unrestricted funds, the City may decide to either:

(1) Directly reimburse the PEG/I-Net funding account for the amount not spent in accordance with this Franchise; or,

(2) Allow the Grantee to reduce future PEG/I-Net Fee payments by the amount not spent in accordance with this Franchise.

(C) The decision as to which of these options to exercise, under Sections 7.6(A) and (B), shall be at the City's sole discretion.

(NOTE: Not applicable to CL franchise)

Section 8. SERVICE, CONSTRUCTION AND INTERCONNECTION

8.1 Non-Discriminatory Rates and Charges. Grantee shall provide Cable Services to all Subscribers in the Franchise Area under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within the Franchise Area, in accordance with Section 10.6.

(NOTE: MHCRC staff would like to further discuss the following service sections)

8.2 RT Service Radius. RT Service Radius means an area with 4,000 cable feet (ISO NOTE: Insertion of "cable" change from Qwest franchise) from an Activated Remote Terminal capable of providing Cable Services. 8.3 Service Availability. Except as otherwise provided in this Franchise, where Grantee chooses to activate a Remote Terminal located within the Franchise Area, Grantee shall provide Cable Services at its standard installation rates within seven (7) days of a request by any Person within an activated RT Service Radius. A request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

8.4 Monthly Service and Installation of Schools. Upon request, Grantee shall provide without charge the Basic Service Tier and one standard outlet to any School located within an activated RT Service Radius provided that such School is not already receiving such service from another cable provider.

(NOTE: MHCRC staff accepts CL proposed language) (NOTE: Defined term in definitions section) Section 8.5 Quality and Workmanship. The Cable System constructed or erected by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency. (NOTE: MHCRC staff accepts CL proposed language)

Deleted: 7.7 Undedicated I-Net Funds. The restrictions upon the City's use of the one percent (1%) paid by Grantee to the City to fund Capital Costs related to the I-Net and its use ("I-Net Capital Funds") under Section 7 will survive the termination of this Franchise for any cause. Any encumbered or dedicated I-Net Capital funds must be expended within four years of receipt by the City. Within 30 days after December 31, 2015 and December 31, 2020, the City shall document any unencumbered and undedicated amounts in City accounts from I-Net Capital funds paid to the City through June 30, 2015 and through June 30, 2020, respectively. If the amount of unencumbered and undedicated I-Net Capital Funds is in excess of twice the total amount paid to the City and intended for I-Net purposes for the fiscal year period July 1, 2014 through June 30, 2015 or July 1, 2019 through June 30, 2020, respectively, the City will return the excess of such I-Net Capital Funds to Grantee for the purpose of refunding these amounts to cable subscribers or to apply such funds to offset Capital construction costs of line extensions that exceed Grantee's Capital contribution obligations under Section 8.4, for the purpose of distributing Cable Services, including PEG programming, within the Franchise Area.

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Deleted: Standard Installation. For purposes of Section 8, "Standard Installation" means an installation of a drop no more than 125 feet between the Dwelling Unit and the nearest point of access on the Street from which the Cable System is designed to serve the site, which qualifies a Residential Subscriber for installation at standard rates. Except as otherwise provided in Section 8.3, Grantee shall provide Standard ... [1]

Deleted: Non-Standard Installations. In general, Grantee shall have no obligation to provide service necessitating a service drop extension beyond a Standard Installation unless the potential Residential Subscriber requesting ... [2]

Deleted: (A) Grantee shall provide service at its Standard Installation rate for the initial 125 feet of service drop extension.¶

¶ **(B)** Grantee and the Residential ... [3]

Deleted: For purposes of Section 8.5, schools mean any public and private primary and secondary schools (K through 12), which have received the appropriate accreditation from the State of Oregon.

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Section 8.6. Inspection of Construction. The City shall have the right to inspect any construction or installation work performed under this Franchise. (NOTE: MHCRC staff accepts CL proposed language)

Section 9. CABLE SYSTEM UPGRADE

9.1 Technology Assessment.

(A) The City may notify Grantee on or after (NOTE: tie to Service Date) that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the five (5) largest U.S. cable systems owned and operated by Grantee or any Affiliated Entities pursuant to franchises that have been renewed or extended since January 1, 2012. (NOTE: MHCRC staff accepts CL proposed language in this Section: Edits related to deletion of "Parent Corporation")

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(B) Grantee shall cooperate with the City to provide necessary non-confidential and proprietary information upon the City's reasonable request as part of the technology assessment.

(C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

Section 10. CONSUMER PROTECTION

10.1 City's Cable Television Consumer Protection Policy.

(A) Grantee shall comply with the City's Cable Television Consumer Protection Policy set forth in Portland City Code Chapter 3.115.

(B) With Grantee and the City both reserving their respective rights under applicable law, the City and Grantee agree that certain requirements of the Cable Television Consumer Protection Policy shall be interpreted in the manner set forth in Exhibit D hereof, and that the interpretations set forth in this Exhibit shall control on the related requirements set forth in the Cable Television Consumer Protection policy as adopted by the City Council.

10.2 Subscriber Contracts. Grantee shall not enter into contracts with Subscribers which are inconsistent in any material sense with the requirements of this Franchise.

10.3 Obscenity. Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any Programming which is obscene under applicable law. Grantee shall be deemed to have transmitted or permitted a transmission of obscene Programming only if a court of competent jurisdiction has found that Grantee's officers or employees, acting in their authorized capacity, have knowingly permitted Programming which is obscene under applicable law to be transmitted over any Channel that is subject to Grantee's editorial control.

10.4 Parental Control Device. Upon request by any Subscriber, Grantee shall make available a parental control or lockout device 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.

10.5 Regulation of Rates and Charges. All Grantee Subscriber rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by the City Charter and by applicable federal, state and local laws and City ordinances.

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10.6 Rate Discrimination. All Grantee Subscriber rates and charges shall be published and non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability, income of the residents, or geographic location within the Grantee's Franchise Area. Nothing in Section 10.6 shall be construed to prohibit:

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(A) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

(B) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;

(C) Grantee establishing different and nondiscriminatory rates and charges and classes of services for commercial subscribers, as well as different, nondiscriminatory monthly rates for classes of commercial subscribers; or

(D) Grantee from establishing reduced bulk rates for Subscribers. (NOTE: 9/6/12 Agreed)

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10.7 Filing of Rates and Charges. Grantee shall maintain on file with the City a complete and current schedule of applicable Subscriber rates and charges for Cable Services provided under this Franchise, in a form satisfactory to the City. Nothing in this Section 10.7 shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used solely in this Section 10.7, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six (6) consecutive months to purchase Cable Services at such rate or charge.

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10.8 Changes in Rates and Charges.

(A) Grantee shall provide written notice to the City and Subscribers at least 30 days in advance of any increase in rates and charges. Notice to the City of proposed increases in rates and charges shall be filed in a form satisfactory to the City

(B) Unless the City has lawfully required prior review of Grantee's rate increase in accordance with the requirements and conditions of applicable law, Grantee's rate increase shall become effective on the date identified in the form filed by the Grantee, provided that the effective date shall not be earlier than the 31st day after such filing.

10.9 ADA Accessible Equipment and Services. To the extent authorized by law, the City reserves the right to require and regulate the installation or rental of equipment which facilitates the reception of Basic Service by hearing impaired individuals. 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.

10.10 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.

10.11 Unauthorized Monitoring or Cable Tapping. For the purposes of Section 10.11, "Tap" means to observe or monitor video, audio, digital or other non-video Signals, or any combination of such Signals carried on the Cable System, where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.

(A) Neither the Grantee, nor any of its agents, employees, officials or permittees, or any other Person, agency or entity, shall Tap any cable, line, Signal input device or subscriber outlet or receiver in any manner inconsistent with applicable law.

(B) Grantee may Tap a cable, line, Signal input device or Subscriber outlet or receiver to 1) determine the number of viewers watching a program where the identities of the viewers are not determined; 2) perform Cable System maintenance and verify technical performance; and 3) identify theft of services, without the Subscriber's written consent.

10.12 Privacy.
~~Privacy. The City and Grantee shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any Subscriber, Programmer or any other Person lawfully receiving Cable Services resulting from any device or Signal associated with the Cable System. Grantee's compliance with its Privacy Policy will be sufficient to satisfy the foregoing. Grantee shall not use the two-way communications capability of the Cable System for unauthorized or illegal Subscriber surveillance of any kind. (NOTE: CL proposal sent 10/3 email: MHCRC staff would like to further discuss this Section)~~

Deleted: The City and Grantee shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any Residential Subscriber, Programmer or any other Person lawfully receiving Cable Services resulting from any device or Signal associated with the Cable System. Grantee shall not use the two-way communications capability of the Cable System for unauthorized or illegal Subscriber surveillance of any kind.

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10.13 Permission of Property Owner or Tenant. Grantee shall not install or attach any of its Facilities to any residence or other property without first securing the permission of the owner or tenant of any property involved, except where there is an existing utility easement reserved by plat or other conveyance or unless such installation or attachment is otherwise authorized by law. Nothing herein, however, shall excuse the Grantee from obtaining permission from anyone who has the right to approve or disapprove the attachment. If such permission or easement is later revoked, unless Grantee is otherwise lawfully entitled to maintain its Facilities, whether by the original or a subsequent owner or by operation of law, the Grantee, on the owner's request, shall promptly remove any of its Facilities and promptly restore the property to a condition similar to its prior condition. Grantee shall perform all such installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation or the removal.

10.14 Sale of Subscriber Lists and Personalized Data. Grantee shall be subject to the provisions of applicable (NOTE: MHCRC staff accepts CL proposal) federal law regarding limitations on Grantee's collection and use of personalized data, and other issues involving the protection of Subscriber privacy.

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10.15 Contact Information on Subscribers' Bills. Grantee shall include on Subscribers' bills the contact information for the City. Grantee shall also provide to Subscribers the City's contact information at the time of Cable Service installation and at least annually (NOTE: 9/6/12 Agreed) thereafter.

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Section 11. CABLE SERVICES NETWORK

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11.1 Channel Capacity.

(A) ~~Grantee's Cable System shall be capable of providing at least 200 or more activated minimum Downstream video Channels and minimum Activated Upstream digital Channel Capacity of 35 MHz accessible from any node, any Residential Subscriber, any Access facility, and any I-Net Site in the Franchise Area. This Upstream Capacity requires no additional installation of equipment for use except on users' premises. (NOTE: 9/6/12 CL to provide technical proposal for this section)~~

Deleted: Prior to the Effective Date of this Franchise, Grantee upgraded its Cable System to a Fiber to the Fiber node Cable System architecture, with Fiber Optic cable deployed from

Deleted: Headend to Grantee's Fiber nodes, tying into Grantee's coaxial Cable System already serving Subscribers. Active and passive devices currently are passing a minimum of 860 MHz (with a minimum passband of between 50 and 860 MHz)

Deleted: to Residential Subscribers

(B) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the Exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a Signal is transmitted.

11.2 Leased Access Channels. Grantee shall meet the leased access channel requirements under 47 USC § 532.

11.3 Technical and Safety Standards.

(A) Grantee shall comply with FCC Rules and Regulations, Part 76, Subpart K (Technical Standards), now in effect or as may be amended from time to time.

(B) Grantee shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of the Grantee.

(C) Grantee shall install and maintain its Cable System in accordance with the applicable requirements of the National Electrical Safety Code, and in such manner that the Cable System shall not interfere with any installations of the City or any public utility or Institutional utility, or any franchisee, licensee or permittee of the City.

(D) Grantee shall provide and put in use such equipment and appliances as shall control on a closed circuit basis and effectually carry all electric currents and Grantee television and other system Signal impulses in a manner so as to prevent injury to the wires, pipes, structures, and property belonging to the City or to any Person within the City.

(E) Grantee, at its own expense, shall repair, renew, change, and improve its Cable System from time to time as may be necessary to accomplish these purposes.

11.4 Performance Testing.

(A) Grantee shall perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise or in response to subscriber complaints.

(B) At a minimum, the Grantee's tests shall include:

(1) Proof of performance when activating any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Cable System tests and intervals required by FCC regulations.

(C) Grantee shall maintain written Records of all results of its Cable System tests as required by this Franchise, performed by or for the Grantee. Such test results shall be available for inspection by the City upon request.

(D) Tests may be witnessed by representatives of the City, and, upon request, Grantee shall inform the City of the time and place of each test. The City may conduct independent tests of the system for which the Grantee shall give its fullest cooperation. Grantee shall be required to take prompt corrective measures to correct any system deficiencies and to prevent their recurrence.

11.5 Specific Technical Facilities or Capabilities. The following specific technical facilities or capabilities shall be provided on the Cable System by the Grantee:

(A) 100% Emergency Standby Power. Grantee shall maintain standby power generating capacity at the Cable System Headend and throughout the trunk and distribution networks as is in place on the effective date of this Franchise. All standby power systems shall be rated to provide at least four (4) hours duration. In addition, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four hours. This outage plan and evidence of requisite implementation resources shall be presented to the City upon request.

(B) Emergency Alert Systems. Grantee shall comply with all applicable federal and state regulations regarding emergency alert systems, including equipment standards and procedures for alerting capacities. The City may identify authorized emergency officials for activating the emergency alert system. The City may also develop a local plan containing methods of emergency alert system message distribution, subject to applicable federal and state laws.

11.6 Quality and Workmanship. The Cable System constructed or erected by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

11.7 Inspection of Construction. The City shall have the right to inspect any construction or installation work performed under this Franchise. The City shall have the right to make such tests as it deems necessary to ensure compliance with the terms of this Franchise and applicable provisions of law.

Section 12. COMPENSATION AND AUDITING

12.1 Amount of Compensation. 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, throughout the duration of this Franchise, an amount equal to five (5%) percent of Grantee's Gross Revenues. (NOTE: 9/6/12 Agreed to not retain CL proposed language)

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12.2 Payments and Quarterly Reports.

(A) Payments. Grantee's franchise fee payments to the City shall be computed quarterly following the effective date of this Franchise for the preceding quarter year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

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

12.3 Interest on Late Payments. Payments not received within forty-five (45) days from the quarter ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date.

12.4 Bundled Services. If Cable Services subject to the franchise fee required under this Section 12.4 are provided to Subscribers in conjunction with non-cable services, Grantee shall not allocate revenue between Cable Services and non-cable services for the purpose of evading or substantially reducing Grantee's franchise fee obligations to the City.

12.5 Cost of Publication. Grantee shall pay the cost of publication of this Franchise and any amendments thereto, ~~as~~ such publication is required by the City Charter.

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12.6 Maximum Legal Compensation. The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible franchise fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the City may request a modification of this Franchise under the provisions of Section 20.15. ~~In no event shall the City apply a percentage rate for calculating franchise fees against Grantee's Gross Revenues that is greater than for any other cable service provider operating under a cable service franchise in the City. (NOTE: Agreed 9/5/12 in concept-MHCRC proposed language)~~

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Deleted: but in no event shall the amount of the franchise fee be in an amount greater than any other cable service provider in the City.

12.7 Additional Commitments not Franchise Fees. No term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay franchise fees related to Cable Services in accordance with applicable law. Although the total sum of such franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not franchise fees as defined under 47 U.S.C. § 542, nor are they to be offset or credited against any franchise fee payments due to the City so long as such commitments are exercised by the City in a manner consistent with this Franchise. ~~Except as otherwise authorized by 47 U.S.C. § 542, and the regulations promulgated thereunder, Grantee shall not pass these additional commitments through to subscribers. (NOTE: 9/6/12 Agreed to retain original Comcast language)~~

12.8 Acceptance of Payment and Recomputation. ~~No acceptance of any payment pursuant to Section 7.1 (PEG/I-Net Fee-s) or Section 12.1 (Franchise fees) 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. (NOTE: 9/6/12 Agreed to retain original Comcast language)~~

12.9 Audits and Reviews.

(A) Acceptance of Payment and Recomputation. No acceptance of any payment pursuant to Section 7.1 or Section 12.1 of this Franchise 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 7.1 or Section 12.1 of this Franchise shall be subject to audit by the City, provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies Grantee of its intent to perform an audit shall be subject to such audit. Grantee agrees to pay the City for:

(1) Interest on any underpayment of an amount due under Section 7.1 or Section 12.1 of this Franchise that is disclosed as the result of an audit, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successor and assigns as designated by the City, compounded quarterly from the date on which the payment was due. If such payment is not received within thirty (30) days of notice from the City, then interest shall be compounded daily from the date on which the payment was due until the date the City receives the payment.

(2) Five percent (5%) of the underpayment shall be due within thirty (30) days of written notice from the City, if the City's audit discloses that the Grantee has paid ninety-five percent (95%) or less of the principal amount owing for the period under audit. If such payment is not received within thirty (30) days of written notice from the City, then interest shall be compounded daily from the date on which the payment was due until the date on which the City receives the payment, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successors and assigns as designated by the City.

(B) Authority to Audit.

(1) The City and its agents and representatives shall have authority to arrange for and conduct audits under Section 12.9, within the Portland metropolitan region, upon no less than thirty (30) days prior written notice, and during normal business hours. Within the limitations established by Section 12.9, the City may determine the scope of audit in each instance.

(2) The Grantee agrees to reimburse the City for:

(a) The reasonable costs of such audit if the audit discloses that the Grantee has paid 95% or less of the fees owing under Sections 7.1 and 12.1 for the period at issue; or

(b) One half of the reasonable costs of such audit if the audit discloses that the Grantee had paid more than 95% but less than 98% of the fees owing under Sections 7.1 and 12.1 for the period at issue.

(3) The Grantee shall reimburse the City within 30 days of receipt of an invoice from the City showing such costs were actually incurred and were directly related to the audit. The Grantee's obligation to reimburse auditing costs under this Section 12.9 shall not exceed \$15,000.00 per audit.

12.10 Liability for Licenses and Taxes. Payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. The City's right to impose any such license fee, tax or charge shall be subject to any limitations on the City under applicable law.

Section 13. RECORDS AND REPORTS

13.1 Open Records. Grantee shall manage all of its operations in accordance with a policy of keeping its Records open and accessible to the City. Upon reasonable notice, NOTE: 9/6/12 Agreed to CL proposal the City shall have the right to inspect all Records of the Grantee and Affiliated Entities at any time during normal business hours at a Grantee business operations site within Multnomah, Clackamas or Washington counties, Oregon, and to determine compliance by Grantee with its obligations under this Franchise. If any books or records of Grantee are not kept in a local office and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by the Grantee. (NOTE: MHCRC staff accepts CL proposed language) Grantee shall not deny the City access to Grantee's Records on the basis that Grantee's Records are under the control of an Affiliated Entity or a third party, rather than the Grantee. In the case of Affiliated Entities not under common control with Grantee, Grantee shall not be subject to the remedies set forth in Section 19.1(A) if such Affiliated Entity does not permit inspection of its Records, and Grantee has;

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(A) made available for inspection all of its Records relevant to the determination of compliance; and

(B) exercised all reasonable efforts to persuade such Affiliated Entity to make such Records available for inspection.

13.2 Information and Reports. Grantee shall provide a current copy of the following information at the intervals indicated. (NOTE: MHCRC does not accept CL proposed language)

(A) Cable System structure and operating information:

(1) Total living units passed (Annually) (NOTE: Agree in concept: need to determine application of Living Unit definition);

(2) The number of Basic Service Subscribers, other programming service tier subscribers, Pay Service Subscribers and pay-to-basic percentages (Annually);

(3) Schedule of all Cable Services and Programming services, tiers and/or packages, and Channel assignments, provided on the Cable System (Annually and upon change);

(4) A schedule of all Grantee's rates and charges (Annually and upon change);

(5) A monthly Cable Services sample customer bill within the Franchise Area, including copies of all communications of a general nature related to Cable Services sent to Subscribers with the bill (monthly);

(6) Copies of other communications of a general nature sent to Subscribers related to Cable Services, excluding communications sent to individual Subscribers which name that Subscriber (at the same time communications are sent to Subscribers); and,

(7) A copy of Subscriber privacy policies and the Subscribers service agreements, including terms and conditions (Annually and upon change).

Deleted: Grantee may satisfy these obligations by referring the City to a website:

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(B) Grantee shall provide an audited statement or, in lieu of such audited statement, a statement certified by an officer of the company of Gross Revenues for the Franchise Area from the previous year, no later than one hundred twenty (120) days after the end of its fiscal year. The statement shall contain such information as may be required from time to time by the City, and at least the following, unless the City waives the requirement: a listing of all categories of Gross Revenues, and the revenue associated with such categories, in sufficient detail and with sufficient explanation to enable the City to understand the statement and to verify the accuracy of payments to the City. The report shall include an explanation of any deductions made from Gross Revenues in the calculation of payments.

13.3 General Reports. The City shall have the right to request, in writing, information as is appropriate and reasonable to determine whether Grantee is in compliance with this Franchise. Grantee shall provide the City such information in a format as Grantee customarily prepares such report or information. Grantee shall fully cooperate with the City and shall provide such information and documents as necessary and reasonable for the City to evaluate compliance. Grantee reserves the right to object to any request made under this Section 13.3 as unnecessary, unreasonable or inappropriate under the circumstances.

13.4 Format. The City, after consultation with Grantee, may specify the form and details of all Grantee's reports required under this Franchise.

13.5 Reports of Regulatory Violations. Upon written request, Grantee shall provide copies to the City of any communications to and from federal, state or local courts, regulatory agencies or other governmental bodies addressed to Grantee regarding any alleged, apparent or acknowledged violation by Grantee of any applicable federal or state law specifically related to the operation of Grantee's Cable System or Grantee's provision of Cable Services within the Franchise Area. Grantee shall submit such communications to the City no later than thirty (30) days after such request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under applicable federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency or a request for confidential treatment is pending.

13.6 Public Records. (NOTE: 9/6/12 MHCRC rejected CL proposed new Section 13.6; original Comcast language restored)

(A) Grantee acknowledges that information submitted by Grantee to the City may be open to public inspection under the Oregon Public Records Law. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

(B) Grantee may identify information submitted to the City as confidential, if Grantee reasonably believes such information is qualified for an exemption recognized under the Oregon Public Records Law. Grantee shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as "Confidential" prior to submitting such information to the City. When submitting such information to the City, Grantee shall submit documentation to the Commission that specifically identifies the applicable exemption under the Oregon Public Records Law, and stating the reason(s) Grantee believes the information is exempt from public inspection. After reviewing the Grantee's request for confidentiality, and determining whether the identified exemptions are applicable, the City shall take reasonable steps to protect the confidential nature of any such information, consistent with the Oregon Public Records Law, including only disclosing such information to employees, representatives, and agents thereof that have a need to know or in order to enforce the provisions of this Franchise.

(C) Within five (5) working days of receiving a public records request to inspect 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 disclose any of the requested confidential information. If the City determines that it will be necessary to reveal the information, the City shall promptly notify the Grantee, and do so at least five (5) working days prior to the information being released. The City shall retain final discretion to determine whether to release the requested information in response to any public records request, as recognized under the Oregon Public Records Law.

Section 14. GENERAL INDEMNIFICATION AND INSURANCE

14.1 Indemnification.

(A) General Indemnification. Grantee shall indemnify, defend and hold harmless the City, its officers, agents, boards and employees, from any liability for claims, damages, costs or expenses, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property, including, without limitation: copyright infringement; defamation; damages arising out of or by reason of any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents, or its employees; or by reason of any neglect or omission of Grantee to keep its system in a safe condition. Grantee's indemnification obligation shall not extend to liability directly arising out of any negligence or willful misconduct by the City or its officers, agents, boards or employees. The City shall provide Grantee 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 without the prior written approval of the City which approval shall not be unreasonable withheld. Grantee shall consult and cooperate with the City while conducting its defense of the City and the City shall fully cooperate with the Grantee.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, 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 Grantee by the City's duly authorized agent in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

(C) Indemnification – Hazardous Substances. Grantee agrees to forever indemnify the City, its officers, agents and employees, from and against any claims, costs and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law, statute, regulation or order, for the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances, directly attributable to Grantee's structures or other (NOTE: 10/3/12 Agreed to retain original Comcast language) Facilities in the Streets.

14.2 Insurance.

(A) Grantee shall maintain in full force and effect, at its own cost and expense, continuously during the Franchise Term, the following insurance coverage:

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

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¶
(A) Grantee acknowledges that information submitted by Grantee to the City may be subject to public requests for inspection under the Oregon Public Records Law. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.¶

¶
(B) Grantee may identify information submitted to the City as confidential, if Grantee reasonably believes such information is qualified for an exemption recognized under the Oregon Public Records Law. Grantee shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as "Confidential" prior to submitting such information to the City. The City shall take reasonable steps to protect the confidential nature of any such information, consistent with the Oregon Public Records Law, including only disclosing such information to employees, representatives, and agents thereof who are necessary in order to enforce the provisions of this Franchise.¶

¶
(C) If a public records request seeks the disclosure of information that has been designated as confidential under the Oregon Public Records Law, then prior to the release of the information the City will provide written notice Grantee and allow an opportunity for Grantee to provide a written response to the request.¶

(1) The person asserting confidentiality must demonstrate that the information is exempt from disclosure.¶

(2) If the City concludes that the information designated as confidential is not protected from disclosure, then the Commission will provide notice of the decision and delay the release of the information to permit the person asserting confidentiality to seek a court order to protect the records from disclosure.¶

(3) If the person asserting confidentiality consents in writing to the release of the information or does not commence court proceedings to limit disclosure within 10 business days following notice of the decision, then the Commission will remove the confidential designation from the requested information and release the information to the requester.¶

(4) A person denied the right to inspect or to receive a copy of a public record may appeal the Commission's decision to the Attorney General under ORS 192.450.¶

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(2) Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

(3) Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

(4) Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) employee limit; five hundred thousand dollars (\$500,000) policy limit.

(5) The limits of the insurance as provided herein shall be subject to any changes as to the maximum limits imposed on municipalities of the State of Oregon during the term of this Franchise.

(B) The City and the Commission shall each be designated as an additional insured under each of the insurance policies required in this Section 14.2 by endorsement on the policies, except Workers' Compensation and Employer's Liability Insurance.

(C) Grantee shall not cancel any required insurance policy, nor shall Grantee allow the required insurance to lapse, without obtaining alternative insurance in conformance with this Agreement. For any of the insurance policies identifying the City and the Commission as additional insureds, as provided under this Section 14.2, the Grantee shall notify the City and the Commission within five (5) business days of any notice of non-renewal, any cancelation, or any material adverse change in coverage. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 14.2 during the term of this Franchise, Grantee shall provide a replacement policy.

(D) Each of the required insurance policies shall be with insurers authorized or permitted to do business in the State of Oregon, with an A-: VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition, or an equivalent rating entity.

(E) The insurance shall be without prejudice to coverage otherwise existing and shall name the City, and its officers, agents, and employees as additional insureds as their interest may appear, except the Workers' Compensation and Employer's Liability Insurance.

(F) Grantee shall provide the Commission, within fifteen (15) days of the Effective Date of this Franchise, a certificate or evidence of insurance certifying the coverage required above, which shall be subject to the approval of the City's Legal Counsel as to whether the insurance certified is consistent with the requirements of this Section 14.2. Failure to maintain adequate insurance as required under this Section 14.2 shall be cause for revocation of this Franchise by the City as set forth in Section 19.

(10/3/12 Agreed to CL edits in this Subsection)

(G) The City shall require as a condition of any separate agreement between the City and a Designated Access Provider, that the Designated Access Provider shall include the Grantee as a named insured in the Designated Access Provider's liability insurance policy with respect to any claim for injury, damage, loss, liability, cost or expense arising from Programming or other transmission placed by the Designated Access Provider on PEG Access Channels or the Institutional Network (but not if arising out of or by reason of any act done by the Grantee or its officers, agents or employees).

14.3 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City with good and sufficient surety approved by the City, in the penal sum of Five Hundred Thousand Dollars (\$500,000.00), conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be maintained by the Grantee throughout the term of this Franchise.

(B) Grantee shall pay all premiums charged for any bond required under Section 14.3, and unless the City Council specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:

(1) The remaining term of this Franchise; or

(2) If required by the City, the removal of all of Grantee's system installed in the City's Streets.

(C) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days written notice first being given to the City Auditor. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of this Section 14.3. During the term of the bond, Grantee shall file with the City Auditor 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 30 days prior written notice to the City.

(D) Subject to the City's prior approval, Grantee may provide an irrevocable letter of credit or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

(E) In lieu of the performance bond required under Section 14.3, the Grantee may elect to provide to the City a fully executed Guarantee in Lieu of Bond of Qwest Broadband Services, Inc. d/b/a CenturyLink in the form provided in Exhibit E to this Franchise. In the event of such election, the duly executed Guarantee in Lieu of Bond shall be filed by the Grantee within thirty (30) days. Any performance bond required under Section 14.3(A) shall remain in effect until replaced by such Guarantee in Lieu of Bond. (10/3/12 Agreed to CL edits in this Subsection)

14.4 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 required by the City's permit. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of the Franchise. 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. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section 14.4. 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 unless the bond otherwise provides that the bond shall not expire or be terminated without 30 days prior written notice to the City.. The bond or letter of credit shall be subject to the approval of the City

Attorney as to its adequacy under the requirements of Section 14.4. (10/3/12 Agreed to CL edits in this Section)

Section 15. GENERAL STREET USE AND CONSTRUCTION (NOTE: MHCRC staff has included proposed new language for Section 15: Some similar to last draft but most revised: Proposed here as new language for Section 15.)

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15.1 Permits.

(A) Subject to applicable regulations of the City, Grantee may perform all construction necessary for the operation and maintenance of its System. Regardless of who performs the installation and/or construction, all construction and maintenance of any and all Grantee's Facilities within the Streets shall be and remain the Grantee's sole responsibility. 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 System Facilities within the Streets. Grantee shall pay all applicable fees due for City permits. In the event that emergency repairs are necessary for Grantee's underground 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 excavation or construction, including the payment of permits or license fees.

(B) Maps.

(1) Prior to beginning any new construction in the Streets, Grantee shall provide the City Engineer through the permitting process with an initial construction schedule for work in the Streets and the estimated total cost of such work together with its permit application. When Grantee's construction in the Streets is completed, Grantee shall provide the City with electronic maps showing the location of its installed System Facilities in the Streets, as built. Such "as-built" maps shall be in a form acceptable to the City Engineer.

(2) One (1) year after the effective date of this Franchise, and annually thereafter in the event of any alterations, Grantee shall provide an electronic map to the City Engineer and the City's Office for Community Technology, or its successor, showing the location of Grantee's Facilities in the Streets on a scale of three thousand five hundred feet (3,500') per inch or whatever scale the City and Grantee agree upon.

15.2 Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law, ORS Chapter 757 (2011), and the related rules and administrative regulations promulgated thereunder in OAR Chapter 952.

15.3 Relocation. Grantee shall relocate its System within the Streets when public convenience requires such change, in compliance with the requirements of applicable Portland City Code and implementing regulations, and the expense thereof shall be paid by Grantee.

15.4 Additional Facilities Subject to Franchise. Within thirty (30) days of Grantee's acquisition of any 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, license, permit or any other similar form of right granted by the City, and specifying the location of all such Facilities. At the City's sole option, as expressed by ordinance adopted by the City Council, such acquired Facilities shall be subject

to the terms of this Franchise, with a reasonable period of time provided to Grantee to bring such acquired Facilities into compliance with this Franchise, including payment of appropriate franchise fees as determined by the City in accordance with Section 3.

15.5 Restoration of Streets. Grantee shall, after construction, maintenance or repair of Facilities, leave the Streets in as good or better condition in all respects as it was before the commencement of such construction, maintenance or repairs, excepting normal wear and tear in strict compliance with the requirements for right-of-way permits established by applicable Portland City Code and implementing regulations, and the expense thereof shall be paid by Grantee.

15.6 Facility Maintenance. Grantee shall provide and put in use all Facilities and equipment necessary for the operation of its System in a manner that will not cause injury to the City's property or to any property within the City belonging to any Person. Notwithstanding the foregoing, it shall not be a breach of this Section 15.6 if such injury is not reasonably foreseeable by Grantee. Grantee, at no expense to the City, shall repair, renew, change and improve said Facilities and equipment from time to time as may be necessary to meet the requirement of this Section 15.6. Grantee shall not require any customer (except the City) or any entity franchised or licensed by the City to install any lines, cables or other equipment in, under or over the Streets in order for such customer or entity to connect with or receive service from Grantee's System. The System constructed, owned or controlled by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

15.7 Acquisition of Facilities. Within thirty (30) days of Grantee's acquisition of Facilities used or usable for the Cable System in any Street, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any Streets, the Grantee shall, at the City's request, submit to the City a written statement describing all Facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such Facilities to the extent the Grantee has possession of such information. At the City's sole option, as expressed by ordinance adopted by the City Council, such Facilities shall be subject to the terms of this Franchise within a reasonable period of time to bring the acquired Facilities into compliance with this Franchise including payment of applicable franchise fees.

15.8 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; 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 not to injure or prevent the unrestricted use and operation of the Grantee's System under this Franchise. However, if any portion of the Grantee's 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 City may direct Grantee to relocate as provided in applicable regulations of the City.

15.9 New Construction.

(A) Grantee shall provide twenty (20) business days prior written notice to the City of any planned Duct construction. Such notice shall include a description of any planned Duct construction and a map showing the planned route in a form acceptable to the City Engineer. If the City desires any Ducts along Grantee's planned route, then within ten (10) business days of receiving the written notice, the City shall provide a written request to Grantee, and Grantee shall provide such Ducts to the City pursuant to the process set forth in this Section 15.X.

(B) For new Grantee Duct installation, Grantee will provide additional duct(s) as needed by the City.

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(1) Grantee will confer with City prior to finalizing plans and specifications for any proposed new build, to establish City requirements for ducts, conduits, or access vaults:

(2) If the City determines a need for duct or access vaults, City will pay Grantee the direct incremental costs for this work, consisting of material, labor, and design and engineering costs associated with modifications to the plans and specifications for the segments defined and necessary facilities:

(3) Grantee will provide suitable documentation of ownership and include location(s) in maps submitted to the City under Section 15.1(B). City will then maintain ownership of and maintenance responsibilities for the additional Ducts or access vaults.

(C) Grantee will provide separate access vaults for the City at City's cost, at locations to be determined by the City during the process noted in this Section.

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15.10 Street Vacation. Upon receipt of any request for vacation of any Street or portion thereof used by Grantee, the City shall provide the Grantee with the standard notice provided for street vacations. 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 area or Grantee secures such right from the third party that will have title to the area in which Grantee has its Facilities, Grantee shall, without expense to the City, remove its Facilities from such Street, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area in such condition as may be required by the Council, which shall be no worse than the condition of such Street immediately prior to removal. In the event of failure, neglect or refusal of Grantee, after thirty (30) days notice by City Council, to repair, improve or maintain such Street portions, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by 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 shall make reasonable efforts to assist Grantee in identifying potential available alternative locations within the Streets, or, if requested by Grantee, will cooperate with Grantee's efforts to secure an alternate location in the vacated Street area from the third party that shall have ownership after vacation.

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15.11 Common Users.

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(A) Use of Surplus Facilities by Third-parties. 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 duct or 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, the City Engineer may require Grantee to afford to such Person the right as a Licensee to use Grantee's Surplus Ducts or Conduits in common with the Grantee, unless safety or engineering concerns cannot reasonably be mitigated or eliminated. This right of use shall be subject to Section 12.2, to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by the Grantee and the Licensee, and to the safety and reliability of Grantee's System and maintenance requirements. Any agreement governing the terms and conditions of use of Surplus Ducts or Conduits may, at Grantee's discretion, require use of Grantee's employees or contractors in any work occurring in Grantee's vaults. If the Grantee and the Licensee are unable to mutually agree upon the terms and conditions of the use of Surplus Ducts or Conduits, the parties shall submit the matter to final and binding arbitration to establish such terms and conditions as the arbitrator may determine to be fair and equitable. Such arbitration shall be conducted according to the procedures

set forth under the Uniform Arbitration Act, ORS 36.309 through 36.365 (2011). 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 cost of attorney's fees.

(B) City Use of Surplus Facilities. As needed and specified by the City, City will be allowed to access and use Grantee's Surplus Facilities without use fees, subject to the same process and other terms applicable to Licensees under Section 15.11(A) and subject to a separate written agreement between the City and Grantee specifying the terms of such access and usage by the City.

(C) Coordination of Licensee Usage. For purposes of this Section 15.11(C), "Attachment" means any wire, optical fiber, or other cable, or any related device, apparatus or auxiliary equipment, for the purpose of voice, video, or data transmission.

(1) A Licensee occupying part of a Conduit or Duct shall be deemed to occupy the entire Conduit or Duct.

(2) Grantee shall give Licensee and the City one hundred twenty (120) calendar days written notice of its needs to occupy any licensed Conduit or Duct and within such notice period Licensee shall take one of the following actions as directed by Grantee:

(a) Pay revised conduit or duct rent designed to recover the cost of retrofitting the Conduit or Duct with multiplexing, optical fibers, or other space-saving technology sufficient to meet the Grantee's space needs;

(b) Pay revised conduit or duct rent designed to recover the cost of new Conduit or Duct constructed to meet the Grantee's space needs;

(c) Construct and maintain sufficient new Conduit or Duct to meet the Grantee's space needs; or

(d) Vacate the Conduit or Duct.

(3) When two or more Licensees occupy a section of Conduit or Duct, the last Licensee to occupy the Conduit or Duct shall be the first to vacate or construct new conduit or duct as directed by the Grantee; pursuant to Section 12.2(B)(4), Grantee may require all Licensees to vacate. When conduit or duct rent is revised because of retrofitting or space-saving technology or construction of new conduit or duct, all Licensees shall bear the revised cost.

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(4) 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.

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15.12 Discontinued Use of Facilities. If Grantee intends to discontinue using any Facilities in the Streets, Grantee shall comply with the requirements of applicable Portland City Code and implementing regulations regarding the discontinuation of the use of Facilities.

15.13 Hazardous Substances. As required by the City Code, Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to its System and Facilities in the Streets. Grantee shall place utility corridor fill and

use containment barriers in compliance with the requirements for right-of-way permits established by applicable Portland City Code and implementing regulations.

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15.14 Undergrounding of Cable. Grantee is strongly encouraged to locate and construct its present and future cables underground. Grantee shall use reasonable commercial efforts to install its cables or other Facilities underground wherever all existing utilities already are underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground to the extent reasonable. Previously installed aerial cable shall attempt to be undergrounded in concert, if commercially reasonable and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the City or applicable State law, or in the event that an institutional utility or a public utility decides to underground its facilities on a voluntary basis, unless the City grants an exception.

15.15 Construction Codes. Grantee shall strictly adhere to all 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 cause no unreasonable interference with the prior use of said public or private property by any Person. In the event of such interference, the City may require the reasonable removal or relocation of the Grantee's lines, cables, and other appurtenances from the property in question after notice and an opportunity for Grantee to provide alternatives.

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15.16 Construction and Use of Poles.

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(A) Whenever feasible, the construction, maintenance, and use of Grantee's Cable System shall comply with the standards of materials in engineering and all other provisions of a pole user agreement for use of poles, entered into by and between the pole owners and the Grantee, or separate agreements between each of said companies and the Grantee. The City may request a copy of any pole attachment agreement affecting poles place in the Streets, and Grantee shall not unreasonably refuse such request. In the event Grantee cannot obtain the necessary poles and allied facilities pursuant to the provisions of such an agreement, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's Cable System. All poles of the Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper City authorities, and each pole shall be set whenever practicable at an extension of a lot line. The City shall have the right to require the Grantee to change the location of any pole, conduit, structure or other Facility within the Streets when in the opinion of the City the public health, welfare and safety requires such change, and the expense thereof shall be paid by the Grantee.

(B) The terms of Section 15.16 shall not exempt the Grantee from compliance with all Charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

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15.17 Tree Trimming.

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(A) When Permits Needed. Upon obtaining a written permit from the City Forester as required by applicable law, Grantee may prune or cause to be pruned, using proper utility arboricultural practices and in accordance with such permit, any tree in or overhanging the Streets which interferes with Grantee's Facilities. Except in emergencies or by special written permission of the City Forester, Grantee may not prune trees at a point below 30 feet above sidewalk grade until one week (seven [7] calendar days) 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. The owner or occupant shall have one week from receipt of

notice to have such trees pruned by a qualified line clearance arborist at his or her own expense in accordance with Grantee's standards for reliable utility service, provided that the owner or occupant agrees to use tree pruning personnel that are qualified to work in close proximity to power lines. If the owner or occupant fails to do so in compliance with the notice, Grantee may prune such tree at its expense.

(B) Blanket Permits. The City Forester may, at the City Forester's discretion, waive the notification and single tree permit process and issue a blanket tree pruning permit if Grantee adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper utility arboricultural practices to the pruning of trees. Before any blanket permit may be issued, any contractor of Grantee shall be subject to the approval of the City Forester. The City Forester shall have discretion to cancel the blanket permit, notification and single tree permit process if, at any time, the Grantee or its agents fail to either use proper utility arboricultural practices or to properly notify the public as specified in Section 15.6.

(C) Emergencies. Notwithstanding the permit and notice requirements of Section 15.6, in the event of an emergency, Grantee may prune a tree or trees as necessary to abate the emergency. For purposes of Section 15.6, emergencies exist when it is necessary to prune a tree or trees in order to restore electrical services, or to protect the public from imminent danger, or to prevent the imminent destruction of property.

Section 16. TRANSFER OF GRANTEE'S CABLE SYSTEM

16.1 Transfer Defined. For purposes of Section 16, "Transfer" shall mean any form of sale, change in control, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, in whole or in part, and whether voluntary or involuntary.

16.2 Council Consent. Neither this Franchise nor all or substantially all of Grantee's Cable System located in the Streets by authority of this Franchise shall be 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 Franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Cable System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's cable system, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment with respect to Grantee's Cable System shall be subject to the City's other rights contained in this Franchise.

16.3 Review.

(A) In determining whether the City will consent to any 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 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 reasonably appropriate or to the resolution of outstanding and unresolved issues of Grantee's noncompliance with the terms and conditions of this Franchise.

(B) No Transfer for which the City's consent by ordinance is required may occur until the

successor, assignee, lessee or transferee has complied with the requirements of Section 14 of this Franchise, 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 City Auditor an executed counterpart or certified copy thereof.

16.4 Leases. Grantee shall not lease any portion of its franchised Cable System without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 16.2, Grantee may lease any portion of its Cable System 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 portion of its Cable System. A lessee of any portion of Grantee's Cable System shall not obtain any rights under this Franchise.

16.5 Sales.

(A) Notwithstanding Section 16.2, Grantee may sell portions of its Cable 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:

(1) The sale is to the holder of a current existing, cable system franchise, license, permit, or other similar right granted by the City;

(2) Within fourteen (14) days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the portions of the Cable System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the mapping requirements of Section 15.1(B) and providing an executed counterpart or certified copy of the sales documents;

(3) Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Cable System; and,

(4) Within fourteen (14) 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 cable system franchise, license, permit or other similar right granted by the City. The purchaser shall not obtain any of the Grantee's rights under this Franchise.

(B) If required by federal law, the City shall make a final decision upon a proposed Transfer within 120 days of receiving a written request for approval of a Transfer containing or accompanied by such information as is required by federal law and this Franchise. If the City fails to render a final decision on the request within 120 days, then the proposed Transfer shall be deemed to be consented to by the City. At any time during the 120 day period, the City may request in writing that the Grantee provide or cause to provide any information reasonably necessary to rendering a final decision on the request. The City and the Grantee may, at any time, agree to extend the 120 day period.

(C) Bankruptcy or Dissolution. Grantee shall immediately report to the City, as soon as it becomes known, the initiation of bankruptcy proceedings, or corporate or partnership dissolution.

(D) Consent. No consent by the City, which is required under this Section, shall be unreasonably denied or delayed.

Section 17. CITY REGULATORY AUTHORITY**17.1 City Regulatory Rights.**

(A) The City Council shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, (NOTE: 10/3/12 MHCRC rejected CL proposal-MHCRC sent CL related case law)

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(B) Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of this Franchise by any failure of the City to promptly enforce compliance with this Franchise.

17.2 City Regulatory Actions. Grantee shall comply with any and all lawful actions of the City affecting Grantee's operations under this Franchise, including, without limitation, all orders, contracts, and regulatory actions taken pursuant thereto, in all respects and without exception, so long as such actions do not materially affect the rights of Grantee hereunder. In the event of any direct conflict between City orders and regulatory actions, and the terms of this Franchise, this Franchise shall prevail.

17.3 Right of Intervention. The City shall have the right to intervene in any suit or proceeding to which the Grantee is a party, in the event the City's rights under this Franchise may be affected thereby.

Section 18. EQUAL EMPLOYMENT OPPORTUNITY/ AFFIRMATIVE ACTION/ MINORITY BUSINESS ENTERPRISES**18.1 Equal Employment Opportunity.**

(A) Throughout the term of this Franchise, Grantee shall fully comply with the equal employment opportunity requirements of federal, state, and local law, and in particular, FCC rules and regulations relating thereto. Upon request by the City, Grantee shall furnish the City a copy of the Grantee's Annual statistical report filed with the FCC, along with proof of Grantee's Annual certification of compliance. Grantee shall immediately notify the City in the event Grantee is at any time determined not to be in compliance with FCC rules or regulations.

(B) Throughout the term of this Franchise, the Grantee shall maintain a policy that all employment decisions, practices, and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee's policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, remuneration, selection for training, company benefits, disciplinary action, lay-off, and termination.

18.2 Affirmative Action. Grantee shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ and advance in employment women, minorities, and the physically and mentally disabled.

18.3 Minority and Female Business Enterprises. Grantee shall make determined and good faith efforts to use minority and female business enterprises in its contracted expenditures, including, without limitation, contracts for the acquisition of goods, services, materials, supplies, and equipment used in the construction, maintenance, and operation of its Cable System. If directed by the City, the Grantee shall participate in the City's Minority and Female Business Enterprise Certification Program.

Section 19. FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

19.1 Remedies for Franchise Violations.

(A) In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess, the City reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise.

(1) Recover liquidated damages as provided in Section 19.1(C);

(2) Recover specific damages from all or any part of the security provided pursuant to this Franchise, including without limitation any performance bond, letter of credit or other security, provided, however, the assessment shall be for such amount as the City reasonably determines is necessary to remedy the violation;

(3) Commence litigation seeking recovery of monetary damages or specific performance of this Franchise, as such remedy may be available;

(4) Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or

(5) Revoke this Franchise.

(B) (1) In regard to Grantee's performance of its obligations under this Franchise, Grantee shall not be relieved of its obligations to comply promptly with this Franchise by reason of any failure of the City to enforce prompt compliance. The City's failure to enforce shall not constitute a waiver of any term, condition, or obligation imposed upon the Grantee under this Franchise; nor a waiver of rights by the City or acquiescence in Grantee's conduct. A specific waiver of a particular term, condition, or obligation imposed upon Grantee under this Franchise shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation. The acts or omissions of Affiliates are not beyond the Grantee's control, and the knowledge of Affiliated Entities shall be imputed to Grantee.

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(2) Subject to applicable law, the remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any available rights of the City at law or equity.

(3) No cost or liability to Grantee arising from a breach or violation of this Franchise shall be recovered from Subscribers or be offset against any other sums due to the City as a tax, Franchise Fee or otherwise regardless of whether the combination of Franchise Fees and said costs exceeds five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period.

(NOTE: 10/3/12 MHCRC rejected CL deletion of Section B above; CL to follow up, MHCRC proposed (B)(1) highlighted new language intended to address CL's expressed concern)

(C) Liquidated Damages. (NOTE: 10/3/12 MHCRC rejected CL proposed changes to Section C; the Section below is restored to original Comcast; MHCRC noted that CL can have either Comcast language or Qwest language. MHCRC proposed language is intended to address CL's expressed concerns about Section C)

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(1) The City and Grantee recognize that delays, expense and unique difficulties may be involved in establishing actual losses suffered by the City and the public as a result of the Grantee's violation of certain aspects of this Franchise. To that end and subject to Grantee's right to notice and the opportunity to cure as provided in Section 19.2, in circumstances where proof of specific, actual damages would not be feasible, the City and Grantee agree that Grantee shall pay liquidated damages in the following amounts to the City for any violation of the categories listed below. The parties agree that such amounts are a reasonable estimate by the parties of the damages (including increased costs of administration and other damages difficult to measure) the City and the public would suffer in the event of Grantee's breach such provisions of this Franchise. The election of liquidated damages for an incident shall be the City's sole and complete remedy as to that incident. The parties agree that such liquidated damages shall be considered as a reasonable estimation of the actual and potential damages suffered for violations of these categories:

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- (a) For any failure to provide data, documents, reports or information as provided in the Franchise - \$1,000 per day or per violation, up to a total of \$20,000 during any rolling twelve (12) month period;
- (b) For any failure to comply with FCC technical standards, any emergency alert standards or any back-up power requirements - \$1,000 per day or per violation, up to a total of \$40,000 during any rolling twelve (12) month period;
- (c) Failure to provide PEG Channels and/or PEG/I-Net capital support payments required by this Franchise - \$1,000 per day or per violation, up to a total of \$40,000 during any rolling twelve (12) month period;
- (d) Failure to provide I-Net in compliance with the provisions of this Franchise - \$1,000 per day or per violation, up to a total of \$40,000 during any rolling twelve (12) month period;
- (e) Failure to comply with customer service standards and reports - \$1,000 per day or per violation, up to a total of \$40,000 during any rolling twelve (12) month period.
- (f) Violation of any other provision of the Franchise - \$1,000 per day or per violation, up to a total of \$20,000 during any rolling twelve (12) month period.

(2) The Commission, acting on behalf of the City, may determine that the actual and potential damages are capable of being ascertained, taking into account the nature and extent of the violation, the associated costs administrative enforcement by staff and the Commission, and the harm to the public or individual subscribers. In those circumstances, the Commission may seek the recovery of the ascertained, determinable damages arising from the violation.

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(3) Effective January 1, 2017, maximum liability for each category of damages set forth in Section 19.1(C)(1)(a) through (f) above shall increase by 15%, so that, by way of example and not limitation, where the maximum liability in a twelve month rolling period is \$20,000, that limit shall increase to \$23,000 for each remaining year of the Franchise term.

(4) The assessment and recovery of liquidated damages will not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law as to subsequent

incidents. The assessment and recovery of liquidated damages for a particular violation will substitute for the recovery of actual damages for the period of the assessment.

(5) Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages may be imposed. Grantee's obligations under this Franchise relating to PEG Access Channels, PEG/I-Net Capital support, I-Net, franchise fees, customer service standards and reports, and reports and records contained in Section 13 shall at all times be considered material provisions. Enumeration of material Franchise provisions set forth in this Section 20.1(C)(5) is not exhaustive and shall not be invoked under any guideline for contract interpretation to narrow the scope of other material terms, violation of which would be a material breach of this Franchise. After the imposition of liquidated damages, if Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue any other remedies available under this Franchise or applicable law.

(D) In determining which of the remedies available under this Franchise is appropriate, the City may consider, among other things: (1) the nature and extent of the violation; (2) whether Grantee has had a history of similar violations; (3) the damage suffered by the public and the cost of remedying the violation; and (4) such other factors as the City may deem appropriate.

(E) The City may shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 20.1(A)(4) and (5) upon the occurrence of any of the following acts or events:

(1) Any failure to comply with the requirements of Section 14 of this Franchise, including but not limited to, any failure to provide uninterrupted insurance or performance bonds;

(2) Grantee is found by a court of competent jurisdiction to have practiced any fraud upon the City; or

(3) Grantee fails to obtain and maintain any permit, franchise or license required by any federal or state regulatory body affecting Grantee's authority to own or operate a Cable System within the City.

(F) Except for the remedies specified in Section 20.1(A)(3), in addition to its other rights and remedies as set forth in this Franchise, the City shall have the right to revoke this Franchise after the appointment of a receiver or trustee to take over and conduct the Grantee's business, or the initiation of receivership, reorganization, insolvency or other similar action or proceeding, unless Grantee, its receiver or trustee timely and fully perform all obligations, until such time as this Franchise is either rejected or assumed by Grantee, its receiver or trustee.

(G) Except for liquidated damages as provided in Section 20.1(C), in the event that the City makes a preliminary determination that the Grantee has violated this franchise, the City shall commence a contested case proceeding under the rules adopted by the City. The City's final determination, following a contested case proceeding, may be appealed to the City Council. The City Council shall consider the appeal, under rules established by the City Council, based on the record established in the contested case proceeding.

19.2 Notice and Opportunity to Cure.

(A) The City shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 19.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and the Grantee initiates good faith efforts satisfactory to the City within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the City shall not exercise its rights under Section 19.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and continue efforts satisfactory to the City to remedy the stated reason, then the City may exercise any or all of the remedies available under Section 19.1 or such other rights as the City may possess.

19.3 Minor Variances. The City may, upon request of the Grantee or its own motion, permit the Grantee to vary its manner of performance under this Franchise so long as the variance does not result in a substantial change in the terms of this Franchise or a substantial reduction in the services to be provided.

19.4 Expiration.

(A) Upon the expiration of this Franchise, subject to 47 U.S.C. § 546 and other applicable federal, state or local laws, the City shall have the right, at its election, to:

- (1) Renew or extend Grantee's Franchise;
- (2) Invite additional proposals and award a Franchise to another Person;
- (3) Decline to grant a renewed franchise; or
- (4) Take such further action as the City deems appropriate.

(B) Until such time as the City exercises its rights under Section 19.4, the Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

19.5 Removal of Plant and Equipment. If the City has revoked this Franchise as provided in Section 19.1, or if this Franchise has expired without being renewed or extended, or in the event of the City's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, the Grantee shall remove its Facilities from the Streets and restore the Streets to the standards provided in Section 15.4. In the event of a failure by the Grantee to properly perform such work, then the City may perform the work and collect the cost thereof from the Grantee. The cost thereof shall be a lien upon the system of the Grantee and a set-off against any sums owed Grantee by City.

Section 20. MISCELLANEOUS PROVISIONS

20.1 Compliance with Laws.

(A) Both Grantee and the City shall comply with all applicable federal and state laws.

(B) Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

(C) Nothing in this Franchise is intended to authorize the Grantee to engage in any activity constituting a violation of federal or state antitrust laws, including, but not limited to, the Sherman Act, the Clayton Act, the Robinson-Patman Act or any related amendments or regulatory provisions.

20.2 Arbitration

(A) Any dispute between the parties hereto, including but not limited to disputes or controversies arising from or related to interpretation of this Franchise, may be arbitrated provided that both parties consent in writing to the arbitration. Such arbitration will be final and binding, and the parties shall have no right to appeal from the arbitrator's decision.

(B) The City may initiate arbitration by resolution of its City Council, while Grantee may choose to initiate arbitration by sending written notice to the City.

(C) After arbitration has been initiated, the City and Grantee may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within 20 days after the arbitration has been initiated, the arbitrator shall be selected by the presiding civil judge of the Multnomah County Circuit Court.

(D) If either the City or Grantee does not consent to having one arbitrator conduct the arbitration, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

(1) If the City initiates arbitration, the City shall select one arbitrator and Grantee by written notice shall select one arbitrator within 15 days after passage of the resolution. If Grantee initiates arbitration, it shall identify its selected arbitrator in its written notice, and the City shall select one arbitrator, within 15 days after receiving the notice.

(2) The two selected arbitrators shall select a third arbitrator within 15 days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Multnomah County Circuit Court.

(E) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than 120 days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the City and Grantee. The arbitrator(s) shall make a written report to the City and Grantee on the final determination within 60 days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination.

(F) Once initiated by the parties, the arbitration shall be conducted according to the Uniform Arbitration Act, ORS 36.600 to ORS 36.470 (2009).

(G) The City and Grantee shall share equally the fees and costs of the arbitrator(s).

(H) In any arbitration proceeding regarding a modification of this Franchise, initiated under Section 20.15, Section 20.16 or Section 20.8, the arbitrator(s) may order a modification of the Franchise in response to the events and circumstances initiating the arbitration proceeding. The arbitrator(s) shall attempt to modify the Franchise so that the net rights and obligations of the City and the Grantee remain substantially the same after the modification as they were prior to the events and circumstances leading

to the arbitration proceeding. The party seeking the modification shall have the burden of establishing how the net rights and obligations remain substantially the same. If the arbitrator(s) determine that it is not possible to so modify the franchise, then they shall make a finding so stating in their final determination and instead shall modify the franchise to provide as fair a balancing of the rights and obligations of the City and the Grantee as they are reasonably able to achieve in relation to the balancing of rights and obligations under the franchise prior to modification.

20.3 Mediation.

(A) The City and Grantee agree that should any dispute arise between the parties concerning any aspect of this Franchise 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 may be submitted to mediated negotiation prior to any party commencing litigation. In such event, the City and Grantee may 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. If the City and Grantee are unable to successfully conclude the mediation within 45 days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written termination notice has been received by the other party, either party may request arbitration, as set forth in Section 20.2, or may pursue any other available legal remedies. All costs associated with mediation shall be borne, equally and separately, by the parties.

(B) In any mediation regarding a modification of this Franchise, regarding disputes between the parties under Section 20.15, Section 20.16 or Section 20.8, the City and the Grantee agree that they shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the City and the Grantee remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding.

20.4 Continuity of Service. Grantee agrees that all Subscribers shall receive all available Cable Services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to modify or sell its Cable System, the Grantee shall make a good faith effort to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances during the term of this Franchise. In the event of purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, including subsequent assignment, sale, lease or other transfer to any other Person, the Grantee shall operate the Cable System for such reasonable periods as are necessary to maintain continuity of Cable Service to all Subscribers.

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20.5 Severability and Survivability. 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, unless the City Council determines such Section, provision or clause was material to the City's agreement to issue the Franchise. All provisions concerning indemnity shall survive the termination of this Agreement for any cause. Expiration or termination of this Franchise shall not extinguish, prejudice or limit either party's right to enforce this Franchise with respect to any default or defect in performance that has not been corrected.

20.6 No Recourse against City. To the extent provided by law, Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief. NOTE: MHCRC provided Cable Act citation)

20.7 Nonenforcement by the City. 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. 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.

20.8 Action by Agencies or Courts. Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Oregon or any court with competent jurisdiction requires the Grantee to act inconsistently with any provisions of this Franchise. Upon receipt of such notification, the City or the Grantee may determine if a material provision of this Franchise has been affected. Upon such determination, the City or the Grantee may seek to modify or amend this Franchise, pursuant to Section 20.15, as may be necessary to carry out the parties' intentions and purposes under this Franchise.

20.9 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, Portland Division.

20.10 Choice of Law. This Franchise shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

20.11 Notice. Any notice provided for under this Franchise shall be sufficient if in writing and: (1) delivered personally to the following addressee; (2) deposited in the United States Mail, postage prepaid, certified mail, return receipt requested; (3) sent by overnight or commercial courier (such as Federal Express); or, (4) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City: Office for Community Technology
City of Portland, Oregon
111 SW Columbia, Suite 600
Portland, OR 97201

With a copy to: City Attorney's Office
Room 430, City Hall
1221 SW 4th Avenue
Portland, Oregon 97204
FAX No. (503) 823-3089

If to the Grantee: Qwest Broadband Services, Inc. d/b/a CenturyLink
Attention Public Policy
1801 California Street
10th Floor
Denver, CO 80202

With a copy to: CenturyLink
 Attention: Public Policy
 310 SW Park Avenue
 11th Floor
 Portland, OR 97205

Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of: 1) actual delivery; three (3) business days after depositing in the United States mail as aforesaid; 2) one (1) business day after shipment by commercial courier as aforesaid; or 3) the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

20.12 Reasonability of Actions. In any matter provided for in this Franchise involving discretionary acts by the City or the Grantee, including but not limited to the giving of consent, approval or instructions, the parties agree that they will each act in a manner that is reasonable under the circumstances.

20.13 Force Majeure.

(A) For purposes of this Franchise, 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, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, partial or entire failure of utilities, documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and other similar events which are not reasonably within the control of the distressed party.

(B) If either party is wholly or partially unable to carry out or perform its obligations under this Franchise as a result of Force Majeure, the distressed party shall not be deemed in violation or default during the duration of the Force Majeure. The distressed party shall take immediate and diligent steps to comply as soon as possible under the circumstances, and shall take all necessary corrective steps to remedy as expeditiously as possible the non-compliant responsibilities and duties affected by the Force Majeure. The distressed party shall give prompt notice of such Force Majeure, describing the same in reasonable detail. The distressed party's obligations under this Franchise shall not be deemed in violation or default for the duration of the Force Majeure. In the event that delay in performance or failure to perform affects only part of the distressed party's capacity to perform, the distressed party shall perform to the extent that it is reasonably able to do so. Force Majeure shall not apply to any obligations under this Franchise for the payment of monies due. The acts or omissions of Affiliates are not beyond the Grantee's control, and knowledge of Affiliates shall be imputed to Grantee.

20.14 Integration and Written Modification. Except as otherwise expressly provided within this Franchise, this Franchise contains the entire agreement between the City and the Grantee. Any prior franchise agreements between the City and the Grantee shall be superseded upon the effective date of this Franchise. This Franchise may not be altered or modified orally but only by an instrument in writing executed by duly authorized representatives of the City and the Grantee.

(NOTE: MHCRC does not accept the insertion of CL's proposed language).

Deleted: (A) The provisions of this Franchise shall not be construed as or deemed to be a precedent by any party with respect to any issue, principle, or interpretation or application of law and regulations, for any purpose.

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20.15 Changes in Law or Unenforceability of Franchise Provisions.

(A) The City and Grantee have entered into this Franchise under the federal and state laws in effect on the effective date of this Franchise. The City and the Grantee reserve the right to request modifications to this Franchise, under Section 20.15(B), to account for changes in the law during the term of this Franchise. The City and the Grantee also reserve the right to request modifications in this Franchise, under Section 20.15(B), if any provision of this Franchise becomes, or is declared, invalid or unenforceable.

(B) Upon written notice from either party, the City and the Grantee may voluntarily agree, under Section 20.15(A), to participate in a non-binding mediation proceeding under Section 20.3 to mediate, in good faith, modifications to the terms and conditions of this Franchise. The written request shall specifically identify the particular reasons under Section 20.15 (A) for the modification sought by the requesting party. In the mediation proceeding, the City and the Grantee shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the City and the Grantee remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding. If the City and Grantee are unable to successfully conclude the mediation within 90 days from the date of the written notice requesting the mediation proceeding, the parties may agree to submit the matter to arbitration as set forth in Section 20.2.

20.16 Renegotiation.

(A) If 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 this Franchise, then the City and the Grantee shall renegotiate the terms of this Franchise, subject to the mediation procedures of Section 20.3. The party seeking renegotiation shall serve on the other party written notice of a request to mediate. The parties shall have 90 days to conduct and complete the renegotiation. If the City and the Grantee cannot successfully conclude the renegotiation within 90 days from the date of the mediation request is served upon the other party, the matter may be submitted to arbitration under Section 20.2.

(B) By mutual agreement, the City and the Grantee may meet at any time during the term of this Franchise to review and renegotiate matters of concern or interest to either of them. The topics of such renegotiation shall be stated in writing by each party prior to such meeting, but each party may include any topic or concern arising under this Franchise or otherwise.

Section 21. WRITTEN ACCEPTANCE

21.1 Written Acceptance. On or before thirty days after this Franchise becomes effective, Grantee shall file with the City Auditor's Office a written acceptance of this Franchise duly executed by the Grantee, in the form provided in Exhibit F to this Franchise. Such acceptance shall be unqualified and shall be an acceptance of all the terms, conditions and restrictions contained in this Franchise.

21.2 Failure to File Acceptance. Any failure on the part of the Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and this ordinance shall thereupon be null and void.

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Standard Installation. For purposes of Section 8, "Standard Installation" means an installation of a drop no more than 125 feet between the Dwelling Unit and the nearest point of access on the Street from which the Cable System is designed to serve the site, which qualifies a Residential Subscriber for installation at standard rates. Except as otherwise provided in Section 8.3, Grantee shall provide Standard Installation within 60 days of a service request to any potential Residential Subscriber throughout the Franchise Area at Grantee's published rates and charges. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified oral request.

8.3

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Non-Standard Installations. In general, Grantee shall have no obligation to provide service necessitating a service drop extension beyond a Standard Installation unless the potential Residential Subscriber requesting service contractually agrees to pay construction costs based on the following formula:

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(A) Grantee shall provide service at its Standard Installation rate for the initial 125 feet of service drop extension.

(B) Grantee and the Residential Subscriber shall share equally the actual cost of the service drop extension for the distance over 125 feet but less than 250 feet.

(C) The Residential Subscriber shall pay all costs for the service drop extension for the distance greater than 250 feet.

8.4 Line-Extension Aid to Construction. For those Persons not eligible for installations pursuant to Section 8.2 and 8.3, Grantee shall have no obligation to provide Cable Service causing direct and incremental line extension costs in excess of 50 times the standard monthly charge for Expanded Basic Service Tier or its equivalent, unless the Person requesting service contractually agrees to pay such costs, based on the following formula:

Grantee shall provide installation at its standard installation rate if the direct and incremental line extension costs are equal to or less than 50 times the standard monthly charge for Expanded Basic Service Tier.

In all other cases the Person shall pay the standard installation rate plus all direct and incremental line extension costs in excess of 50 times the standard monthly charge for Expanded Basic Service Tier.

EXHIBIT B
ACCEPTANCE OF EXTENSION OF TERM OF CABLE FRANCHISE

Karla Moore-Love Council Clerk
City Hall
1221 SW 4th Ave Room 140
Portland, Oregon 97204

This is to advise the City of Portland, Oregon that Franchisee that Franchisee Qwest Broadband Services, Inc. ("Qwest BSI"), abn Centurylink, hereby unqualifiedly accepts the provisions applicable to them of Ordinance No. _____, passed by the City of Portland, Oregon on the ____ of ____, 2013, extending the term of the cable franchise granted by the City of Portland, Oregon to Qwest BSI under Ordinance No. 181414 and by Ordinance No. 184206 consenting to Qwest BSI's parent, Qwest Communications International, Inc, change of control at the parent level to CenturyLink, Inc., to December 31, 2015 and agrees, as applicable, to abide by the following terms and conditions:

- a. In all respects and without exception, Qwest BSI abn CenturyLink agrees and acknowledges that the extension of the term of the cable franchise will not affect, diminish, impair or supersede the binding nature of the existing valid ordinances, franchises, resolutions and agreements applicable to operation of the cable system, and that during the term of the extension Qwest BSI and CenturyLink, Inc. shall comply with each and every provision of the cable franchise including all lawful applicable ordinances, orders, contracts, agreements, commitments, side letters, and regulatory actions taken pursuant thereto, as applicable, whether prior or subsequent to the date of the term extension that is the subject of this Acceptance.
- b. Qwest BSI abn CenturyLink will comply with all applicable requirements of the cable franchise consistent with applicable federal and state law.
- c. Qwest BSI abn CenturyLink specifically acknowledges and accepts that the City of Portland does not waive and expressly reserves all legal rights and authority in regard to any and all non-compliance under the cable franchise that may now exist or may later be discovered to have existed during the term of the franchise, even if prior to the extension of the cable franchise authorized by the Ordinance No. _____.
- d. Qwest BSI abn CenturyLink does not waive and expressly reserves all legal rights they may have under the current cable franchise and applicable law.

QWEST BROADBAND SERVICES, INC.
abn CENTURYLINK, INC.

STATE OF _____)
) ss.
County of _____)

By _____
Name:
Title:

Date: _____, 2013

This Acceptance was acknowledged before
me on the _____ day of _____,
2013, by _____,
as _____, a
duly authorized officer of Qwest Broadband
Services, Inc.

Notary Public for _____
My Commission Expires _____

APPROVED AS TO FORM:

Portland City Attorney's Office

- c. Office for Community Technology
P.O. Box 745
Portland, OR 97207-0745