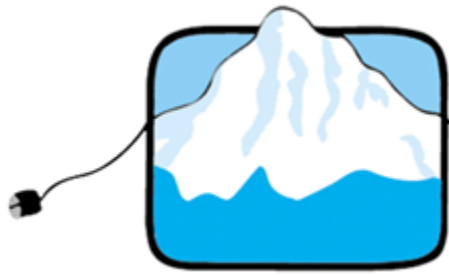


REGULAR AGENDA



MT. HOOD CABLE REGULATORY COMMISSION

111 SW Columbia St., Suite 600 • Portland, OR 97201

Phone: (503) 823-5385 • Fax (503) 823-5370

www.mhcr.org

Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

STAFF REPORT AND RECOMMENDATION

To: Mt. Hood Cable Regulatory Commission
Re: Qwest Broadband Services, Inc. (QBSI) d/b/a CenturyLink Cable
Franchise Renewal: Staff Recommendation
For: MHCRC Meeting, March 16, 2015
From: Mary Beth Henry, MHCRC Staff Director
Julie S. Omelchuck, Program Manager
Date: March 11, 2015

STAFF RECOMMENDATION

Staff recommends that the Commission adopt:

- Resolution No. 2015-01 recommending and transmitting to the City of Portland a cable franchise renewal agreement with QBSI d/b/a CenturyLink and a side letter of agreement for consideration and final action by the Portland City Council prior to the December 31, 2015 expiration of the extended term of the current franchise agreement.

BACKGROUND

After lengthy negotiations, it is our pleasure to transmit the proposed CenturyLink cable franchise renewal for an 11 year term (August 2015 - December 2026). The duration of the franchise term will be contingent on reaching certain penetration thresholds. CenturyLink's current cable franchise expires at the end of 2015.

CURRENT LEVELS OF FRANCHISE BENEFITS CONTINUE

MHCRC members and interested parties will observe that the fundamental public benefit framework of the current CenturyLink franchise has been retained and is commensurate with the Comcast franchise:

- Cable franchise fees at anticipated levels are secured;
- 3% PEG/I-Net Capital fund retained (including funds for community media providers, the MHCRC's community grants, and the I-Net); and
- Access by all cable subscribers to all PEG channels is guaranteed, and the current complement of PEG Access channels and interconnects are retained.

PROGRAM ENHANCEMENTS

In addition to this, tangible improvements and enhancements have been secured in a number of key areas of the renewed franchise, for example,

- All PEG channels will be High Definition;
- PEG program listings will be included in all subscriber guides, including web-based and set-top box program guides; and
- The availability and accessibility of PEG Video-on-Demand programming is improved and contractually secured.

PUBLIC COMMENT

A summary of the in-person comments is contained in the MHCRC January 26, 2015 meeting minutes included in the MHCRC meeting packet for the March 16 meeting. The written public comment submitted to the MHCRC regarding the proposed CenturyLink renewal franchise is attached.

CONCLUSION

It is staff's belief that the proposed renewal franchise, along with Exhibit A and a side letter of agreement, is generally consistent with the MHCRC's community needs ascertainment and adequately addresses the future cable-related needs and interests of the community during the proposed renewal franchise term (eleven years), taking into account the cost of meeting such needs and interests. Staff recommends that the MHCRC adopt the resolution, including the proposed renewal franchise (and accompanying documents) for Portland and forward the proposed renewal agreement to the Portland City Council for final consideration and action prior to the scheduled expiration of the current franchise term on December 31, 2015. MHCRC staff believes the resultant renewed cable franchise represents balanced interests of Century Link and community public benefits, and ensures the a high level of benefits for a reasonable term.

Please let us know if you have any questions!

Attachments: Comcast Letter
MHCRC Response to Comcast Letter



February 10, 2015

Carol Studenmund, Chair
Members of the Mt. Hood Cable Regulatory Commission
111 SW Columbia, Suite 600
Portland, Oregon 97201

Dear Commission Members:

I am writing to provide you with Comcast's comments regarding the proposed cable franchise that was negotiated between the Mt. Hood Cable Regulatory Commission (MHCRC) staff and CenturyLink. Thank you, in advance, for considering this input.

Comcast welcomes a fair and robust competitive marketplace made up of responsible competitors, and we do not oppose the granting of an equitable cable franchise to CenturyLink. Consumers can choose from numerous video options today, including Comcast, DirectTV, DISH Network, and "over the top" – services like Netflix, Amazon, Apple TV and Hulu. This fiercely competitive landscape is challenging but it brings out the best in each company – at least when competitors face a level playing field that treats similar providers in a similar manner.

Of the many franchise obligations that MHCRC has imposed on Comcast in our existing franchise (and on our predecessor companies in previous franchise agreements), one of the most material and impactful to the Commission's constituents is the "build out" or "service requirement" provision, which requires Comcast to offer equivalent video service to all parts of your community (that meet a minimum density threshold). The public policy underlying that obligation is clear: private companies gaining access to valuable rights of way must make their video services available to all residents, and not cherry-pick based on a neighborhood's age, ethnicity, affluence, market potential or any other factor. MHCRC's commitment to that policy (acting on behalf of its members) has historically guaranteed that all residents have had access to the same video services.

But today, that requirement means much more. Because broadband is delivered over that same video infrastructure, and because broadband speeds accelerate as those facilities are upgraded, the service requirement in our franchise ensures that every resident in Portland having access to our services has precisely the same access to the industry-leading broadband speeds (currently up to 250 Mbps for residential services, and multi-Gig for commercial services) that we offer today. So, when we invested millions of dollars over the last several years in Portland and surrounding communities to increase the capacity of your community's broadband network, every resident having access to our services benefitted. And every time we increased our residential

broadband speeds in MHCRC's territory, which we have done 12 times in the last 12 years, every single resident having access to our services benefitted, equally.

Simply put, when Comcast and its predecessors entered these communities, it did so with full understanding of the investment necessary to build out (over time, and subject to reasonable time and density thresholds) to serve the entire community. There are no cable "haves" and "have nots" in the Portland metro area – and in fact, there is total consumer equity when it comes to the products and services we offer. And we all know what discrimination in access or inconsistent access means. Today's fast broadband connection has become a critical link to a world of educational and economic opportunities. Those who are connected have instant access to online learning tools, they can more easily find jobs, and they can efficiently access health care and government services or run their businesses. Those who do not have access to affordable broadband or advanced broadband speeds will get left behind or will be at a disadvantage in the marketplace.

Imposing reasonable (but binding and enforceable) full-community service requirements on all companies serving the community would protect competitive and consumer equity and prevent selective service deployment. It would equalize the investment that all providers would be required to make in return for access to the public rights of way. And it would ensure that competition develops according to which provider can best serve subscribers, and not according to which provider enjoys the most advantageous regulatory requirements.

The Cable Act provides that "in awarding a franchise, the franchising authority shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area," see 47 U.S.C. Section 541(4)(A), implying that build-out requirements will be imposed, and the FCC (in its 2006 Franchising Order) specifically clarified that reasonable build out requirements are certainly allowed and it listed what constitutes unreasonable versus reasonable build-out provisions. Yet the provision that addresses build out in the CenturyLink Franchise in Section 1.3 (entitled "Franchise Term Extension") falls far short of requirements we have seen in other communities: it allows CenturyLink to self-select initial service territory that would comprise no more than 20% of the community and contains no binding obligation on CenturyLink to build out their service area whatsoever. This is hardly a "reasonable period" to serve "all households" as stipulated in the Cable Act – rather, it gives total deference to CenturyLink on whether it ever expands its advanced offerings throughout the community.

The impact of the purported build out language in Section 1.3 of the CenturyLink franchise, accordingly, likely equates to no impact for the vast majority of Portland's residents, which could mean that the small minority of residents getting access to CenturyLink's new services would have advanced services from CenturyLink while the rest are stuck with plain old legacy phone service. If, as CenturyLink has said in other markets, increased video competition is good for consumers and will lead to faster

broadband speeds, then shouldn't all of Portland's residents get the benefits of a new telecommunications provider competing for their business, at least over some reasonable period of time?

As stated above, Comcast does not oppose CenturyLink's entry into video marketplace. But we are concerned that competitive providers who make use of the same rights of way as Comcast, and who are subject to the same federal law and the same local regulatory authority, be held to some reasonable level of city-wide service requirement standards similar to what we have been held to.

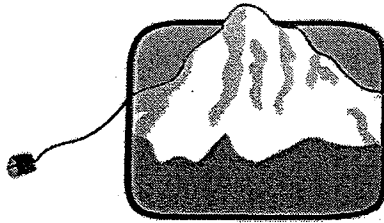
Again, thank you for the opportunity to share our views with you on this important issue. Please do not hesitate to contact me if you have any questions, or if you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Farrar", with a long horizontal flourish extending to the right.

Marc Farrar
Vice President of Government Affairs

Cc: Mary Beth Henry, MHCRC Manager



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Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

March 11, 2015

Marc Farrar
9605 NW Nimbus Avenue
Beaverton, Oregon 97008

RE: Comcast Comments on proposed CenturyLink Cable Franchise

Dear Marc,

Thank you for your letter to the Mt. Hood Cable Regulatory Commission regarding CenturyLink's proposed cable franchise. We agree that a robust competitive marketplace would greatly benefit our community.

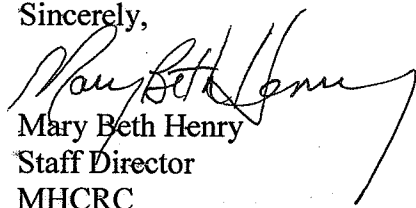
In your letter you indicate that Comcast believes that the build out provisions of the proposed CenturyLink franchise are not comparable to Comcast's build out requirements. In response I would argue that the proposed franchise is as aggressive on this issue as is possible with this applicant in the current legal environment. As demonstrated by the pattern of CenturyLink's negotiations elsewhere, imposing a mandatory build out provision of 100% of the franchise area subject to a fixed timeline will have one result: the elimination of any possibility of a competitive, facilities-based cable alternative. CenturyLink will simply not make the necessary investment to deploy competitive cable services here with the requirement that Comcast proposes, because the business case necessary to support facilities-based competitive cable services from a second provider (CenturyLink in this instance) cannot (in CenturyLink's view) be sustained if a costly fixed build out requirement is imposed that bears no relationship to CenturyLink's actual success as a second entrant in the cable services marketplace.

It is worth noting that Comcast (and its predecessors) have already reaped the benefit of a 25+ year head start over CenturyLink in multi-service broadband deployment, with the result that every household in Comcast's franchise is already wired and serviceable. Comcast also enjoys a substantial lead in cable services marketing, packaging and customer retention in what is now (for Comcast) a unique "quad play" environment (Comcast-owned cable, broadband Internet, digital telephone and (Verizon's) wireless services) but which for CenturyLink will, at best, become a "triple play" environment (CenturyLink-owned services will be wireline telephone, fiber or DSL Internet and cable services). While staff neither adopts nor denies CenturyLink's arguments about the business environment facing it as a second entrant, sufficient objective evidence exists to demonstrate that the mirror-image build out conditions urged by Comcast in the name of "competitive neutrality" will have one proximate result: the elimination of cable services competition to Comcast from CenturyLink, since CenturyLink will decline to enter the market here under the condition proposed.

That being the case, staff's approach in the franchise is to provide for a non-discriminatory, incentive-based build out where CenturyLink is rewarded with a longer franchise term if certain construction targets are reached. The penalty facing CenturyLink for failing to build is the loss of the franchise in 72 months. Staff regards this condition as a significant deterrent to inaction by CenturyLink, and a significant incentive to build out the system

Moreover, Comcast is well aware that the FCC cast doubt on the lawfulness of fixed build out mandates imposed by franchising authorities on second entrants in the cable services market. These limitations are discussed in a memorandum from the MHCRC's legal counsel to staff, which is attached. Thank you.

Sincerely,



Mary Beth Henry
Staff Director
MHCRC

Attachment: City Attorney Memo dated August 14, 2007



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Linda Meng, City Attorney
1221 S.W. 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

August 14, 2007

INTEROFFICE MEMORANDUM

TO: David C. Olson, Director
Office of Cable Communications and Franchise Management

FROM: Ben Walters *BW*
Senior Deputy City Attorney

SUBJECT: Qwest Broadband Services – Proposed Cable Franchise
Anti-“redlining” Provision

After staff concluded negotiations with Qwest Broadband Services on a franchise to provide cable services within the City of Portland, on July 30, 2007, the Mt. Hood Cable Regulatory Commission held a hearing seeking public comments on the proposed franchise.¹ At the hearing, Comcast’s vice-president for government affairs offered testimony broadly reflecting statements made in a letter sent by Comcast to the Commission on July 27, 2007. Comcast’s letter asserted that “the proposed franchise provides no mechanism for the Commission and the City to ensure non-discriminatory deployment of services throughout the City or to residences within the City limits which truly reflects the socio-economic diversity of the City’s neighborhoods.” Letter from Sanford Inouye to Norm Thomas, page 3 (July 27, 2007).²

Section 4.3 of the draft franchise addresses potential “redlining” by prohibiting the franchisee from “bas[ing] 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.” Section 4.3 also forbids the franchisee from denying cable services “to any group of subscribers

¹ Qwest’s service territory may eventually extend into portions of Gresham and other east Multnomah County cities. For the present time, however, Qwest has represented that its construction efforts and service marketing will be limited to within Portland.

² The cable industry, including Comcast, has argued for years that the telecommunication companies will engage in redlining unless subjected to rigorous anti-redlining guidelines. See, for example, Federal Communications Commission, *Application for the Consent to Assignment of Licenses of Adelphia Communications Corp. and Time Warner Cable Inc.*, MB Docket No. 05-192, Petition to Deny of National Hispanic Media Coalition, p. 4, fn.6 (July 21, 2005) www.mediaaccess.org/NHMCFinal.pdf (site accessed August 6, 2007).



or potential residential subscribers based upon the income level of residents of the local area in which such group resides.” Section 19.4 requires the franchisee to “establish similar rates and charges for all Subscribers receiving similar services” and prohibits discrimination based upon income or geographic location, as well as other factors.

The language contained in Sec. 4.3 of the draft franchise tracks the terms of 47 USC § 541(a)(3). This federal statute requires local governments to assure that cable franchisees will not deny access to cable service “to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.”

The nature of Congress’ intent relating to this provision has been the subject of some debate. Initially, the Federal Communications Commission (“FCC”) interpreted this section as meaning that “the franchising authority shall require that all areas of the franchised area be wired.” Notice of Proposed Rulemaking, 49 Fed Reg at 48,769 (emphasis added). It later backed away from this position:

[T]he intent of [section 541(a)(3)] was to prevent the exclusion of cable service based on income and that this section does not mandate that the franchising authority require the complete wiring of the franchise area in those circumstances where such an exclusion is not based on the income status of the residents of the unwired area.

Report and Order, 50 Fed Reg at 18,647. The District of Columbia Circuit upheld this interpretation on the grounds that:

[t]he statute on its face prohibits discrimination on the basis of income; it manifestly does not require universal service.

ACLU v. FCC, 823 F.2d 1554, 1580 (D.C. Cir. 1987)).

The FCC recently adhered to this conclusion, ruling that it would be “unlawful for [local franchising authorities] to refuse to grant a competitive franchise on the basis of unreasonable build-out mandates.” Federal Communications Commission, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, ¶¶ 88-90, 72 FR 13189-01, 13204, 2007 WL 835168 (Wednesday, March 21, 2007). On the other hand, the FCC Order expressly disclaimed any intention to displace a “LFAs’ authority to appropriately enforce [Section 541 (a)(3)] and to ensure that their constituents are protected against discrimination.” *Id.* at ¶ 91.³

³ The FCC’s ruling has been challenged in federal court. However, according to lawyers for some of the challengers, the 6th Circuit has declined to stay the effectiveness of the

The language of 47 USC § 541(a)(3) has been incorporated into numerous cable franchises by jurisdictions throughout the country. For example, the City of Davis, California has incorporated this construct into its city code, which states:

A cable Operator shall not deny access or charge different rates to any group of Subscribers or potential Subscribers because of the income of the residents of the local area in which such group resides.⁴

The City of SeaTac, Washington, similarly requires that “[a]ccess to cable service shall not be denied to any group of potential subscribers solely because of the income level of the area in which they reside.”⁵ Similar language is found in Comcast’s franchise for cable services in Spokane, Washington.⁶

A recent review of state legislation determined that at least eight states (including New Jersey, Florida and California) have enacted legislation restricting cable redlining “in language virtually identical to that of federal law.”⁷ California law provides that:

A cable operator or video service provider that has been granted a state franchise . . . may not discriminate against or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides.

California Public Utility Code §5890(a).⁸ California statutes further provided that when issuing franchises, cities must “assure that access to cable service is not denied to any group of potential

Commission’s order.

http://www.millervaneaton.com/content.agent?page_name=HT:%20%20FCC%20Franchising%20Order%202006-12-20 (site accessed August 6, 2007).

⁴ www.city.davis.ca.us/pccs/telecomm/pdfs/telecomm-finalord.pdf (site accessed July 30, 2007).

⁵ www.ci.seatac.wa.us/mcode/ordinances/90-1028.htm (site accessed July 30, 2007).

⁶ *Cable Communications Franchise Agreement between Spokane, Washington and Comcast Cable Communications, Inc.*, §15.B, p. 6 (December 8, 2004).

www.watoa.org/cable_franchise_spokane.doc (site accessed August 6, 2007).

⁷ Minnesota House of Representatives Research Department, *New State Cable TV Franchising Laws*, p. 6 (November 2006) www.house.leg.state.mn.us/hrd/pubs/cablelaw.pdf (site accessed August 6, 2007).

⁸ This language was enacted as part of The Digital Infrastructure and Video Competition Act in late 2006. www.cpuc.ca.gov/PUBLISHED/Graphics/65227.PDF (site accessed August 6, 2007).

David C. Olson
August 14, 2007
Page 4

residential cable subscribers because of the income of the residents of the local area in which the group resides.” California Government Code §53066.2(a).

In conclusion, the language incorporated into the proposed cable franchise with Qwest is consistent with the approach taken throughout the country to address potential “redlining” of cable services. While Comcast has pointed to California’s approach as being significantly different, the draft franchise language is essentially consistent with California’s statutory terms. At this juncture, to push for a more rigorous approach such as Comcast is advocating could create potential legal conflict with the FCC’s recently adopted administrative restrictions upon local government authority to address universal service. I recommend rejecting Comcast’s arguments on this issue.

BW:BW

c. Julie Omelchuck, Cable Office

**Before the
Mt. Hood Cable Regulatory Commission
111 SW Columbia Avenue Room 600
Portland, OR 97201**

Recommending and transmitting to the)
City of Portland a cable franchise renewal) Resolution No. 2015-01
agreement with Qwest Broadband Services, Inc.)
d/b/a CenturyLink for an 11 year term) Adopted by the Commission
expiring December 31, 2026 with exhibit A and a)
side letter)

DRAFT

Section 1. Findings.

- 1.1 The Mt. Hood Cable Regulatory Commission (“MHCRC” or “Commission”) was created by Intergovernmental Agreement (dated December 24, 1992) (“IGA”) to carry out cable regulation and administration on behalf of Multnomah County and the cities of Gresham, Fairview, Portland, Troutdale, and Wood Village (collectively “the Jurisdictions”). Among other things, the Commission acts in an advisory capacity to the Jurisdictions in connection with cable franchise renewals.
- 1.2 The Qwest Broadband Services, Inc cable franchise was approved on the recommendation of the MHCRC by action of the Portland City Council on November 14, 2008 and effective 60 days afterward. Ordinance No. 181414 (the “cable franchise”).
- 1.3 The cable franchise was transferred to CenturyLink, Inc. on the recommendation of the MHCRC by action of the Portland City Council (Ord. No. 184206, November 3, 2010). The franchise was due to expire December 31, 2011 but on the MHCRC’s recommendation was extended by the City to expire December 31, 2015, (Ord. No. 186351).
- 1.3 Pursuant to the provisions of 47 U.S.C. §546, the MHCRC on the City’s behalf has conducted a cable franchise renewal process. The process was authorized by Commission Resolution No. Resolution No. 2011-01 (adopted March 21, 2011). Pursuant to this process, staff relied on the Community Needs Ascertainment report (“Your Voice, Our Communications Technology”) prepared in April, 2010. CenturyLink and MHCRC staff subsequently negotiated a proposed franchise renewal agreement, with exhibit A and a side letter of agreement.
- 1.4 The MHCRC held a public hearing in January 2015 on the public benefit elements of the proposed renewal franchise.
- 1.5 The proposed City-CenturyLink renewal franchise has been accepted by CenturyLink and recommended by staff for MHCRC approval and forwarding to the Portland City Council for consideration and final action, along with the applicable exhibit A and side letter of agreement.

NOW, THEREFORE THE COMMISSION RESOLVES:

Section 2.

2.1 The MHCRC authorizes staff and legal counsel to prepare the City-CenturyLink renewal franchise in final ordinance form in consultation and with the consent of the MHCRC, and submit the proposed franchise to the Council of the City of Portland for consideration and final action, with a recommendation that the Council pass the CenturyLink renewal franchise ordinance along with exhibit A and a side letter of agreement. The City of Portland plans to process this renewal franchise together with a final, separately negotiated telecommunications franchise renewal with QBSI's parent corporation, who is performing the construction buildout of the renewed cable franchise.

ADOPTED BY THE COMMISSION on March 16, 2015.

Carol Studenmund, Chair

Reviewed by:

Benjamin Walters, MHCRC Legal Counsel

Attachments: QBSI d/b/a CenturyLink – Portland Franchise with exhibit and side letter of agreement

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.” The City and the Grantee may be referred to individually as a “Party” and collectively as “the Parties”.

1.2 Term of Franchise. This Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall expire on December 31, 2021 unless terminated sooner as provided in this Franchise or extended as provided in Section 1.3.

1.3 Franchise Term Extension.

- (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 December 31, 2023 if, by December 31, 2018, 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 December 31, 2026 if, by December 31, 2021, 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. Grantee shall submit reasonable documentation regarding achievement of the targets set forth in Section 1.3(A) hereof to the Commission not less than 90 days prior to expiration of the initial or extended term of the Franchise as applicable.

1.4 Effective Date. The effective date of this Franchise shall be 60 days after the passage date of this Franchise by the City Council, 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.

1.5 Non-Exclusive Franchise; Competitive Parity.

(A) Not exclusive. 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) Other franchises. The parties acknowledge that the City has entered into franchises authorizing the provision of similar services within the City by other franchisees. The Parties agree that construction and deployment by QC, incidental to Grantee's provision of Cable Services under this Franchise, of a Fiber-to-the-Premises Network offering upload and download speeds of up to 1 Gbps would materially advance the goals of the City's Broadband Strategic Plan. This Franchise reflects a good faith effort by the parties to balance the requirements of this Franchise with the obligations set forth in other franchises to provide reasonable equivalence in the obligations of Grantee and other similarly-situated franchisees.

(C) Additional Provisions.

(1) Grantee agrees and acknowledges that, solely for the purposes of Section 1.5(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.

(2) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any other Person.

1.6 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 1.6 shall be deemed a waiver by Grantee or the City of the rights of Grantee or the City under applicable law.

1.7 Cable Services by Affiliates. 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 Parties 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 Service, including Cable Services utilizing QC’s Fiber-to-the-Premises Network or Fiber-to-the-node infrastructure utilizing facilities provided by QC. 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.

1.8 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. DEFINITIONS

2.1 (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.

2.2 “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.

2.3 “Access Channel” means any Channel designated for Access purposes or otherwise made available to facilitate or transmit PEG Access Programming.

2.4 “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.

2.5 “Activation” or “Activated” means the status of any Capacity or part of the Cable System in which any 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.

2.6 “Affiliated Entity” or “Affiliates” 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.

2.7 “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.

2.8 “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 Subscribers in the Franchise Area.

2.9 “Broadband Strategic Plan” means the City’s Broadband Strategic Plan as adopted by City Council by Resolution No. 36879 on September 14, 2011.

2.10 “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.

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

2.12 “Cable Services” shall have the meaning provided under Federal law and regulations.

2.13 “Cable System” shall have the meaning provided under Federal law and regulations.

2.14 “Capacity” means the capability of the Cable System to carry Signals within a given format.

2.15 “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.

2.16 “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.

2.17 “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.

2.18 “City Council” means the Council of the City of Portland.

2.19 “Designated Access Provider” means the entity or entities designated by the City under Section 5.2.

2.20 “Facility” means any tangible component of the Cable System.

2.21 “FCC” means the Federal Communications Commission.

2.22 “Fiber” means a transmission medium of optical fiber cable capable of carrying Signals by means of lightwave impulses.

2.23 “Fiber-to-the-Premises (FTTP) Network” or “Network” refers to the construction, operation and maintenance by QC, under a separate agreement with the City, of a system comprised of Fiber connected to individual Living Units enabling the delivery of Cable Services, together with other services as determined by QC; with the capability of providing broadband speeds of up to 1 Gbps, with all related Facilities.

2.24 “Franchise” means this franchise agreement, as fully executed by the City Council and the Grantee.

2.25 “Franchise Area” means the territory within the boundaries of the City.

2.26 “Gross Revenues” means any and all revenues of Grantee derived from operation of Grantee’s Cable System to provide Cable Services to Subscribers within the City, without regard to the billing address of the Subscriber, and to the extent such Cable Services utilize the Cable System described in this Franchise. “Gross Revenues” do not include: (i) revenue from sources excluded by law; (ii) revenue derived by Grantee from services provided to its parent, subsidiaries of its parent or affiliated companies of Grantee; (iii) late payment fees; or (iv) charges, other than those described above, that are aggregated or bundled with amounts billed by Grantee or Grantee Affiliates for non-Cable Services.

2.27 “Hazardous Substances” has the meaning given by ORS 465.200(16) (2013).

2.28 “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.

2.29 “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.

2.30 “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 Designated Access Providers and any 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.

2.31 “Institutional Network” or “I-Net” means dedicated capacity used to provide one-way and bi-directional communication services to and among various 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.

2.32 “Living Unit” means a distinct address as tracked in the QC network inventory, used by Grantee to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

2.33 “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.

2.34 “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.

2.35 “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.

2.36 “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.

2.37 “QC” means Qwest Corporation d/b/a CenturyLink (“QC”), an Affiliate of Grantee.

2.38 “Qualified Living Unit” means any Living Unit designated as qualified for Cable Service in QC’s loop qualification network inventory.

2.39 “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.

2.40 “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.

2.41 “Section” means a provision of this Franchise, unless specified as part of another document.

2.42 “Service Date” means the date that Grantee offers Cable Services on a commercial basis to one or more Subscribers in the Franchise Area.

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

2.44 “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.

2.45 “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.

Section 3. FRANCHISE AREA

3.1 Service Area. Subject to the provisions of this Franchise, Grantee is authorized to provide Cable Services within the Franchise Area.

3.2 Service Date. Grantee shall establish a Service Date to occur within eighteen (18) months of the Effective Date of this Franchise. Grantee shall give written notice to the City at least 30 days prior to the Service Date. If Grantee fails to offer Cable Services pursuant to this Franchise on or before the Service Date, this Franchise shall terminate following the thirtieth day after written notice from the City to Grantee.

Section 4. CABLE SERVICES NETWORK

4.1 Channel Capacity. 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 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. As used in this Section 4.1, “Downstream” means the direction of Signals from the Headend to Subscribers or Interconnect points served by the Cable System; and “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.

4.2 Broad Programming Categories. Grantee shall provide or enable the provision of at least the following broad categories of Programming:

- (1) Arts, culture and performing arts;
- (2) Foreign languages;
- (3) Programming addressed to diverse ethnic and minority interests in the City;
- (4) National, state and local government affairs; and
- (5) PEG Access Programming.

4.3 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.

4.4 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.

4.5 Leased Access Channels. Grantee shall meet the Leased Access Channel requirements provided under federal law.

4.6 Broadcast Channels. To the extent required by federal law, Grantee shall provide Broadcast Channels to all Subscribers.

Section 5. PEG ACCESS

5.1 PEG Access Channel Capacity. Grantee shall provide to all Subscribers not less than eight (8) Activated PEG Access Channels. Grantee shall simultaneously carry each Access Channel in both a high definition (HD) format and a standard digital (SD) format, for a total of 16 Activated PEG Access Channels. The City acknowledges that receipt of HD format Access Channels may require Subscribers to pay additional HD charges applicable to receiving other comparable HD programming services.

5.2 Designated PEG Access Providers.

- (A) The City may designate up to six (6) PEG Access providers, including itself, to control and manage the use of any or all Access Resources provided by the Grantee under this Franchise. To the extent of such designation by the City, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Resources.
- (B) Grantee shall cooperate with Designated Access Providers in the use of Access Resources. Grantee shall enter into operating agreements as may be necessary to facilitate and coordinate the provision of PEG Access, provided that all such operating agreements shall not be inconsistent with the terms of this Franchise.

5.3 PEG Access Channels.

(A) Access Channel Assignments.

- (1) Grantee shall place one Access Channel under this Franchise on channel 11 in Grantee's channel lineup.
- (2) Grantee shall place the remaining Access Channels under this Franchise on consecutive channel numbers in Grantee's channel lineup where other

commercial standard definition (SD) format channels are carried or, for the high definition (HD) format Access Channels, where other commercial HD format channels are carried.

- (3) Grantee shall notify the City and the Designated Access Providers of the Access Channel assignments at least 60 days prior to Grantee making the Access Channels available to Subscribers.
- (4) If Grantee reassigns Access Channel numbers, Grantee shall provide at least 60 days advance notice to the City and the Designated Access Providers. Grantee shall ensure that Subscribers are notified of such reassignment consistent with notice requirements under the City's Cable Television Consumer Protection Policy set forth in Portland City Code Chapter 3.115. Grantee shall also use the customer messaging function of its set-top unit to provide Subscribers the new channel assignments at least 30 days prior to the change and for at least 30 days after the change. In conjunction with any reassignment of any Access Channel, Grantee shall provide a minimum of \$5,000 compensation to a Designated Access Provider for costs associated with the change. Compensation shall be paid on a per-event basis, regardless of the number of channels affected by the change.

(B) Grantee's Use of Mosaic Channel.

- (1) Grantee shall use Channel 20 in its channel lineup as a means to provide ease of access by Subscribers to the Access Channels placed on channel numbers significantly higher than the access channels have historically been placed under other cable services franchises in the City. Grantee refers to this type of channel as a "Mosaic Channel." As used in this Section 5.3(B), "Mosaic Channel" means a channel which displays miniaturized media screens and related information for a particular cluster of channels with common themes. The Mosaic Channel serves as a navigation tool for subscribers, which displays the cluster of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel in the cluster.
- (2) Grantee shall use its Channel 20 Mosaic Channel to display all Access Channels required under this Franchise, except the Access Channel carried on Channel 11. Grantee shall not include any other channel on the Channel 20 Mosaic Channel unless the City provides advance written consent.
- (3) The Mosaic Channel mechanism shall allow subscribers to navigate directly from Channel 20 to the requested Access Channel in a single operation without any intermediate steps. When using the Channel 20 Mosaic Channel, Subscribers shall be directed to the requested Access Channel in a high definition (HD) format if appropriate to the Subscriber's level of service; otherwise, the Subscriber shall be directed to the standard definition (SD) Access Channel.

- (4) Grantee shall consult with the Designated Access Providers to determine the Access Channels information displayed on the Channel 20 Mosaic Channel. However, the information shall be, at a minimum, reasonably commensurate with Grantee's display of commercial channels on Mosaic Channels.
- (C) Access Programming Information in Programming Guides.
- (1) Grantee shall include the PEG Access Channels and programming information in any program guides, navigation systems and search functions accessible through Grantee's set-top box and remote controls, or their successor technologies, provided to its Subscribers, including, but not limited to on-screen, print and on-line program guides which include channel and program listings of any local Broadcast Channels. Grantee shall bear all capital, implementation and operating costs to include the PEG Access Channels and programming information in the programming guides.
- (2) The Designated Access Providers shall provide to the Grantee's designee, the Access Channel and programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.
- (D) Access Channel Interconnection. Within 120 days of the Service Date, Grantee shall Interconnect with Designated Access Providers at points of Access Channel origination located within the Franchise area. The Designated Access Provider shall provide Access Channel Signals in a HD-SDI format at the demarcation point for the Interconnection at the Designated Access Provider's point of origination for the Access Channels. Grantee shall encode the Access Channels for distribution and transport, and distribute the Access Channel Signals to all Subscribers without degradation. Grantee shall not be required to distribute to its Subscribers more PEG Access Channels than those distributed by franchised cable services operators within the City. Grantee shall provide all necessary equipment at the demarcation point of the Access Channel interconnection at the Designated Access Provider's site, at Grantee's Headend and throughout its Network to deliver the Access Channel(s) to Subscribers. Grantee shall not discriminate against Access Channels with respect to the functionality, signal quality, and features from those of the local Broadcast Channels carried by Grantee. With respect to signal quality, Grantee shall not be required to carry an Access Channel in a higher quality format than that of the Channel delivered to Grantee, but Grantee shall distribute the Access Channel signal without degradation. Grantee shall carry all components of the Access Channel provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the programming. Upon reasonable written request by a Designated Access Provider, Grantee shall verify delivery with the Designated Access Provider the delivery of PEG programming to its Subscribers.

5.4 PEG Access Interface with Grantee Video-On-Demand Capabilities. No later than twelve (12) months after the Effective Date, Grantee shall include up to 31 hours, at any given time, of high definition (HD) format Access programming on its video-on-demand (“VOD”) platform to be accessible free of charge to Cable Services Subscribers on the same basis as commercially offered VOD content. Grantee shall downconvert HD format Access programming to a standard definition format when necessary to provide VOD Access programming to Subscribers without access to HD format VOD programming. Grantee agrees to work in good faith with the Designated Access Providers to establish a mutually agreeable process for placing Access programming on the VOD platform, including but not limited to, an efficient online, electronic method for provision of HD format programming to Grantee including encoding specifications for programming format. Grantee shall include Access VOD program information in its VOD program guides. Designated Access Providers are responsible for selecting the Access programming and providing it to Grantee in a high definition (HD) format. Grantee and the City recognize that future development of VOD technology may allow for the Designated Access Providers and Grantee to agree on a mutually acceptable alternative to including Access programming on Grantee’s VOD platform and increasing the amount of Access programming available to Subscribers.

5.5 Access Programming Interconnects. Upon request by the City based on an identified community need, Grantee shall provide an activated Interconnection, within 120 days of such request, for the carriage and routing of Access programming signals to and from other franchised 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 payments made under Section 7 of this Franchise.

5.6 Charges. All of the Channels, Network capacity, capabilities, equipment, labor and other elements needed for the Grantee to provide PEG Access as required under this Section 5 shall be provided without charge to the City or to any Designated Access Provider, except as specifically provided in this Franchise.

5.7 Changes in Technology. In the event Grantee makes any change in its Network and related equipment and Facilities or in Grantee’s Cable Services delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of Designated Access Providers or Access programmers are not diminished or adversely affected by such change.

5.8 Technical Quality.

- (A) Grantee shall maintain all Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability Grantee maintains for its other commercial Video Services offered to Subscribers.

- (B) Grantee shall have no responsibility for the technical quality of the Access programming distributed on the Access Channels.
- (C) Use of the Grantee's Network by Designated Access Providers shall not interfere with the technical quality or reliability of the Network.

Section 6. INSTITUTIONAL NETWORK

6.1 Grantee acknowledges that the City has acquired I-Net capacity, facilities, interconnection, services and resources from 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 Parties 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 of providing such I-Net capacity, facilities and/or services from I-Net funds provided under Section 7.

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 7.

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.
- (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.

- (C) 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.

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 mediation 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.

Section 8. SERVICE, CONSTRUCTION AND INTERCONNECTION

8.1 Service Extension. Subject to Section 3, following the Service Date, Grantee shall provide Cable Services upon request from any Person in the Franchise Area who resides in a Qualified Living Unit. Grantee shall provide information to the City on a quarterly basis identifying additional Qualified Living Units in the City.

8.2 Service Availability. Except as otherwise provided in this Franchise, Grantee shall provide Cable Services within seven (7) days of a request by any Person who resides in a Qualified Living Unit. 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.

8.3 Monthly Service and Installation of Schools. Upon request, Grantee shall provide without charge the Basic Service Tier, an expanded programming service Tier and one standard outlet to any School that is a Qualified Living Unit provided that such School is not already receiving such service from another cable provider.

8.4 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.

Section 9. CABLE SYSTEM UPGRADE

- 9.1 Technology Assessment.

- (A) Between July 1, 2018 and January 30, 2019, the City may notify Grantee 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, 2015.
- (B) Grantee shall cooperate with the City to provide necessary non-confidential and non-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. NON-DISCRIMINATION AND CONSUMER PROTECTION

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

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.

10.6 Non-Discrimination.

- (A) Grantee shall comply with applicable federal, state or local laws relating to non-discrimination. Grantee shall offer and provide Cable Services to all Persons within the Franchise Area under non-discriminatory terms and conditions. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any Person, on the basis of race, religion, color, sex, marital status, familial status, national origin, age, disability, sexual orientation, income level or source of income.
- (B) Grantee shall not arbitrarily refuse to provide Cable Services to any Person within the Franchise Area. Grantee's designation of any Qualified Living Unit shall not be based upon race, religion, color, sex, marital status, familial status, national origin, age, disability, sexual orientation, income level or source of income.
- (C) Grantee's rates and charges shall be published, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions.
- (D) Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of Subscriber's race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, disability, income source, or geographic location within the Franchise Area. Nothing in this Section 10.6 shall be construed to prohibit:
 - (1) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;
 - (2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;
 - (3) 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
 - (4) Grantee from establishing reduced bulk rates for Subscribers.

10.7 Filing of Rates and Charges. Grantee shall maintain on file with the City or provide via a working Internet link with contemporaneous notice to City upon change, 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.

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, which may include notice by means of a working Internet link with contemporaneous notice to City upon change.

- (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 Provision of Equipment and Services to Individuals with Disabilities. Grantee shall provide Services and equipment to Subscribers with disabilities in accordance with federal and state laws.

10.10 Privacy. Grantee shall comply with applicable federal, state and local laws regarding Subscriber privacy. Grantee will make available to Subscribers a privacy policy discussing its practices with regard to the Services.

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 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.

10.13 Sale of Subscriber Lists and Personalized Data. Grantee shall be subject to the provisions of applicable federal law regarding limitations on Grantee's collection and use of personalized data, and other issues involving the protection of Subscriber privacy.

10.14 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 thereafter.

Section 11. TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS

11.1 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.

11.2 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.

11.3 Emergency 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.
- (C) Public Alerts. The Portland Bureau of Emergency Management (“PBEM”) has developed Public Alerts, available at <http://www.PublicAlerts.org>, to facilitate timely distribution of service outage and other emergency information to the public. Grantee will cooperate with PBEM to explore potential participation in PublicAlerts to provide outage information to the benefit of Subscribers and the community.

11.4 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.

11.5 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 REVIEWS

12.1 Compensation. As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets of the City, 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.

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) ACH Payments. Grantee shall set up electronic fund transfer within sixty (60) days of the Franchise effective date to submit payments to the City by Automated Clearing House (ACH) credit payment receipts. The City may in its sole discretion approve any written requests from Grantee for waivers from the ACH requirement.
- (C) Quarterly Reports. Payments pursuant to this Section 12 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. Any payments that are due and payable under this Franchise that are not received within forty-five (45) days from the specified due date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date.

12.4 Bundled Services. Grantee shall not allocate revenue between Services subject to the franchise fee and Services not subject to the franchise fee 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, if such publication is required by the City Charter.

12.6 Additional Commitments Shall Not Offset Franchise Fees. Except as may be provided in an amendment to this Franchise, or by a separately adopted ordinance, no term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay franchise fees. Grantee agrees that additional commitments under this Franchise shall not be offset or credited against any franchise fee payments due to the City.

12.7 Acceptance of Payment and Recomputation. Acceptance of payment pursuant to this Section 12 shall not be construed as an accord that the amount paid is, in fact, the correct amount, nor as a release of any claim the City may have for further or additional sums payable.

12.8 Reviews.

(A) Acceptance of Payment and Recomputation. All amounts paid under Section 12 of this Franchise shall be subject to review by the City, provided that only payments that were due and payable during a period of thirty-six (36) months prior to the date the City notifies Grantee of its intent to perform a review shall be subject to such review. Grantee agrees to pay the City for:

- (1) Interest on any underpayment of an amount due under Section 12 of this Franchise that is disclosed as the result of a review, such interest to be calculated at one percent (1%) per month. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives the payment.
- (2) A penalty of five percent (5%) of the underpayment shall be due within forty-five (45) days of written notice from the City, if the City's review discloses that Grantee has paid ninety percent (90%) or less of the principal amount owing for the period under review.

(B) Authority to Conduct Financial Reviews.

- (1) The City and its agents and representatives shall have authority to arrange for and cause to be conducted reviews of any payments under this Franchise, upon no less than thirty (30) days prior written notice to Grantee, and during normal business hours at reasonable locations in the City or the Portland metropolitan area designated by the Grantee. The City's thirty (30) day notice shall provide Grantee with a preliminary list of financial documentation requested by the City for review. Prior to any review being conducted, the Parties shall execute a non-disclosure agreement. Following availability being made by the Grantee of complete, necessary financial documentation, the City and its agents and representatives shall use best efforts to complete any review under this Section 12.8.B within sixty (60) days; in any event, any review shall not exceed ninety (90) days unless by mutual consent of the parties. Any financial documentation made available by the Grantee to the City for the review shall not be copied or removed from the reasonable locations designated by the Grantee, and both the documents and the information contained therein shall be accorded the maximum

level of confidential treatment to the extent authorized by Oregon law. The City shall not call for reviews more than once per thirty-six (36) month period.

- (2) Grantee agrees to reimburse the City for the reasonable costs of such review if the review discloses that Grantee has paid ninety percent (90%) or less of the fees owing under Section 12 of this Franchise for the period at issue.
 - (3) Subject to the requirement set forth in Section 12.8.B, Grantee shall reimburse the City within forty-five (45) days of receipt of an invoice from the City showing such costs were actually incurred and were directly related to the review.
- (C) Grantee Dispute of Review. Grantee shall have the ability to dispute any determination of underpayment by the City within thirty (30) days of receipt of written notice from the City related to the review. If Grantee disputes the City's determination of any underpayment under this Franchise, Grantee shall place the disputed amount in an escrow account at a financial institution acceptable to the City with instructions agreed to by the City until final resolution.

12.9 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 City Access to Grantee 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, 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. 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;

- (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. Notice to the City containing this information may be provided by means of a working Internet link, with contemporaneous notice to City upon change, in form satisfactory to the City.

- (A) Cable System structure and operating information:

- (1) Total Living Units and Qualified Living Units in the Franchise Area (Annually);
- (2) Beginning no later than 2016, the number of Cable Subscribers, including the numbers of Basic Service Subscribers, other programming service tier subscribers, Pay Service Subscribers and pay-to-basic percentages (Annually). As used in this subsection, "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) 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).

- (B) Grantee shall provide an audited statement or, in lieu of such audited statement, a statement certified by an authorized representative 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, which may be satisfied, at the City's discretion, by means of a working Internet link with contemporaneous notice to City upon change in form satisfactory to the City. .

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.

- (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 Facilities in the Streets.
- (D) Defense of the Franchise. Grantee agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from injury, damage, loss, liability, reasonable cost or expense, including expert witnesses and other consultants, court and appeal costs and reasonable attorney fees or expenses, arising from or in any way related to the grant of, or terms of, this Franchise. This agreement to indemnify, defend and hold harmless encompasses, but is not limited to, injury, damages, losses, liabilities, costs or expenses, including expert witnesses and other consultants, court and appeals costs and reasonable attorney fees and expenses that in any way arise in connection with a claim or defense that the City: (1) lacked authority under federal or state law, its charters, city codes or ordinances in granting this Franchise; (2) acted in any disparate or discriminatory manner against any incumbent franchisee or permittee in granting this Franchise; (3) granted this Franchise in violation of any contractual rights belonging to any incumbent franchisee or permittee.

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.
 - (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.).
- (G) In the alternative to providing a certificate of insurance to the City certifying liability insurance coverage as required in Section 14.2, Grantee may provide the City with an Annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for Grantee and the City, its officers, agents and employees, as otherwise required under this Franchise. The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 14.2(G), any failure by Grantee to maintain

adequate self-insurance shall be deemed sufficient cause for the City to declare a revocation of this Franchise under and subject to Section 19.

- (H) 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 (\$100,000.00), 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.

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.

Section 15. GENERAL STREET USE AND CONSTRUCTION

15.1 In General. Subject to Section 1.7 of the Franchise, the Cable System shall be constructed in accordance with applicable City regulations and ordinances. The City shall perform its obligations with regard to Cable System construction in accordance with applicable ordinances and regulations and the City's processes and practices generally made available to all third parties.

15.2 Construction.

- (A) Subject to Section 1.7 of the Franchise, Grantee may perform all construction necessary for the operation and maintenance of its Cable System within the Streets. All construction and maintenance of Grantee's Cable System within the Streets, regardless of who performs the construction, shall be and remain Grantee's responsibility. Grantee shall apply for and obtain all permits necessary for construction, maintenance or installation of any Facilities, and for excavating and laying any Facilities within the Streets. Grantee shall pay all applicable fees due for such permits.
- (B) As Grantee undertakes and completes the incremental construction of its Cable System, Grantee shall provide updated "as-built" maps to the City Engineer showing the location of Grantee's installed Facilities in the Streets. Such "as-built" maps shall be on a scale of three thousand five hundred feet (3,500') per

inch or whatever scale the Parties agree upon. Grantee's "as-built" maps shall be provided in an electronic format (such as pdf or a successor format) acceptable to the Parties. The level of detail in maps provided by Grantee shall be limited to that which is needed for the City's administration of the Streets in order to protect Grantee's confidential business information and the security of Grantee's Cable System.

15.3 Locates. Grantee acknowledges that as a condition of constructing and maintaining Facilities within the Streets, Grantee shall be responsible for complying with ORS 757.542-757.562 and ORS 757.993 (2013), and the rules and regulations promulgated thereunder in OAR Chapter 952.

15.4 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 they were 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.

15.5 Cable System Installation. Grantee shall not require any Subscriber to install lines or cables in, under or over the Streets in order to connect with or receive Service from Grantee's Cable System.

15.6 Acquisition of Facilities. Upon Grantee's acquisition of Facilities in any City Street, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any Streets, Grantee shall, at the City's request, submit to the City a statement describing all Facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such acquired Facilities to the extent Grantee has possession of such information. At the City's sole option, as expressed by ordinance adopted by the City Council, such Facilities shall immediately be subject to the terms of this Franchise within a reasonable period of time to bring the acquired Facilities into compliance with this Franchise.

15.7 Reservation of City Street Rights. Nothing in this Franchise shall 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 obstruct, injure or prevent the use and operation of Grantee's Cable System.

15.8 Street Vacation. Upon receipt of any request for vacation of any Street or portion thereof used by Grantee, the City shall provide 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 delay or expense to the City remove its Facilities from such Street, and restore, repair or

reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required consistent with the City Code, which shall be no worse than the condition of such Street immediately prior to removal. 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. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City Council, to restore, repair or reconstruct such Street, the City may do such work or cause it to be done, and the 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.

15.9 Common Users

(A) For the purposes of this Section 15.9:

- (1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.
- (2) "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.
- (3) "Duct" means a single enclosed raceway for power or communication lines, conductors, optical fiber, wire or other cable.
- (4) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Streets.
- (5) "Surplus Ducts or Conduits" are Conduit Facilities other than: those occupied by the Grantee or any prior Licensee; one unoccupied duct held by Grantee as an emergency use spare; and other unoccupied ducts that Grantee reasonably expects to use within the next sixty (60) months.

(B) Grantee acknowledges that the Streets have a finite capacity for containing conduits. Therefore, Grantee agrees that, whenever the City Engineer makes a reasonable determination that it is impracticable to permit construction of an underground conduit network by any other Licensee, the City Engineer may require upon reasonable notice and an opportunity to object, that Grantee afford to such person the right 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 the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee, and to the safety and reliability of Grantee's Cable 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.

- (C) If Grantee and any Licensee fail or cannot otherwise agree to fair and equitable terms, conditions and regulations, including but not limited to a conduit rental rate, within a reasonable period of time, Grantee and the Licensee shall enter into non-binding arbitration to determine such terms, conditions and regulations. In such arbitration, the arbitrators shall determine the conduit rental rate at a fair market rate.
- (D) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.
- (E) Grantee shall give a Licensee a minimum of one-hundred-twenty (120) days' notice of its need to occupy licensed Conduit Facility or Duct and shall propose that the Licensee take the first feasible action as follows:
 - (1) Pay revised Conduit Facility or Duct rent designed to recover the cost of retrofitting the Conduit Facility or Duct with multiplexing, optical fibers or other space-saving technology sufficient to meet Grantee's space needs;
 - (2) Pay revised Conduit Facility or Duct rent designed to recover the cost of new Conduit Facility or Duct constructed to meet Grantee's space needs;
 - (3) Vacate the Conduit Facility or Duct that is no longer surplus; or
 - (4) Construct and maintain sufficient new Conduit Facility or Duct to meet Grantee's space needs.
- (F) When two or more Licensees occupy a portion of Conduit Facility or Duct, the last Licensee to occupy the Conduit Facility or Duct shall be the first to vacate or construct new Conduit Facility or Duct as directed by Grantee. When Conduit Facility or Duct rent is revised because of retrofitting of space-saving technology or construction of new Conduit Facility or Duct, all Licensees shall bear the increased cost.
- (G) All Attachments under this Section 15.9 shall meet local, state and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. Grantee, at its option, may correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.
- (H) The City will be allowed to access and use Grantee's Surplus Ducts or Conduits without use fees, subject to the same process and other terms applicable to

Licensees under Section 15.9 and subject to a separate written agreement between the Parties specifying the terms of such access and usage by the City.

15.10 Discontinuing Use of Facilities. If Grantee decides to discontinue use of Facilities within all or a portion of the Streets and does not intend to use those Facilities again in the future, the City may direct Grantee to remove the Facilities or may permit the Facilities to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefor. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. Until such time as Grantee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

15.11 Construction and Use of Poles. If Grantee constructs any poles in the Streets, the poles shall be located and maintained in accordance with applicable Portland City Code and implementing regulations.

15.12 Tree Trimming

- (A) When Permits Needed. Upon obtaining a written permit from the City Forester, 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 that 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 (30') above sidewalk grade until 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 seven (7) calendar days 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 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) Programmatic Permits. The City Forester may, at the City Forester's discretion, waive the notification and single tree permit process and issue a programmatic 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 programmatic permit may be issued, any contractor of Grantee shall be subject to the approval of the City Forester. The City Forester shall have the discretion to cancel the programmatic permit, after notice to the Grantee, if at any time Grantee or its agents: fail to use proper utility arboricultural practices; fail to properly notify the public in accordance with applicable City requirements; or violates any other City requirements on tree trimming.

- (C) Emergencies. Notwithstanding the permit and notice requirements of this Section 15.12, in the event of an emergency, Grantee may prune a tree or trees as necessary to abate the emergency. For purposes of this subsection, emergencies exist when it is necessary to prune a tree or trees in order to restore Cable System services, or to protect the public from imminent danger, or to prevent the imminent destruction of property.

Section 16. ASSIGNMENT OR TRANSFER OF GRANTEE’S FRANCHISE

16.1 Council Consent. Grantee shall not sell, lease, mortgage, assign, merge or otherwise transfer this Franchise (a “Transfer”), except to an entity that controls, is controlled by or is under common control with Grantee (each an “Affiliate”), without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, delayed or conditioned. Grantee shall give written notice to the City of any Transfer to an Affiliate within ten (10) days of such transfer. 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, sale or assignment of tangible assets of Grantee’s Cable System for any purpose without the City’s consent. Grantee acknowledges that any purchaser of any or all of the assets of Grantee may not continue to maintain the Cable System in the Streets unless it is permitted to do so under the terms of a franchise or other grant of authority from the City Council by ordinance.

16.2 Review.

- (A) In determining whether the City will consent to any Transfer that requires its consent, 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 that requires its consent 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 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.

16.3 Leases. 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 or the lessee is permitted to maintain the Cable System in the Streets under the terms of a franchise or other grant of authority from the City Council by ordinance. A lessee of any portion of Grantee's Cable System shall not thereby obtain any rights under this Franchise.

Section 17. CITY REGULATORY AUTHORITY/FRANCHISE ADMINISTRATION

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.
- (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.
- (C) 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.
- (D) 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.

17.2 Cable Regulatory Commission. The City has provided for regulation of this Franchise through the Commission, created through an intergovernmental agreement. 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.

17.3 Administration. The City and the Commission have agreed to cooperate in connection with monitoring and verifying compliance with Franchise provisions applicable to Grantee's Cable System, including Grantee's provision of Services, to ensure non-duplication and efficiency of administration. The Grantee agrees and accepts that notices to Grantee, if otherwise consistent with 20.10 of this Franchise, shall be considered sufficient from the City to Grantee under this Franchise regardless of initial issuance by the City or the Commission, and no additional form of notice shall be required.

Section 18. EQUAL EMPLOYMENT OPPORTUNITY/ DIVERSITY IN WORKFORCE/ MINORITY BUSINESS ENTERPRISES

18.1 Equal Employment Opportunity.

- (A) Throughout the term of this Franchise, Grantee shall fully comply with applicable equal employment opportunity ("EEO") requirements of federal, state and local law. Upon request by the City, Grantee shall furnish the City a copy or a valid Internet link to Grantee's annual statistical EEO report filed with the Federal Communications Commission ("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 EEO rules or regulations.
- (B) Throughout the term of this Franchise, 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 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 Diversity in Workforce. Grantee is expected to make a determined and good-faith effort to employ and advance in employment women, minorities and persons with disabilities.

18.3 Minority and Female Business Enterprises. Grantee is expected to make determined and good faith efforts to use Minority-Owned, Women-Owned and Emerging Small Businesses ("MWESBs") 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 Network. In furtherance of Grantee's efforts in this area, the City will be available to consult with Grantee in providing information on, and support regarding, certified MWESB enterprises.

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(B);
 - (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 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) Liquidated Damages.
- (1) The Parties recognize that delays, expense and unique difficulties would 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, liquidated damages as set forth in the categories below. Instead of requiring proof of actual damages, the Parties agree that Grantee shall pay liquidated damages in these amounts to the City for any violation of the categories listed below. The parties agree that such amounts are a reasonable estimate of the actual 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:
 - (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 Broadband Adoption Fund 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 Interconnections or related commitments 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 harm to the public is greater than the amounts agreed to by the parties as liquidated damages, taking into account the nature and extent of the violation, whether there has been a pattern or practice of repeated violations of the same nature resulting in increased costs of administrative oversight by staff and the Commission, and the harm to the public or individual subscribers. Any liquidated damages exceeding the amounts set forth in Section 19.1(B)(1) may be submitted to mediation in accordance with the provisions of Section 20.2 of this Franchise.
- (3) Effective January 1, 2019, maximum liability for each category of damages set forth in Section 19.1(B)(1)(a) through (f) above shall increase by 15%, so that, by way 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, the PEG Capital Fee, I-Net, franchise fees, customer service standards, and reports and records shall at all times be considered material provisions. Enumeration of material Franchise provisions set forth in this Section 19 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.
- (C) 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.

- (D) The City may shorten the term of this Franchise or revoke this Franchise in the manner described in this Section 19 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 Grantee's Network within the City.
- (E) Except for the remedies specified in this Section 19, 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.
- (F) Except for liquidated damages as provided in this Section 19, 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 of this Franchise, 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 of this Franchise 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 agreement or a substantial reduction in the services to be provided.

19.4 Expiration.

- (A) Upon the expiration of this Franchise and subject to law, 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) 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 19, 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 Mediation.

- (A) The Parties 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 Parties 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 Parties 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, the parties may mutually agree to arbitration, or either party 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 5, Section 6, Section 7, Section 12, or Section 14; the Parties agree that they shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the Parties remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding.

20.3 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.

20.4 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.

20.5 Limited 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.

20.6 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.

20.7 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.

20.8 Choice of Forum. Any litigation between the Parties 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.

20.9 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.

20.10 Notice. Any notice provided for under this Franchise shall be effective if in writing and: (1) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) sent by overnight or commercial air courier; (3) sent by facsimile transmission, with the original to follow by regular mail; or (4) sent by electronic mail with confirming record of delivery or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day. Notices shall be addressed as follows, or to such other address as the receiving party specifies 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, OR 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

20.11 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.

20.12 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.

20.13 Integration and Written Modification. Except as otherwise expressly provided within this Franchise, this Franchise contains the entire agreement between the parties. Any prior franchise agreements between the Parties 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 Parties.

20.14 Changes in Law or Unenforceability of Franchise Provisions.

- (A) The Parties have entered into this Franchise under the federal and state laws in effect on the effective date of this Franchise. The Parties mutually reserve the right to each request modifications to this Franchise, under Section 20.14(B), to account for changes in the law during the term of this Franchise. The Parties also reserve the right to request modifications in this Franchise, under Section 20.14(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 20.14(A), to participate in a non-binding mediation proceeding under Section 20.2 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 20.14 (A) for the modification sought by the requesting party. In the mediation proceeding, the Parties shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the Parties remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding.

20.15 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 Parties shall renegotiate the terms of this Franchise, subject to the mediation procedures of Section 20.2. 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.
- (B) By mutual agreement, the Parties 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 A 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.

ACCEPTANCE

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

This is to advise the City of Portland, Oregon (the "City") that Qwest Broadband Services, Inc d/b/a CenturyLink (the "Grantee") hereby unqualifiedly accepts the terms and provisions of Ordinance No. _____, passed by the City of Portland, Oregon on the _____, 2015 (the "Franchise") granting a franchise to the Grantee to operate a Cable System within specified areas of the City. As required by Section 10-212 of the Charter of the City of Portland, the Grantee unqualifiedly agrees to abide by each and every term, condition and restriction of the Franchise.

Dated as of the _____ day of _____, 2015.

**QWEST BROADBAND SERVICES INC.
d/b/a CENTURYLINK**

STATE OF _____)
) ss.
County of _____)

By _____
Name:
Title:
Date: _____, 2015

This Acceptance was acknowledged before me on the _____ day of _____, 2015, by _____ as _____, a duly authorized officer of CenturyLink

Notary Public for _____
My Commission Expires _____

APPROVED AS TO FORM:

City Attorney

c: Office for Community Technology
1120 SW 5th Ave Room 1305
Portland, OR 97204



CenturyLink
1801 California Street, 10th floor
Denver, Colorado 80202
Phone 303 992-5809
Facsimile 303 296-4576

Jim Campbell
RVP-Midwest Region
Regulatory & Legislative Affairs

City of Portland
c/o Office for Community Technology
111 SW Columbia St, Suite 600
Portland, OR 97201

Re: PEG Side Letter of Agreement

Dear City of Portland:

The purpose of this letter agreement is to set forth commitments between Qwest Broadband Services, Inc. d/b/a CenturyLink, who is qualified to do business in Oregon, (hereinafter, "QBSI") and the City of Portland (hereinafter called "the City") that are in addition to the Franchise Agreement to be adopted by Ordinance (hereinafter, "the Franchise"). These items have been negotiated in good faith and agreed to as part of the cable franchise renewal process pursuant to 47 U.S.C. §541 *et seq.*, and specifically relate to unique community needs that exist in the City. This letter agreement shall become effective upon approval of the Franchise by the City Council. Unless otherwise indicated, terms, phrases and their derivations in this letter agreement shall have the same meanings as in the Franchise.

A. Access Program Listings in Subscriber Guides.

(1) Subject to ¶2 hereof, Grantee reserves the right, upon 60 days' written notice to the City, to recoup the cost of providing PEG access channel listings in Grantee's electronic channel guide by withholding such cost quarterly from the PEG/I-Net Fee pursuant to Section 7 of this franchise, up to the maximum amount stated in ¶2.

(2) Grantee's obligation to include PEG Access Channels and programming information shall be continuous but the amount Grantee may recoup and withhold from the PEG Capital Fund under ¶1 hereof may not exceed \$8,000 per Year.

B. Additional Gigabit Circuit Requirement

No later than six (6) months after the Effective Date, and in lieu of providing live origination video transport and other items required of the incumbent cable provider, Grantee shall provide to Portland Community Media, at no cost, a one gigabit (1 GB) circuit together with six (6) static IP addresses for a period of six (6) years, the initial term of this Franchise. The City agrees to use this circuit, in part, to support public availability of high speed broadband internet access to disadvantaged individuals. Any such service provided to the public will be deemed to support the City's digital inclusion efforts and will be co-branded in a manner mutually agreed upon by the parties.

C. PEG Technical Requirements

Grantee and the City shall cooperate with the City's Designated Access Provider/s and each other (as applicable) to exchange information necessary to enable Grantee to design and activate Interconnections with the Designated Access Provider/s pursuant to §5 of the Franchise. Such information shall include, but not be limited to:

- (1) The demarcation point/s at the Designated Access Provider's site, including points of origination and exact physical locations (including specific addresses) for each separate point of origination for the eight (8) PEG Access Channels required under the Franchise. As used in this section, the demarcation point at the Designated Access Provider site/s and at the points of origination is the physical point of interface at which Grantee's equipment interconnects to the Designated Access Provider's equipment. The responsibility for signal quality and equipment transfers at the demarcation point.
- (2) Specifics as to equipment (optical, electrical or both) necessary at the demarcation point/s;
- (3) Confirmation of sufficient electric power and necessary rack space at the demarcation point/s.


D. Cable Outlet Installation at Portland Community Media

For the purposes of monitoring the PEG Access Channels included Grantee's cable services, Grantee shall provide Portland Community Media, located at 2766 NE MLK, Jr. Blvd., Portland, OR 97212 one standard Cable Services outlet activated with HD-provisioned Basic Service and related necessary equipment to receive Basic Service, without charge. Such Cable Service may not be resold or otherwise used in contravention of Grantee's rights with third parties respecting programming. If the address of Portland Community Media does not meet the definition of Qualified Living Unit for purposes of installing Cable Service, within the meaning of Section 8 of the Franchise, Grantee may provide such outlet by alternate means.

The terms and conditions of this letter agreement are binding upon the City and QBSI and their successors and assigns under the Franchise. A violation of these terms of this agreement by QBSI may be considered by the City as if it were a violation of the Franchise, and subject to the remedies and enforcement provisions under Section 19 of the Franchise. The parties agree that fulfillment of the obligations set forth in this letter is also necessary and part of the consideration to secure the renewed Franchise.

Acknowledged and agreed to this th 8 day of March, 2015.

Qwest Broadband Services, Inc. d/b/a CenturyLink.

By: 
Its: RVP
Date: 3/8/15

City of Portland

By: _____
Its: _____
Date: _____