

## ORDINANCE NO. 876

AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE FRANCHISE TO UVISION, LLC, TO OPERATE AND MAINTAIN A CABLE SYSTEM THROUGHOUT THE CITY OF STAYTON, SETTING THE PROVISIONS, TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE AND DECLARING AN EMERGENCY.

WHEREAS, the City of Stayton ("Grantor") is authorized by state statutes and its charter to grant non-exclusive franchises to Persons desiring to occupy Rights-of-Way within the City; and

WHEREAS, Uvision, LLC ("Grantee"), owns, maintains, and operates, a cable company in Rights-of-Way in the City and sometimes operates under the brand name of "Willamette Broadband LLC" under grant of a previous franchise by the City; and

WHEREAS, the purposes of this Franchise are to: establish reasonable regulations applicable to the construction, operation and maintenance of Cable Facilities in, along, across, under and over City property and the provision of Services within the City; protect the health, safety and welfare of the public in the City; and limit the City's liability for claims arising from the granting of this Franchise and the operations of Grantee thereunder; and

WHEREAS, Grantor has determined that the financial, legal, and technical ability of Grantee is reasonably sufficient to provide services, facilities and equipment necessary to meet the future cable related needs of the community; and

WHEREAS, the City Council for the City of Stayton deems it in the public interest to grant a franchise to Grantee under the terms and conditions provided in this ordinance; and

WHEREAS, the current franchise, as extended, will expire on April 6, 2005, and it is necessary in the public interest that this ordinance take effect on that date to assure seamless control of the City's Rights-of-Way.

**NOW, THEREFORE, THE CITY OF STAYTON ORDAINS AS FOLLOWS:**

### **Section 1. Purpose and Grant of Authority.**

A non-exclusive, revocable franchise is hereby granted to Uvision, LLC, an Oregon Limited Liability Corporation, hereinafter referred to as Grantee, to install, construct, operate, maintain, reconstruct, and expand a Cable System within the public Streets, ways, alleys, public utility easements, and similar places of the City of Stayton. This franchise shall constitute both a right and an obligation to provide Cable Service as that term is defined in 47 U.S.C. § 522(6) (Section 602 of the Cable Act), as amended, and in accordance with this Franchise Agreement and related federal, state and local laws and regulations. This franchise shall not be interpreted to prevent the Grantor from imposing lawful additional conditions, including additional compensation conditions, for use of the City rights-of-way should Grantee provide Service other than Cable Service.

## Section 2. Definitions.

For the purpose of this ordinance, the following terms have the meaning given herein:

**Access Channels or Public, Educational, or Government Access (PEG) Channel** – Any channel or portion of a channel utilized for programming as established in Section 5.3 of this Franchise Agreement.

**Access Commission** – The representative commission appointed by the Stayton City Council, operating within adopted bylaws and guidelines assigned the responsibility to evaluate operations and recommend policies and procedures governing Access Channels.

**Affiliate** – When used in connection with Grantee, means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

**Basic Cable Service (Basic Tier)** – That tier of Cable Service which is required as a condition of access to all other video services and which includes but is not limited to, a) the retransmission of local broadcast stations signals; and, b) Public, Educational, and Government Access Channels (PEG). The Access Commission may formulate operating rules for PEG provided such rules shall not control content of the public access programming.

**Cable Act** – The Cable Communications Policy Act of 1984, Pub L. No. 98-549, 98 Stat. 2779 *et seq.*

**Cable Service** – The one-way transmission to Subscribers of video programming, or other programming Service; and, Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming Service.

**Cable System or System** – A Facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a Facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a Facility that serves Subscribers without using any public right-of-way; (3) a Facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. § 201, *et seq.*), except that such Facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such Facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand Service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

**Channel** – A portion of the electromagnetic spectrum which is used in a Cable System and is capable of delivering a television channel, as television channel is defined by the FCC in other applicable regulations.

**City** – City of Stayton, Oregon, a political subdivision of the State of Oregon.

**City Council** – The governing body identified in Chapter III, Section 7, of the City of Stayton Charter of 1993, vested with such authority as described therein.

**Downstream** – The transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

**Educational Access Channel** – Any channel or portion of a channel available for educational programming by individuals or institutions.

**FCC** – The Federal Communications Commission.

**Franchise Area** – The area within the legal boundaries of City and including any areas hereinafter annexed.

**Government Access Channel** – Any channel or portion of a channel available for programming by government agencies.

**Grantee** – Uvision, LLC, an Oregon Limited Liability Corporation, and its lawful successors, transferees, legal representatives, employees, contractors, subcontractors, agents, assigns or Persons acting on Grantee's behalf.

**Grantor** – City of Stayton, Oregon, a political subdivision of the State of Oregon.

**Gross Revenues** – Means all amounts earned by the Grantee, or any entity that constitutes a "cable operator" under the Cable Act definition, in whatever form and from all sources, derived from the operation of the Cable System within the Franchise Area. "Gross Revenues" shall include, without limitation, amounts for all Basic Cable Services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home shopping networks), installations, leasing, renting or selling of system capacity, or other services using the Cable System, and all other revenues derived from the operation of Grantee's Cable System regardless of whether initially recorded to another entity and however characterized.

Gross Revenues shall also include any amounts received or earned by any Affiliate of the Grantee in whatever form and from all sources, derived from the operation of the Cable System within the Franchise Area, including amounts for Basic Cable Services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home shopping networks), installations, leasing, renting, or selling of system capacity and all other revenues derived from the operation of the Cable System.

In the event that Federal or State law permits the Grantee to provide non-video services to Subscribers (such as telephone communications) through the Facilities of the Cable System, and the Grantor has the regulatory authority to collect a franchise fee on such services, then the franchise fee on revenues derived by the Grantee from such services shall be at the same rate as paid to the Grantor by other providers of the same services using the public rights-of-way, not to exceed five percent (5%).

Gross Revenues, however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues.

**Headend** – A facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and Facilities.

**Institutional Network or I-Net** – The institutional network connecting public facilities and organizations within the Franchise Area as described in **Exhibit C** to this Franchise Agreement.

**Interconnect or Interconnection** – The provision by Grantee of technical, engineering, physical, and all other necessary components to maintain a physical linking of Grantee's Cable System and Cable Service or any designated Channel or signal pathway thereof with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this Agreement.

**PEG Access** – The availability of the use of the Cable System by community organizations and members of the general public, or by educational or governmental agencies, under the conditions described in Section 5 of this Franchise Agreement. See also "Access Channels" this Section.

**Person** – Includes any individual, corporation, sole proprietorship, association, partnership and joint stock Grantee, or any other form of entity or organization.

**Programmer** – Any Person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital, or other storage methods or media to Subscribers, by means of the Cable System.

**Rate Schedule** – The charges levied by the Grantee upon Subscribers for services provided on the System.

**Report(s) or Record(s)** – 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 meetings or conferences; opinions or reports of consultants or experts; invoices; billings; statements of account; studies; appraisals; analyses; contracts; agreements; charts; graphs; photographs; and/or other writings or records of every kind and

description, including magnetic media and all sound recordings, to the extent related to the enforcement or administration of this Franchise Agreement.

**Service Day** – Any 24-hour calendar period which has been paid for by a Subscriber in expectation of Cable Service delivery.

**School** – Any public educational institution, including primary and secondary schools, community colleges, colleges, universities, and extension centers, vocational, and all similarly situated private and parochial educational institutions, with 25 or more students, which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.

**Standard Installation Charge** – The cost to the Subscriber for connection to the Cable System in the amount specified in the current Rate Schedule.

**Standard Specifications** – City of Stayton “Standard Specifications: Design Standards and Drawings.” (Adopted 1994)

**Streets** – The surface of and the space above and below any public Street, sidewalk, alley, easement, or other dedicated public way of similar purpose, now or hereafter existing as such within the jurisdiction of the City.

**Subscriber** – Any Person, firm, corporation, or other entity receiving electronic signals by means of the Grantee’s Cable System.

### **Section 3. Stayton Cable Authorities.**

1. The Stayton City Council or its designee shall be the authority as to all terms of this Franchise Agreement, and the appointing authority as to the members of the Access Commission. The acts of this Commission are subject to approval by the City Council.
2. The Stayton City Council shall oversee, administer, and enforce the terms and provisions of this ordinance.
3. The Access Commission may be responsible for all matters relating to PEG activities as assigned by the Stayton City Council.

### **Section 4. Compliance With Laws, Rules and Regulations.**

1. **Laws, Rules and Regulations.** At all times during the term of this franchise, Grantee shall comply with all applicable laws, rules, and regulations of the United States of America, the State of Oregon, and the City of Stayton, including all agencies and subdivisions thereof.

2. **FCC Standards.** At all times during the term of this franchise, Grantee shall comply, at a minimum, with all FCC technical standards.

### **Section 5. Services Provided.**

1. **Service.** Grantee shall provide its Subscribers within the Franchise Area with good quality Cable Services equal to or better than those provided by Grantee and neighboring cable systems in the Marion County area, and consistent with the standards in this franchise.

2. **Programming Categories.** The Grantee shall provide video programming services in at least the following broad categories:

- a. News and information
- b. Sports
- c. General entertainment, movies, music and comedy
- d. Arts, culture, performing arts
- e. Children/family
- f. Science
- g. Travel and weather information
- h. Foreign language/ethnic programming
- i. Governmental and educational programming

The Grantor acknowledges that identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable System.

3. **Public, Education, and Government Access.** Grantee agrees to provide the existing interconnections with other systems for PEG access in place at the time of the grant of this franchise. In addition, Grantee agrees to provide the Grantor two nondiscreet public, education, and government ("PEG") Access Channels to cablecast local government meetings and other noncommercial programming on the Cable System within the Franchise Area. For purposes of this Section, a "nondiscreet" PEG Access Channel means a channel on Grantee's Cable System that carries PEG Access programming that may be viewed beyond the city limits of Grantor.

Beginning on or after January 1, 2006 and throughout the franchise term, in the event an origination site within the Franchise Area is necessary for Grantor to transmit its PEG Access programming, Grantor shall provide Grantee with 120 days advance written notice of such need. Grantee shall provide, at the cost of Grantor or through the PEG Access Capital Support, a connection to facilitate the transmission of Grantor's PEG Access programming to a facility designated by Grantor for distribution on Grantee's residential Cable System. Should a longer period of time be necessary to complete the connection as a result of circumstances beyond Grantee's control, Grantee shall have up to an additional 120 days to complete the connection. Payment shall be made to Grantee for the connection within 30 days of receipt of notice of completion of construction. Grantor shall be responsible for all equipment at its origination site or facility to facilitate the receipt and transmission of Grantor's access programming.

**a. PEG Access Interconnection.** The Grantee shall, at the Grantor's request, maintain existing physical interconnections and facilitate throughout the term of this franchise the physical Interconnection of Grantor's PEG Access Channel in the Cable System to the most effective meet point at the boundary of the Franchise Area to franchise areas that are geographically contiguous to Grantor, provided that Grantor has secured the written permission for such Interconnection from the regulatory authority for the geographically contiguous franchise area. The cost of such Interconnections shall be Grantee's to the meet point at the boundary of the Franchise Area. Notwithstanding the generality of the foregoing, any Interconnection with cable systems other than Grantee's that may be required under this Section shall also be contingent upon Grantee and the other cable operator reaching an agreement for the required Interconnection on reasonable terms and conditions. If Grantee is unable to reach agreement with such other cable operator, Grantee shall, at the request of Grantor, provide documentation of its attempts to reach an Interconnection agreement on mutually acceptable terms.

All Interconnections shall have the capability of transmitting and receiving PEG Access programming. All Interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this Franchise Agreement on all Interconnected PEG Access Channels.

Subject to written agreement between Grantor and the regulatory authority of the geographically contiguous franchise area, Grantor shall have the right to control and schedule the operation of all Interconnected PEG Access Channels. However, the requirement to Interconnect PEG Access programming with geographically contiguous cable systems of willing franchise authorities shall not result in an increase in the number of PEG Access Channels beyond the number of Access Channels provided for in subsection a. above.

Grantee will work with such other cable operator or regulatory authority so that technically adequate signal quality is initially and continuously provided for all Interconnections and origination points so that end of line reception is in compliance with FCC technical standards. The other cable operator or regulatory authority, as originator of signals and programming, is responsible for providing technically adequate signals and programming to be carried on Interconnected PEG Access Channels. Grantee shall not charge for any PEG Access programming transmitted or received on the Interconnect if such signals are provided to Grantee at no charge.

**b. PEG Access Capital Support.** At the Grantor's written request, on or after January 1, 2006 and throughout the franchise term, Grantee shall provide an amount up to \$0.60 per residential Subscriber per month for capital support for PEG Access. The Grantor shall provide Grantee with at least 90 days written notification to implement the Grantor's request. By issuing such request, the Grantor acknowledges that the Grantee may pass through and include such payment on the bills of residential Subscribers. The payment shall be payable to the Grantor only after (a) advance notification to Grantee's residential Subscribers of inclusion of such payment on subscriber bills; and (b) collection of such payment from residential

Subscribers. At the end of the Franchise term, the Grantor may carry over any unspent amount into any succeeding franchise with Grantee, or return such amount to residential Subscribers.

Grantee shall make payments required by this Section to the Grantor quarterly, and each payment shall be due and payable no later than forty-five (45) days after the end of each quarter.

PEG Access Capital Support provided by Grantee to the Grantor for the purposes of supporting capital costs associated with PEG Access may be disbursed in a manner lawfully determined by the Grantor.

On or before May 1 of each year, the Grantor may, upon Grantee's request, provide a report to the Grantee on the use of the funds provided to the Grantor under this Section. The report shall describe the access operations and programming produced utilizing the facilities and equipment supported by the PEG Access Capital Support.

**c. Shared PEG Operations.** The Grantor may negotiate agreements with neighboring jurisdictions served by the same Cable System, education institutions, or others to share operating expenses and/or equipment and materials as appropriate. The Grantor and the Grantee may negotiate an agreement for management of PEG facilities or channel capacity, if so desired by the parties.

**d. Carriage of Access Channels on Basic Tiers.** All Access Channels provided to Subscribers under this Franchise shall be included by the Grantee, without limitation, as part of Basic Cable Service offered by the Grantee on the Cable System, provided that the Grantee shall not be required to include Access Channels in any tier of Service composed exclusively of local broadcast signals.

**e. Intergovernmental Relations.** The Grantee shall assist the Grantor in efforts to centralize public access with other jurisdictions within the Grantee's cable territory which is in common with the Franchise Area, if such centralization is the desire of such jurisdiction.

**4. Modifications and Improvements; Changes to Channel Selection.** Grantee shall maintain and improve the Cable System according to generally accepted practices and standards in the cable television industry. Grantee agrees not to make or permit any change in the channel selection (programming or scheduling) except as is necessary on an emergency basis to provide uninterrupted Service to the community, without (30) days prior written notice to the Grantor.

**5. Parental Control Devices.** Grantee shall provide, at the Grantee's cost, a parental control locking device. Grantee shall make available, at no cost for the device, channel blocking devices for specific channels as requested by Subscribers.



**6. Service to Public Facilities.**

**a. Installation and Service to Public Facilities.** On or before January 1, 2006, the Grantee shall make available single installations of its Cable System Facilities to the public buildings listed in **Exhibit C**. No installation fee shall be imposed for such installations including interconnection between the facilities for transmission of data, video, and voice communication. No monthly Service charge shall be made for distribution of Services to these locations, including two-way internet Service, but transmission and end user equipment is the responsibility of the Grantor.

**b. Institutional Network or I-Net.** Beginning January 1, 2006 and thereafter, at any time during the term of this Franchise, upon (30) days' written notice from the Grantor, the Grantee shall cooperate with the Grantor in the development and construction of an Institutional Network to serve additional public facilities, including schools and libraries.

**Section 6. Compliance With Construction and Technical Standards.**

**1. Channel Capacity.** The Cable System shall, throughout the term of this Franchise, have a minimum channel capacity of 72 standard channels outbound.

**2. System Design for Advanced Services.** The System shall, throughout the term of this Franchise, have activated bi-directional communications capability and addressability, be capable of passing a minimum of 550 MHz in all portions of the system, and be designed in a hybrid fiber coaxial configuration with no more than 800 homes served from any fiber node. The system shall be capable of providing high-speed Internet access, cable-activated pay-per-view, and other advanced communications services, with no System upgrade or installation of equipment required for such services beyond installation of user equipment at Subscribers' premises.

**3. Emergency Alert System.** In accordance with, and at the time required by, the provisions of the FCC Regulations Part 11, Subpart 11.51, as such provisions may from time to time be amended, Grantee shall provide the emergency alert capability in accordance with Federal Law, and in compliance with the FCC-approved Oregon State Emergency Alert System (EAS) plan, and the Local Area EAS plans that apply to Marion County. Grantee will cooperate with the Grantor and local emergency officials to develop policies and procedures for the use of the emergency broadcast capability within the Franchise Area.

**4. Standby Power.** Grantee shall maintain standby power systems supplies, rated at least two hours duration. In addition, the Grantee shall have in place throughout the Franchise term a plan approved by the Grantor, and all resources necessary for the implementation of the plan, for dealing with outages of more than two hours.

## 5. Technical Standards.

a. **FCC Rules and Regulations, Part 76, Subpart K.** The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply and may be enforced by the Grantor. The Grantor may establish and enforce higher or additional reasonable technical standards to the extent that applicable law allows the Grantor to do so without the consent of the Grantee.

b. **Residential Network, Forward Signals.** The Cable System shall have an activated minimum capacity of 72 standard video television channels and the full FM broadcast band. The combined forward trunk and distribution system shall deliver signals to each Subscriber's television receiver that meet or exceed applicable FCC specifications on each and every video channel at the mean system temperature of +70 degrees Fahrenheit.

6. **Performance Testing.** Grantee shall perform all systems tests required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise Agreement. These tests shall include, at a minimum:

- a. tests in response to Subscriber complaints; and
- b. tests requested by the Grantor to demonstrate franchise compliance.

Written records of all systems tests performed by or for the Grantee shall be maintained and shall be available for the Grantor's inspection upon request.

## Section 7. Rates for Installation and Service.

The Stayton City Council is the regulator and may approve and/or modify rates from time to time as allowed by FCC rules.

1. **Schedule of Rates.** Grantee shall keep on file with the Grantor a current schedule of Subscriber rates and charges which shall not be increased except as provided by this Franchise Agreement. Grantee may, without approval or additional filing, temporarily reduce any such rates and charges in connection with its marketing or other business purpose.

2. **Advance Charges.** Grantee may require Subscribers to pay for each month of Service in advance at the beginning of each month.

3. **Prohibition of Discriminatory or Preferential Practices.** The Grantee shall not, in its rates or charges, or in making available the Service or Facilities of its System, or in its rules or regulations, or in any other respect, make or grant discriminatory preference or advantages to any Subscriber or prospective Subscriber to the System, and shall not subject any such person to any prejudice or disadvantage; provided nothing herein shall prevent Grantee from establishing different rates for uniform classes of Subscribers or reducing rates as permitted by FCC regulations.

**4. Disconnections, Failure to Pay.** There shall be no charge for disconnection from the System. If a Subscriber has failed to pay a properly due monthly Subscriber fee within (15) days after the due date of the fee, Grantee may cause disconnection of the Subscriber's cable installation after (10) days prior written notice; however, upon payment in full of the delinquent monthly Subscriber's fee, the reconnection charge plus the first and last months' Service charge, the Grantee shall reinstate the Subscriber's Service.

**5. Subscriber Refunds.** If any Subscriber elects to terminate the monthly Service prior to the end of a prepaid period, a proportionate amount of any prepaid monthly Service fee, corresponding to the number of days remaining in the prepaid period, shall be refunded to the Subscriber by the Grantee, if the amount equals \$1.00 or more.

**6. Rate and Programming Change Procedures.**

a. Grantee agrees to submit to the Grantor advance notice to change Grantee's rates for services. Notices shall be in writing to the Grantor. Grantee further agrees rate changes will not be effective until (30) days from the date the notice was submitted to the Grantor.

## **Section 8. Use of Public Ways.**

**1. Street Openings or Obstructions.** Any opening or obstruction in or disturbance of the Streets made by the Grantee in the exercise of its rights under this Franchise Agreement shall comply with the Standard Specifications of the Grantor and all other applicable federal, state, and local laws, ordinances, traffic manual, and regulations. No hard surface pavement shall be cut or Street broken by the Grantee without first obtaining a permit from the Grantor which requires a plan submittal and approval before installation begins. In the event of an emergency, the Grantor shall be notified in sufficient time to witness any and all work being performed.

**2. Undergrounding and Pole Use.** The Cable System's cables, wires, and associated equipment or Facilities shall be placed underground in areas of the Franchise Area where telephone and electric utility lines are underground. At no time shall the Cable System be the only aerial facility. Undergrounding of Grantee's equipment and Facilities shall comply with code provisions of the Grantor, the City's *Standard Specifications*, and be done in cooperation with the telephone and electric utility operating in the area. In all matters relating to undergrounding, Grantor shall not discriminate against Grantee with respect to any requirements imposed or benefits conferred upon telephone or electric utilities, except as such benefits to telephone or electric utilities are required by state law. Arrangements shall be made by the Grantee for the use of existing poles in areas where the utilities are above ground, and no poles shall be erected by the Grantee without prior approval of the Grantor. Before placing equipment or Facilities underground or above ground, it shall be the responsibility of the Grantee to determine whether necessary easements exist, and except as otherwise provided in this Franchise Agreement, to secure easements, if needed, and to show said easements on each plan submitted for proposed construction.

**3. Restoration and Repair of Streets.** Whenever the Grantee disturbs any of the Streets, it shall restore them as soon as practicable, to good order and condition, as they were at the time of the disturbance, using the kind and quality of material with which the Street was improved prior to disturbance, and making the repair or restoration under the direction and inspection and to the satisfaction of the Grantor. In the event the Grantee fails to respond to the direction of the Grantor to meet standards regarding utility restoration, the Grantor, at its option, may cause such restoration and repair to be made at the expense of the Grantee, or the Grantor shall have the right to fix a reasonable time within which such restoration and repair of Streets shall be completed; and upon failure of the Grantee to make the restoration and repair within the allotted time, the Grantor may cause such restoration and repair to be made at the expense of the Grantee.

**4. Grantor's Use of Streets.** Nothing in this Franchise Agreement shall be construed in any way to prevent the proper authorities of the Grantor from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the Streets, alleys, easements, thoroughfares, and public ways within the Franchise Area in or upon which the poles, wires, or other equipment of said Grantee shall be placed. All such work or improvements shall be done, if possible, so as not to obstruct or prevent the free use of said poles, wires, conduits, or other equipment.

**5. Tree Trimming.** Where tree trimming is necessary on public Streets for the operation of the lines, wires, cables, and antennas, or other appurtenances of the Grantee, the trimmings shall be done by competent employees, agents, or contractors of the Grantee after application for and granting of a written permit by the Grantor, and it shall be done without cost or expense to the Grantor.

**6. Grantor's Use of Poles.** Grantor reserves to itself the right at any time to use the poles and other installations Grantee erected or installed under the authority granted in this Franchise Agreement for any Facilities of whatsoever nature, but it is agreed that such use shall not interfere or compete with Grantee's use thereof. The Grantor shall hold the Grantee harmless from any and all liability which may arise as a result of its use of Grantee's poles or other installations. The Grantee shall hold the Grantor harmless from any and all liability which may arise as a result of its use of Grantee's poles or other installation.

**7. Equipment Maintenance.** Grantee shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire System in good state of repair and shall indemnify and save harmless the Grantor of and from any and all damages of any kind or character growing out of or arising by reasons of Grantee's failure to so maintain the Cable System.

**8. Relocation and Temporary Removal of Facilities.**

a. Grantee shall, at its expense, protect, support, temporarily disconnect, or relocate any of its equipment when required to do so by Grantor by reason of traffic conditions; public safety; Street vacation; freeway and Street construction, change or establishment of Street grade; installation of sewers, drains, water pipes, power lines, signal lines, and tracks; or any other type

of structure or public improvements by or for the Grantor or such duly established utility boards as may regulate such facilities.

b. Grantee shall, within (15) days' written request of any person holding an appropriate permit issued by the Grantor, temporarily raise or lower its lines or other equipment to permit the moving of any building or structure, machinery, or object, and the actual expense of the same shall be paid by the person making the request. The person making the request will indemnify and save harmless said Grantee from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the equipment of the Grantee, and, if required by Grantee, shall provide a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by Grantee.

c. All installations, removals, lowering or raising of aerial cables, or wiring or other apparatus, shall be done in conformance with requirements of the National Electric Safety Code and the laws of the State of Oregon and the regulations of the Grantor.

**9. Emergency Removal of Facilities.** If at any time, in the case of fire or disaster in the Franchise Area, it shall become necessary in the reasonable judgment of the Grantor to cut or move any of the wires, cables, amplifiers, or other appurtenances to the System of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense, provided that such repairs are not necessitated by a negligent act of the Grantor, in which case costs for repairs shall be borne by the Grantor.

**10. Alternate Routing of Facilities.** In the event continued use of a Street is denied to the Grantee by the Grantor for any reason, the Grantee shall provide Service to affected Subscribers over such alternate routes as shall be determined by the Grantee within a reasonable period of time.

## **Section 9. Extension of Service.**

**1. Scope.** Grantee shall install its Service to all applicants within the Franchise Area within (90) days following a request from such applicant. The installation of Service should be underground when compatible with the existing development. With new construction or reconstruction, whenever underground is required by code, Grantee will underground at their expense in accordance with Grantor's "Standard Specifications" and code.

**2. Provision of Residential Service.** Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise Agreement and other pertinent provisions of law.

**a. Isolated homes within the Franchise Area.** For dwelling units either within or outside the area actually receiving Service on the effective date of this Franchise, where the number of dwelling units per mile is less than 22 measured from any point on the existing System, Grantee shall have no obligation to provide Service necessitating more than a line

extension or drop of 125 feet as measured from any point on the existing cable plant, unless the person requesting Service contractually agrees to pay construction costs based on the following formula:

i. Grantee shall provide Service at its Standard Installation Charge for the initial 125 feet of extension.

ii. Grantee and Subscriber shall share equally the actual cost of the extension for the distance over 125 feet but less than 500 feet.

iii. The Subscriber shall pay the additional costs for the extension for any distance greater than 500 feet.

iv. The amount of cable extension, as measured in feet, which is the basis for the cost sharing will be computed as follows: The starting point shall be a point at the nearest reasonably usable existing cable plant using public right-of-way, exclusive of a Street crossing; provided that the Grantee shall make a reasonable effort to secure and use private rights-of-way if the use of such rights-of-way reduces the cost of the line extension to the Subscriber. The actual length of cable needed from the starting point to the Subscriber's home shall be the total number of feet. The cost of the project from the starting point to the home shall be divided by the total number of feet. The resultant cost per foot shall be used to compute each party's share. Street bores or crossings needed to bring the existing cable plant to the requesting Subscriber's side of the Street shall be included as part of the line extension greater than 125 feet; otherwise, these costs shall not be charged to the Subscriber.

v. The prospective Subscriber shall arrange for all necessary easements over or under private property.

**b. New Subdivisions.** Grantee will be required to build, activate, proof, and sell cable in new subdivisions within (60) days of the time when a dwelling unit is occupied.

**3. Service to Individual Subscribers.** Where a Subscriber can be served from the Grantee's System without extension of a trunk cable, the Grantee shall serve the prospective Subscriber upon request on the following terms and conditions:

a. The dwelling unit shall be connected to cable at the Standard Installation Charge if the connection can be made with an aerial drop and does not exceed 125 feet.

b. If the aerial connection drop exceeds 125 feet, the prospective Subscriber may be charged the actual cost of the distance exceeding 125 feet plus Standard Installation Charge, and Grantee may request advance payment of such installation.

c. If the requested installation is to be placed underground, the prospective Subscriber must pay for furnishing an open trench as specified by the Grantee, backfilling, and restoring to original conditions, and Grantee may request advance payment for work.

d. The prospective Subscriber shall arrange for all necessary easements over or under private property.

#### **4. Underground Extension of System.**

**a. Installation of System.** In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of such construction or development, including a copy of any final plat of and the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals which are to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

**b. Costs of Trenching and Easements.** Costs of trenching and easements required to bring Service to the development shall be borne by the developer or property owners, except that if Grantee fails to install its conduit, pedestals and/or vaults, or the laterals within two working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the 2-day period, the cost of new trenching is to be borne by the Grantee.

**5. Aerial Extension of System.** In any area where utility lines are permitted above ground, Grantee shall extend its System to provide Service upon request pursuant to subsection 3 of this Section, where the prospective Subscriber can be served by extension of distribution cable past occupied dwelling units equivalent to a density of 22 dwelling units per mile of cable contiguous to the activated System. Such density shall be computed on the basis of dwelling units which can be served on either side of the cable.

**6. As-Built Drawings.** At the completion of any extension, installation, modification, or enhancement of the System, the Grantee will provide complete, accurate, and verified as-built drawings to the Grantor in accordance with the methods prescribed within the Grantor's adopted Standard Specifications. Such as-built information will be delivered as requested by the Grantor.

### **Section 10. Compensation.**

**1. Franchise Fee.** As compensation for the Franchise granted herein and in consideration of permission to use the Streets and public ways of the Grantor in the Franchise Area for the construction, operation, maintenance, and reconstruction of a Cable System within the Franchise Area, the Grantee shall pay to the Grantor an annual amount equal to five percent (5%) of the Grantee's Gross Revenues as defined in Section 2 herein.

**2. Payment Schedule.** Payments due the Grantor under this provision shall be computed quarterly for the preceding quarter as of March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>. Each quarterly payment shall be due and payable no later than (30) days after the dates listed. Duplicate statements shall be presented to the Grantor at the time of payment.

**3. Report with Payment.** The Grantee shall furnish to the Grantor, with each payment of compensation required by this Section, a written statement, under oath, executed by an authorized agent of the Grantee, showing the amount of Gross Revenues of the Grantee within the Franchise Area for the period covered by the payment computed on the basis set out in subsection 1 of this Section. The compensation for the period covered by the statement shall be computed on the basis of Gross Revenues so reported.

**4. Late Payment.** If the Grantee fails to pay the entire amount of compensation due the Grantor, through error or otherwise, within the times allotted for payment in subsection 2 of this Section, the amount of the fee due for the quarter not timely paid shall be subject to a late penalty of one and one-half percent (1.5%) compounded monthly from date due on the amount of fee due and unpaid from the date due until it is paid together with the late payment penalty.

**5. Verification of Amount Due.** No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provisions of this Franchise Agreement. All amounts paid shall be subject to audit and re-computation by the Grantor; and all records required to conduct such an audit shall be made available to the Grantor auditor and shall be limited to Cable System operations and shall remain proprietary and confidential upon Grantee's request; and shall be provided at the expense of the Grantee.

**6. Compensation not a Credit Against Certain Taxes and Fees.** Nothing contained in this Franchise Agreement shall give the Grantee any credit against any nondiscriminatory business tax or *ad valorem* property tax now or hereafter levied against real or personal property or business by the Grantor; or against any permit fees or inspection fees required by the construction codes or other ordinances of the Grantor which are or may hereafter be adopted.

## **Section 11. Performance Bond and Liability Insurance.**

**1. Performance Bond.** Upon the filing of the acceptance of the Franchise required under Section 24 of this Franchise Agreement, the Grantee shall, during the entire term of such Franchise, maintain in full force and effect a corporate surety bond or other adequate surety agreement in the amount of \$60,000. Evidence of the bond or agreement shall be on file with the Grantor and shall thereafter be filed annually. The bond or agreement shall be so conditioned that, in the event that Grantee shall fail to materially comply with any one or more of the provisions of this Franchise Agreement, there shall be recoverable, jointly and severally, from the principal and surety any damages or loss, or costs suffered or incurred by the Grantor as a result thereof; including attorney's fees and costs of any action or proceeding; including the full amount of any compensation, indemnification, cost of removal, or abandonment of any property or other costs which may be in default, up to the full principal amount of such bond. Such condition shall be a continuing obligation during the entire term of such Franchise and thereafter until Grantee shall have satisfied in full any and all obligations to the Grantor which arise out of or pertain to said Franchise. In lieu of the bond or agreement, Grantee may deposit cash with the Grantor, or in a federal or State of Oregon bank or savings and loan association, on terms and



conditions approved by the Grantor and the Grantee. Neither the provisions of this Section nor any damages recovered by the Grantor thereunder, nor any withdrawal from any cash deposit, shall be construed to excuse faithful performance by the Grantee or to limit the liability of the Grantee under this Franchise Agreement for damages, either to the full amount of the bond or otherwise.

**2. Proof of Performance Bond.** Upon the effective date of this Franchise, Grantee shall furnish to the Grantor proof of a cash deposit as provided in subsection 1, or shall furnish a bond containing the following endorsement:

It is hereby understood and agreed that this bond may not be canceled nor the intention not to renew be submitted until (30) days after receipt by the City of Stayton by Registered Mail, of a written notice of such intent to cancel or not renew.

**3. Public Liability Insurance.** Grantee shall indemnify and save the Grantor free and harmless from any and all liability, loss, cost, damage, or expense from accident or damage, either to itself or to persons or property of others, which may occur by reason of the exercise of the rights and privileges herein granted; and shall for the purpose of carrying out the provisions of this Section and prior to commencing construction of any kind, have in full force and effect, and file evidence thereof with the Grantor, a good and sufficient insurance policy (or policies) covering \$3,000,000 (minimum single limit) for Commercial General Liability coverage, \$500,000 (minimum single limit) for Employer's Liability coverage and \$1,000,000 (minimum single limit) for Business Automobile Liability coverage for bodily injury, property damage, and personal injury liability; with the policy (or policies) to be executed by an insurance company (or companies) authorized and qualified to do business in the State of Oregon; and conditioned to indemnify and save harmless the Grantor from and against any and all claims, actions, suits, liability, loss, cost expense, or damage of any kind or description which may accrue to or be suffered by the Grantor or by anyone by reason of erection, construction, reconstruction, relocation, replacement, readjustment, repair, maintenance, or operation of the coaxial cable and appurtenances thereto; or by reason of anything that has been done or may be done by the Grantee hereunder which may in any way cause liability by reason thereof.

**4. Reimbursement of Costs.** The Grantee shall pay all justifiable expenses incurred by the Grantor in defending itself with regard to all damages and penalties mentioned in subsection 3 herein. These expenses shall include all out-of-pocket expenses such as consultant or attorney fees.

**5. Notice of Cancellation or Reduction in Coverage.** The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this Franchise Agreement and shall contain the following statement:

It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until 30 days after receipt, by the City of Stayton, by Registered Mail, of a written notice of such intent to cancel or reduce the coverage.

**6. No Waiver of Performance Bond.** Neither the provision of this Franchise Agreement nor any insurance accepted by the Grantor pursuant hereto, nor any damages recovered by the Grantor thereunder, shall be construed to excuse faithful performance by the Grantee under the Franchise Agreement for damages, either to the full amount of the bond or otherwise. Nor shall maintenance of insurance pursuant to this Section be construed to impose liability upon third parties or Grantee for loss, expense, or damages otherwise allocated under provisions of this Franchise Agreement.

## **Section 12. Responsibilities to Public.**

**1. Repair.** Any damage caused to the property of building owners or users or any person, by the Grantee, shall be repaired fully and promptly by the Grantee.

**2. Removal of Facilities Upon Request.** Upon termination of Service to any Subscriber, the Grantee shall remove promptly all its above ground external Facilities and equipment from the premises at the Subscriber's or the owner's request and at Grantee's expense.

**3. Customer Service Standards.** Grantee shall meet or exceed the customer service standards set forth in Section 76.309 of the FCC's Rules and Regulations, as such may be amended from time to time, and any customer service standards established by Grantor.

**4. Complaint Procedures and Inquiries.** The Grantor is committed to assuring quality Service for its citizens who subscribe to Cable Services. The Grantee will make every effort to monitor, require a response, and effect change whenever such quality is perceived by Subscribers as insufficient.

a. Grantee shall maintain an office in the Franchise Area which shall be open during all the usual business hours with its telephone listed in directories of the telephone company serving the Franchise Area; and be so operated that complaints and requests for repairs or adjustments may be received at any time, day or night, seven days a week.

b. Original records, including Service records pertaining to complaints received by the Grantee and of the office procedures followed to satisfy these complaints, shall be maintained by the Grantee for a period of not less than three years, and be made available for inspection by the Grantor on reasonable notice to the Grantee. This record shall be considered by the Grantor in evaluating the Grantee's performance under this franchise.

c. All complaints not resolved during initial customer contact will be followed up on by the Grantee.

i. The Grantee will ascertain customer satisfaction or lack thereof within two days following the resolution offered or performed by the Grantee.

ii. Non-resolved complaints or those extending over four or more days, consecutively or in recurrence, will be forwarded to the Grantor in written form on a monthly basis.

iii. The Grantee will provide the Grantor within (15) days of the end of the month, a monthly "trouble report" identifying customer complaints. The Grantee will provide sufficient explanatory responses to inquiries from the Grantor regarding complaints and shall provide written summaries, basic analysis, or specific detail as requested by Grantor.

## **5. Maintenance of Service.**

a. Grantee shall maintain a repair and troubleshooting team which shall respond to Subscriber complaints within two Service Days after receipt of the complaint, other than as may be due to circumstances beyond the reasonable control of the Grantee. No charge shall be made to the Subscriber for maintenance of Grantee-owned Facilities. Repairs shall be accomplished at the convenience of the Subscriber by having the Grantee set an appointment or schedule a repair. The Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during the periods of minimum use of the System.

b. Grantee shall install, keep, and maintain all parts of the Cable System in good condition through the entire period of this Franchise.

c. Where there have been similar complaints made or where there exists other evidence which, in the judgment of the Grantor, casts doubt on the reliability of the quality of the Cable Service, the Grantor shall have the right and authority to compel the Grantee to test, analyze, and Report on the performance of the System. Such test or tests shall be made in accordance with Section 6 of this Franchise Agreement and the Reports of such test or tests shall be delivered to the Grantor within seven days after completion of tests. Such Report(s) shall include the following information:

- i. The nature of the complaint(s) which precipitated the special tests;
- ii. The System component(s) tested and the equipment used and procedures employed in said testing;
- iii. The results of such tests;
- iv. The method(s) by which such complaints were resolved.
- v. Any other information pertinent to the special test(s) shall be recorded and reported.

d. At the Grantor's option, said tests and analyses shall be supervised at the Grantee's expense by a professional engineer not in the permanent employ of the Grantee. The

aforesaid engineer shall sign all records of special tests and forward the same to the Grantor within the time prescribed, with a Report interpreting the results of the tests, and recommending actions to be taken by the Grantor and/or the Grantee.

e. In addition to testing by the Grantee, the Grantor may at any time employ, at its own expense, a registered, qualified engineer to test, analyze, and report on the performance of the System. Grantee agrees to make all of its testing equipment available at no charge or cost to the engineer selected by the Grantor to perform these tests.

## 6. **Subscriber Privacy.**

a. **Cable Tapping Prohibited.** Grantee may not, nor may Grantee knowingly permit any person, agency, or entity, without the Subscriber's consent or court order to tap, or to arrange for the tapping of any cable, line signal input device, or Subscriber outlet or receiver for any purpose except routine maintenance of the System, or for polling with audience participation or audience viewing surveys to support advertising research regarding viewers where individual viewer behavior cannot be identified.

b. **Invasion of Privacy Prohibited.** In the conduct of providing its Services or pursuit of any collateral commercial enterprise resulting from its Services, Grantee will take all action necessary to prevent an invasion of a Subscriber's right to privacy as such right is defined by applicable law. Grantee will not without lawful court order utilize the Cable System's interactive two-way equipment or capability for surveillance of any Subscriber or general citizen outside the normal course of business.

7. **Sale of Subscriber Lists Prohibited.** The Grantee shall not sell or otherwise make available lists of the names or addresses of its Subscribers or any list which identifies Subscriber viewing habits by name or address, to any person, agency, or entity, except as needed to maintain current services or to implement new services to Subscribers in connection with the Grantee's Service.

8. **Grantee Rules, Regulations.** The Grantee shall have the authority, consistent with applicable laws and FCC rules and regulations, to promulgate such rules, regulations, terms, and conditions governing the conduct of its business with Subscribers as shall be reasonable and necessary to enable the Grantee to exercise its rights and to perform its obligations under this Franchise Agreement. Two copies of all rules, regulations, terms, and conditions, including Subscriber agreements promulgated under this Section, together with any amendments, additions, or deletions thereto, shall be kept current on file with the Grantor. An additional copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the Franchise Area; and no such rules, regulations, terms, conditions, or amendments, additions, or deletions thereto, shall take effect unless and until so filed.

9. **Equal Employment Requirements.** Grantee shall adhere strictly to the equal employment opportunity requirements of the FCC. Grantee shall comply at all times with all other valid and applicable federal, state, local, and county laws relating to non-discrimination.

### **Section 13. Reports and Records.**

1. Annually, within (150) days after the close of the fiscal year for which the financial records of the Grantee are maintained, Grantee shall file with the Grantor the following Reports (items a, b, and c are to be reported according to tiers):

- a. Total number of Subscribers at the end of the fiscal year.
- b. Number of Subscribers added during the year.
- c. Number of Subscribers lost during the year.
- d. Summary of other additions to the System in terms of increased channel capacity or technological improvements made during the year.
- e. Outline the plans for expansion and improvement of the System during the year.
- f. A Report on Gross Revenues in a form mutually agreeable to Grantor and Grantee, containing information substantially in conformance with **Exhibit A** to this Franchise, and an income statement for the System-wide operation. This Report shall be signed by an authorized agent of the corporation and an accountant who participated in its preparation or review.
- g. Financial statements, including balance sheet, income statement and cash flow statement, for each Grantee for which statements are prepared in the ownership chain for the System, where such financial statements are required for the administration of this Franchise, audited if audited statements exist, otherwise certified by an officer of the Grantee. All notes shall be provided with financial statements.

**2. Copies of Reports.** Copies of all petitions, applications, and communications submitted by the Grantee to the FCC or any other federal or state regulator, commission, or agency having jurisdiction in respect to any matters relating specifically to the operation of the Cable System, authorized pursuant to this Franchise Agreement, shall also be submitted simultaneously to the Grantor.

**3. Cost of Reports.** The cost of preparing and furnishing to the Grantor the records and Reports required by this Section shall be borne by the Grantee.

**4. Documentation.** Documentation for the financial Reports required above shall be made available for inspection by the Grantor at the Grantee's expense. It shall be the responsibility of the Grantor to protect any proprietary or confidential material or information provided by the Grantee, consistent with Oregon law.

## **Section 14. Resolution of Disputes.**

**1. Intent.** It is the intent of the parties to provide for orderly resolution of disputes arising out of the enforcement or interpretation of provisions in this Franchise Agreement or any rule, regulation, or procedure relating to Cable Service matters. To this end, the procedures set forth in subsections 2 and 3 below may be implemented upon the election of either the Grantor or Grantee where agreement has not been reached after a reasonable time and good faith negotiation. In addition, any controversy or dispute may be submitted to binding arbitration as set forth in subsection 4 below, but only upon agreement of both the Grantor and the Grantee. As further incentive to utilize these informal procedures for resolution of disputes, the fees and expenses of fact finding, mediation, and arbitration (unless otherwise determined by the arbitration panel) shall be borne equally by the Grantor and the Grantee, but the costs and expenses of any court action arising from a dispute between the Grantor and the Grantee shall be borne by the non-prevailing party, pursuant to Section 17 of this Franchise Agreement.

**2. Fact Finding.** Any controversy or dispute upon the election of either the Grantor or the Grantee shall be submitted to an expert individual acceptable to both parties for an investigation of the facts and a Report thereof. Such fact finding shall be for the purpose of developing better information for the use of both parties and shall not be binding on either party.

**3. Mediation.** Any controversy or dispute upon the election of either the Grantor or Grantee shall be submitted to an expert individual acceptable to both parties for the purpose of initiating discussion and receiving new perspective on the issues and new proposals for compromise. Such mediation shall not be binding on either party.

**4. Arbitration.** Upon agreement of the Grantor and the Grantee, any controversy or dispute may be submitted for arbitration to a single expert individual, if both parties agree, or to a three-member expert panel. Arbitration shall be binding on both parties and shall be held to have been finally adjudicated and settled in accordance with any applicable state law.

### **5. Selection Procedures.**

a. In the case of fact finding or mediation, both parties shall present a maximum of three names each for possible service as experts. If there is no agreement on any of the names, the presiding judge of the circuit court of the State of Oregon, for the County of Marion, or a designee, shall select a person to fulfill the function of expert.

b. In the case of arbitration, if both parties agree, one person may serve as arbitrator. In the absence of agreement, there shall be an arbitration panel of three members. If a single-member panel is agreed upon, the selection procedures established for fact finding and mediation shall be utilized to select the single arbitrator. If a three-member panel is to be used, one person shall be named by the Grantor, one person shall be named by the Grantee, and the third person shall be named by agreement between the Grantor and the Grantee. The third person shall serve as the presiding officer of the panel. If there is no agreement on the single arbitrator or the

presiding officer of a three-member panel, the selection shall be made by the presiding judge of the circuit court of the State of Oregon, for the County of Marion, or a designee.

## **Section 15. Duration, Renewal and Renegotiation.**

**1. Duration and Renewal.** This Franchise Agreement and the rights and privileges granted herein shall take effect on April 6, 2005 and shall remain in effect for ten years from that date unless terminated sooner under provisions of subsection 3 of this Section; provided, however, the terms of this Franchise must be unconditionally accepted by the Grantee, in writing, signed by an officer of the Grantee, within (30) days after the date this Franchise Agreement is approved by the Grantor.

### **2. Franchise Review.**

a. As need arises, and at least at the end of the third year of the term of this Franchise Agreement, the Grantor and Grantee may meet to review the Franchise performance generally, and in particular the following matters:

i. Use of channel space, including public Access Channels and programming categories; the need for activation of additional channels as set forth herein;

ii. Service extension policies set forth in Section 9, including but not limited to changes in urban service boundaries affecting areas to be served by the Grantee;

iii. Technical adequacy of the System, including but not limited to, picture quality, two-way transmission capacity, and compliance with standards set forth in Section 6;

iv. New technological, regulatory, or legal developments affecting the Franchise, Grantee operations, or Grantor's regulatory authority hereunder, including changes in FCC authority, rules, or regulations; and

v. The franchise fee set forth in Section 10.

b. The Grantee shall be represented at these meetings by a representative of the Grantee authorized to speak on behalf of the Grantee on questions of Grantee practice, policy, plans, or other matters concerning the Cable System in the Franchise Area.

c. Any matters within the categories enumerated in subsection 2.a. above, on which agreement is not reached after good faith negotiation in the course of these review proceedings, shall be submitted pursuant to Section 14 herein, without need of further agreement to arbitrate, as otherwise required in Section 14.4. Upon decision of the arbitrator(s), this Franchise Agreement shall be amended to the extent necessary to implement said decision.

#### **4. Termination.**

a. The Grantor reserves the right to terminate this Franchise Agreement, and all rights and privileges pertaining hereto, in the event that:

i. The Grantee violates any material provision of this Franchise Agreement, except where such violation is without fault or occurs by reason of excusable neglect; or

ii. The Grantee deliberately fails to operate the System without prior approval of the Grantor without just cause; or

iii. The Grantee intentionally evades any of the provisions of this franchise, or is found to have practiced any fraud or deceit upon the Grantor or any Subscriber.

b. Prior to any termination proceedings under this Section, the Grantee shall be given (60) days' prior notice, in writing, which notice shall state with particularity the grounds upon which the Grantor relies. If, at the end of the sixty day period, the Grantee has not cured the matter to the Grantor's satisfaction, which provides grounds for termination, the franchise shall be subject to termination at the Grantor's election.

#### **Section 16. Change of Ownership.**

##### **1. Transfer and Assignment.**

a. This Franchise Agreement shall not be assigned or transferred, either in whole or in part; nor shall the System, whether in whole or in part be leased or sublet; nor shall title thereto, either legal or equitable; nor any right, interest, or property therein, nor any effective control thereof, pass to or vest in any person without prior written consent of the Grantor. The Grantee may, however, transfer or assign the franchise to a wholly-owned subsidiary of the Grantee and such subsidiary may transfer or assign the franchise back to the Grantee without such consent. The proposed assignee must show legal, technical and financial responsibility as determined by the Grantor and must agree in writing to comply with all provisions of the Franchise Agreement.

b. The Grantee shall promptly notify the Grantor of any actual or proposed change in or transfer or acquisition of any other part of the System or control of the Grantee. The word "control" as used herein is not limited to major stockholders; includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall make the Franchise Agreement subject to cancellation unless and until the Grantor shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the Grantor may inquire into the qualifications of the prospective controlling party; and the Grantee shall assist the Grantor in any such inquiry.



c. In accordance with Section 617 of the Cable Act, the Grantor shall have 120 days to act upon any request for approval of a sale or transfer that contains or is accompanied by such information as is required in accordance with Federal Communications Commission regulations and by the Grantor. If the Grantor fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

## **2. Continuity of Service Mandatory.**

a. It shall be the right of all Subscribers to continue receiving Service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the System, or the Grantor gives notice of intent to revoke or fails to renew this Franchise Agreement, the Grantee shall make the best effort to ensure that all Subscribers receive continuous, uninterrupted Service regardless of the circumstances. In the event of a change of Grantee, or in the event a new operator acquires the System, the current Grantee shall cooperate with the Grantor in maintaining continuity of Service to all Subscribers, and shall be entitled to the revenues for any period during which the Grantee operates the System.

b. In the event the Grantee fails to operate a substantial part of the System for seven consecutive days without prior approval of the Grantor or without just cause, the Grantor may operate or cause to have operated the System until such time as a new operator is selected. If the Grantor decides to fulfill this obligation for the Grantee, the Grantee shall reimburse Grantor for any costs, including attorneys' fees or damages that are the result of the Grantee's failure to perform.

**3. Foreclosure.** Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the equipment comprising the System, the Grantor shall have the right, at its discretion, to terminate the franchise, which termination shall be final and binding upon both parties. Such option shall be exercised not later than (60) days following foreclosure, other judicial sale, or termination of such lease, or Grantor shall be deemed to have approved such successor in interest to the Grantee.

**4. Grantor Right to Purchase the System.** The Grantor shall have the right to terminate this franchise (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship has been vacated prior to the expiration of said 120 days, or unless the Grantor acquires the System as provided below.:

a. The Grantor shall have the right to purchase the Cable System in accordance with applicable federal, state, and local laws, upon expiration of the term of this Franchise Agreement or any extension thereof, or in the event the Grantor terminates the franchise prior to the end of the franchise term. Should the Grantor decide to purchase the System, in accordance with Section 627 of the Cable Act it shall do so at an equitable price if the franchise has been revoked

for cause, or following denial of a renewal at a price not to exceed its then fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the franchise itself. In determining the fair market value of the System, the original cost of all tangible and intangible property, as well as the salvage value, the book value, the replacement cost, cash flow, and other factors may be considered in accordance with all applicable federal, state, and local laws.

b. If the parties cannot agree on the price, the matter shall be subject to binding arbitration under Oregon law.

## **5. Disposition of Facilities.**

a. Upon expiration or termination of the franchise, the Grantee, upon request of the Grantor, shall promptly remove any or all of its equipment in the public right-of-way.

b. In removing its equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires, or attachments. Such restoration of property shall not be considered completed until the Grantor has inspected and approved the condition of the public ways and places. The liability insurance and indemnity, as well as the requirements regarding a performance bond and security fund as provided under Section 11 herein, shall continue in full force and effect during the period of removal.

c. In the event of a failure by the Grantee to complete any work required by subsections a. and b. above, or any work required by law or ordinance within such time as may be established by the Grantor, or to the satisfaction of the Grantor, the Grantor may cause such work to be done and the Grantee shall reimburse the Grantor the costs thereof within 30 days after receipt of an itemized list of such costs, or the Grantor may recover such costs as provided in Section 11.

## **Section 17. Payment of Litigation Costs.**

The non-prevailing party in any litigation shall reimburse to the other all costs, including filing fees, costs of depositions, discovery, and expert witnesses, all other expenses of suit, and reasonable attorney fees.

## **Section 18. Penalties.**

**1. Assessment of Penalties.** For violations of this Franchise Agreement, the Grantor may, at its discretion, assess penalties against the Grantee in the amounts specified herein together with damages plus costs.

**2. Penalty Amounts.** Violation of any provision of this franchise is subject to a financial penalty of up to \$100 per day and/or per subscriber for each such violation.

**3. Written Notice.** As a condition precedent to imposition of a penalty, the Grantor shall give the Grantee written notice specifying the nature of the Grantee's violation of this Franchise Agreement. Notice shall be by certified U.S. mail with a Return Receipt requested, and shall be deemed given when actually delivered or as of 5:00 p.m. on the fifth day following the date actually mailed. The Grantee shall be subject to penalty if the violation of the Franchise Agreement is not cured within (10) days after notice is given; or in the event the violation cannot be cured for reasons beyond the control of the Grantee within ten days, it shall be sufficient if the Grantee initiates all reasonable measures to cure the violation within ten days, provided that, in any event, the violation must be cured not later than (60) days after notice is given. Notice shall be directed to the manager of the Grantee.

#### **Section 19. Remedies Not Exclusive.**

All remedies and penalties under this ordinance, on application of the Grantee, including termination of the Franchise Agreement, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this Franchise Agreement, including termination of the franchise, are not exclusive; and the Grantor reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of any term, condition, or obligation imposed upon the Grantee pursuant to this Franchise Agreement. A specific waiver of a particular term, condition, or obligation imposed upon the Grantee by or pursuant to this Franchise Agreement shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition, or obligation itself.

#### **Section 20. New Technology.**

The Grantee shall, in good faith, make reasonable effort to maintain technology consistent with comparable franchise areas.

#### **Section 21. Severability.**

If any Section, subsection, sentence, clause, or phrase of this Franchise Agreement is, for any reason, held illegal, invalid, or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Grantor hereby declares that it would have adopted this Franchise Agreement and each Section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this Franchise Agreement shall not abate, reduce, or otherwise affect any other consideration or obligation required of the Grantee.

## **Section 22. Franchise Not Exclusive.**

The Franchise granted herein is not exclusive. This Franchise shall not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets and public ways or public places by Franchise, permit or otherwise.

## **Section 23. No Rights by Implication.**

No rights shall pass from the Grantor to the Grantee by implication. Without limiting the foregoing, by way of example and not limitation, the franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the Franchise Area that may be required under generally applicable ordinances and laws of the Grantor;
2. Any permit, agreement or authorization required under generally applicable ordinances and laws of the Grantor in connection with operations on or in Public Rights of Way or property, including by way of example and not limitation, Street cut permits; or
3. Any permits or agreements for occupying any other property of the Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the Grantor or a private entity.

## **Section 24. Acceptance.**

The Grantee, on or before approval of this Franchise Agreement by the Grantor, shall execute and file with the Grantor a written acceptance executed by Grantee, in the form attached hereto as **Exhibit B**. In the event Grantee fails to file the acceptance as required herein, then this Franchise Agreement shall be null and void.

## **Section 25. Responsibility for Costs.**

Except as expressly provided otherwise, any act that Grantee is required to perform under this franchise shall be performed at its cost. If Grantee fails to perform work that it is required to perform within the time provided for performance, the Grantor may perform the work and bill the Grantee for documented costs. The Grantee shall pay the amounts billed within (30) days. The parties agree that any amounts paid pursuant to this Section are not franchise fees and fall within one or more of the exceptions to the definition of franchise fee under federal law. Nothing in this Section is intended to affect in any way (by expansion or contraction) Grantee's rights under applicable law governing rates.

**Section 26. Entire Agreement.**

This Franchise contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise that are not fully expressed herein.

**Section 27. Emergency declared; effective date.**

The Grantee's current franchise to occupy City Rights-of-Way expires on April 6, 2005. In order that the City can have a continuous franchise agreement in place to ensure seamless regulation and compensation for the use of City Rights-of-Way, an emergency is hereby declared and this Ordinance shall take effect on April 6, 2005 provided the Grantee files its acceptance hereof as provided in Section 15.1.

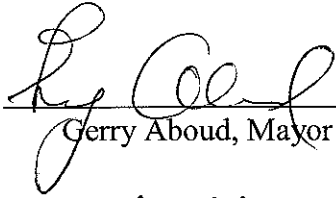
SIGNATURES APPEAR ON THE FOLLOWING PAGE

//  
//

ADOPTED BY THE STAYTON CITY COUNCIL this 7<sup>th</sup> day of March 2005.

CITY OF STAYTON

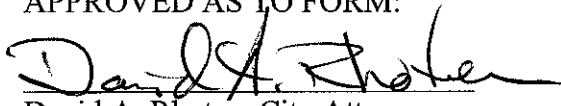
Signed March 8, 2005.

By:   
Gerry Aboud, Mayor

Signed March 8, 2005.

Attest:   
Chris Childs, City Administrator

APPROVED AS TO FORM:

  
David A. Rhoten, City Attorney

**Exhibit A**  
**Proposed Gross Revenue Reporting Form**

**CABLE TV TOTAL GROSS REVENUES REPORTING FORM**  
**CITY OF STAYTON**

For the quarter ending: \_\_\_\_\_

| <b>Category</b>  | <b>Revenues</b> | <b>Avg. Number of<br/>Subscribers/Service Units</b> |
|--|-----------------|---|
| Basic Service  |                 | X   |
| Expanded basic Service (cable programming<br>Service tiers)                                |                 | X   |
| Premium channels   |                 | X   |
| Pay-per-view, Pay-per-event, etc.  |                 | X   |
| Digital services   |                 | X   |
| Equipment rental or sale   |                 | X   |
| Installation, disconnection, re-connection,<br>change-in-Service, or other Service revenue |                 | X   |
| Maintenance plan revenue   |                 | X   |
| Itemized franchise fee revenue   |                 | X   |
| Itemized FCC regulatory fee revenue  |                 | X   |
| Other itemized fee or tax revenue (if any)   |                 | X   |
| Late fees/administrative fees  |                 | X   |
| Other miscellaneous Subscriber revenue<br>(please specify types included)                  |                 | X   |
| Home shopping commission revenue   |                 | X   |
| Other payments from Programmers  |                 | X   |
| Lease of channel space   |                 | X   |
| Advertising revenue (explain method of<br>calculating on separate sheet)                   |                 | X   |
| Other (specify; use separate sheet if needed)  |                 | X   |
| <b>Total</b>   |                 | <b>XXX</b>  |

If any category of revenue, or any part of any category, has been excluded from the amount on which franchise fees were paid for the year, please identify the categories and the amounts excluded, and explain why they have been excluded.

Exhibit B  
Acceptance

Chris Childs  
City Administrator  
City of Stayton  
362 North Third Avenue  
Stayton, OR 97383

This is to advise the City of Stayton, Oregon ("City") that Uvision, LLC ("Grantee") hereby accepts the terms and provisions of Ordinance No. 876, passed by the Stayton City Council on March 7, 2005 (the Franchise) granting a Franchise for ten (10) years to Uvision, LLC. The Grantee agrees to abide by each and every term of the Franchise.

BY WAYNE VESTAL  
TITLE President  
SIGNATURE Wayne Vestal  
DATE 3/8/05

The undersigned guarantees the faithful performance of each and every term of this Franchise by the Grantee.

BY WAYNE VESTAL  
TITLE President  
SIGNATURE Wayne Vestal  
DATE 3/8/05

This Acceptance was received by the City of Stayton on March 9, 2005.

Chris Childs  
Chris Childs  
City Administrator



**Exhibit B  
Acceptance**

Chris Childs  
City Administrator  
City of Stayton  
362 North Third Avenue  
Stayton, OR 97383

This is to advise the City of Stayton, Oregon ("City") that Uvision, LLC ("Grantee") hereby accepts the terms and provisions of Ordinance No. 876, passed by the Stayton City Council on March 7th, 2005 (the Franchise) granting a Franchise for ten (10) years to Uvision, LLC. The Grantee agrees to abide by each and every term of the Franchise.

BY \_\_\_\_\_

TITLE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

The undersigned guarantees the faithful performance of each and every term of this Franchise by the Grantee.

BY \_\_\_\_\_

TITLE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

**This Acceptance was received by the City of Stayton on \_\_\_\_\_, 2005.**

\_\_\_\_\_  
Chris Childs  
City Administrator

**Exhibit C**  
**Sites to Which Complimentary Subscriber Cable TV Drops and Internet Access  
with Interconnection are to be Provided**

| <b>NAME</b>                  | <b>STREET ADDRESS</b> | <b>ZIP CODE</b> |
|------------------------------|-----------------------|-----------------|
| Stayton City Hall            | 362 N. Third Ave.     | 97383           |
| Stayton Police Department    | 386 N. Third Ave.     | 97383           |
| Stayton Public Library       | 515 N. First Ave.     | 97383           |
| Stayton Family Memorial Pool | 400 W. Virginia St.   | 97383           |
| Stayton Community Center     | 400 W. Virginia St.   | 97383           |