

RESOLUTION NO. 578

A RESOLUTION AUTHORIZING THE MAYOR AND THE CITY ADMINISTRATOR TO EXECUTE THE CABLE FRANCHISE AGREEMENT AS NEGOTIATED WITH NORTH SANTIAM COMMUNICATIONS.

WHEREAS, the City of Stayton Cable Franchise Task Force was authorized by the Stayton City Council to enter into negotiations with North Santiam Communications for the continued provision of cable services to the city; and

WHEREAS, the task force and negotiating members of North Santiam Communications have reached an agreement that is fair and equitable to all parties; and

WHEREAS, the timely approval and execution of the cable franchise agreement is in the best interests of the residents of the City of Stayton;

NOW, THEREFORE, BE IT RESOLVED by the Stayton City Council that the mayor and the city administrator are hereby authorized to enter into the agreement with North Santiam Communications to renew the cable franchise services in the City of Stayton.

ADOPTED BY THE STAYTON CITY COUNCIL this 22nd day of January 1996.

Date: 2-14-96

By:


WILLMER VAN VLEET, Mayor

Date: 2/13/96

Attest:


THOMAS L. BARTHEL, City Administrator

RESOLUTION NO. 578

Authority to Enter Cable Franchise Agreement

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CABLE FRANCHISE AGREEMENT

This AGREEMENT, made this 17 day of February, 1996, in accordance with

SECTION 1.: PURPOSE AND GRANT OF AUTHORITY

A non-exclusive franchise is hereby granted to SCS Communications and Security, doing business as North Santiam Communications, hereinafter referred to as COMPANY, to install, construct, operate, maintain, reconstruct, and expand a cable communications system within the public streets, ways, alleys, public utility easements, and places of the City of Stayton, hereinafter referred to as CITY. This franchise shall constitute both a right and an obligation to provide the service of a cable communications system as required by this franchise agreement and related federal and state laws and regulations.

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 5.4 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 the access channel.

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 (P.L. 98-549), 47 U.S.C. §§521 through 611 and all subsequent amendments.

Cable Communications System or System: A system of antennas, cable, amplifiers, towers, microwave links, waveguides, laser beams, satellites, earth stations, or any other conductors, converters, equipment, or facilities

designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital, or other forms of electronic or electrical signals.

City: The City of Stayton.

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.

Company: SCS Communications and Security, doing business as North Santiam Communications.

Commission: The Stayton Cable Commission as established by Stayton City Code Chapter 2.24.

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 or Franchisee: SCS Communications and Security, an Oregon corporation doing business as North Santiam Communications.

Grantor: The City of Stayton, a political subdivision of the State of Oregon.

Gross Annual Revenues: All revenues of the Grantee or any affiliate, or any entity that constitutes a "cable operator" under the Cable Act definition, generated from all sources including locally originated advertisement revenues through the operation of the cable communications system in the franchise area; except that any sales, excise or other taxes, or fees levied directly upon subscribers by a local, state, or federal government shall not be included.

Institutional Service: Video, audio, data, and other services provided to institutional subscribers as identified in Section 5.6 of this franchise agreement, on an individual application, private channel basis. These services may include, but are not limited to, two-way video, audio, or digital signals among institutions or from institutions to residential subscribers.

Monitoring: Observing a one-way communication signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, where the signal is observed by visual or electronic means for any purpose whatsoever.

Pay Television: Television signals for which the COMPANY pays a fee or charge other than statutory copyright fees, on a per program, per channel, per subscriber, or similar basis; and which are offered individually to subscribers on a similar additional cost basis over and above the charge for basic service.

PEG Access: See "Access Channels" (§ 2, "Definitions")

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 communications system.

Public Access Channel: Any channel or portion of a channel where any member of the general public may be a programmer on a non-discriminatory basis, subject to operating rules formulated by the Access Commission. Such rules shall not be designed to control the content of public access programming.

Rate Schedule Rate(s): The charges for subscriber service approved by the city council and defined by FCC regulations and appropriately and directly related to this franchise agreement.

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 day which has been paid for by a subscriber in expectation of 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 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 communication 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 any type whatsoever, 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 COMPANY's cable communications system.

Technical Facilities or Facilities: All real property, equipment, and fixtures used by COMPANY in the distribution of its services through its system, whether located in the city or out, and includes but is not limited to poles, cables, wires, microwave transmitters, antennas, amplifiers, etc.

Television System Services or System Services: All of the services provided by COMPANY or available to COMPANY to provide through its technical facilities by the grant of this franchise, and shall include but not be limited to the distribution of television and radio signals.

Year: A full twelve-month calendar year, unless designated otherwise as "fiscal year."

SECTION 3.: STAYTON CABLE AUTHORITIES

1. The Stayton City Council shall be the authority as to all terms of this franchise agreement and the appointing authority as to the members of the cable communications commission and Access Commission. The acts of these commissions are subject to approval by the city council.
2. The Stayton Cable Communications Commission shall oversee, administer, and enforce the terms and provisions of this ordinance. In addition to those powers referred to in any existing ordinance establishing the commission, said commission shall have those powers referred to in this franchise agreement.
3. The Access Commission shall be responsible for all matters relating to PEG activities as assigned by the Stayton City Council.

SECTION 4.: COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

At all times during the terms of this franchise, COMPANY 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.

At all times during the terms of this franchise, COMPANY shall comply, as a minimum, with all FCC technical standards.

SECTION 5.: SERVICES PROVIDED

1. **Service:** COMPANY shall provide its subscribers within the CITY with good quality television and radio reception, station selection, and other system services within the limits of its technical facilities as defined herein.
2. **Programming Categories:** The Grantee shall provide broad categories of video programming in at least the number and type offered at the time the franchise is granted until system upgrade required by this franchise is completed. Upon completion of the system upgrade required by this franchise, the Grantee shall provide video programming services in at least the following broad categories:
 - a. News and Information
 - b. Sports
 - c. General Entertainment
 - d. Arts, Culture, Performing Arts
 - e. Children/Family
 - f. Topics from community and state of interest to City of Stayton viewers
 - g. Science
 - h. Travel information
 - i. Weather information
 - j. Foreign language/ethnic programming
 - k. Governmental and educational programming
 - l. Movies
 - m. Religious programming
3. **Changes in Video Programming Services:** Subject to the provisions of the Cable Act, no category of services as referred to in this section may be deleted, or be so limited as to be effectively deleted, by the Grantee without Grantor approval, which approval shall not be unreasonably withheld. In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories described in Section 5.2 of this franchise agreement, then the Grantee shall be obligated to carry such programming only upon reasonable terms and conditions.
4. **Community Access and Local Programming:** The City of Stayton desires to administer public, educational, and government (PEG) access and local programming in the Stayton area. The PEG access service facilitates government and educational television programming and makes available, to all members of the public who are subscribers or residents of the franchise area, television production training, equipment, facilities, and channels on a first-come, first-

served, non-discriminatory basis, for the purpose of developing community programming for cable casting. The local programming service provides programs designed to be of direct interest to residents of the franchise area. The PEG access channels are free of censorship, open to all residents of the franchise area, and available for all forms of public expression, community information, and debate on public issues.

- a. **Access Commission:** CITY will provide an Access Commission to promulgate operational guidelines and to monitor community access issues. The extent of the Access Commission's authority and responsibilities will be determined by the Stayton City Council, federal and state law, and terms of this franchise agreement, and shall be honored by the COMPANY.
- b. **Public Access:** At the direction of the Access Commission, the COMPANY shall provide and maintain equipment for access program origination, which shall include, at a minimum, at least one high quality video camera, one video tape recorder with playback capability, an adequate and portable light source, video enhancer/stereo-audio mixer, and accessory equipment, and all other necessary for transmission of video tapes on the access channel. Cost of equipment shall be spread over its useful life as identified in current tax codes.
 - i. Public access channel equipment shall be made available at no charge. The COMPANY shall be entitled to reimbursement from the party responsible for damages to any property of the COMPANY.
 - ii. The COMPANY shall maintain all equipment in satisfactory condition, both electronically and mechanically, without charge to users, except as provided above.
 - iii. Subject to the foregoing, the COMPANY shall prepare and make available to users, rules governing the use and availability of its equipment; such rules to be subject to the approval of the Access Commission, which approval shall not be unreasonably withheld. In addition to any other rights of appeal granted under this ordinance, any other person or group may appeal to the city council any decision by the COMPANY concerning use of public access channels, and priority of public access programming over other programming. The Stayton City Council, at its discretion, may accept the appeal and its decision shall be final and binding on the COMPANY.

c. **Future Development of PEG Equipment and Facilities**

- i. At any time after the effective date of this agreement, the CITY may submit to the COMPANY a written notice and request that the COMPANY pay to the CITY a PEG assessment to be utilized solely for PEG access equipment, facilities, and operations, which are defined to include, but not be limited to, data communications terminal and interface equipment as well as video equipment and studio.
 - ii. The total dollar amount of all PEG assessments the CITY may request from the COMPANY shall not exceed one and one-half percent (1.5%) of the cable system gross annual revenue from the area subject of this franchise.
 - iii. The COMPANY shall "pass through" PEG access assessments provided herein.
 - iv. All PEG assessments submitted by the CITY shall include an operating plan sufficiently detailed to provide the COMPANY with information necessary for adequate financial planning.
 - d. **Shared PEG Operations:** The CITY 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 CITY and the COMPANY may negotiate an agreement for management of PEG facilities or channel capacity, if so desired by parties.
 - e. **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 every tier, sub-tier, package, combination, or other grouping 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.
 - f. **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 City of Stayton, if such centralization is the desire of such jurisdictions.
5. **Modifications and Improvements:** COMPANY shall maintain and improve the technical facilities of its system according to generally accepted practices and standards in the cable television industry.

COMPANY agrees not to make or permit any change in system station selection (programming or scheduling) except as is necessary on an emergency basis to provide uninterrupted service to the community, without thirty (30) days' prior written notice to the CITY through the commission.

6. **Control Keys:** COMPANY shall provide, at the COMPANY's cost, a key-operated parental control locking device. COMPANY shall make available, at no cost for the device, channel blocking devices for specific channels as requested by subscribers.
7. **Service to Institutions:** Upon request, the COMPANY shall make available single installations of its cable communication system facilities to each fire and police station, public school, city hall, community center, and public library within the franchise area on terms provided in Sections 6.1 and 6.2 of this agreement. No standard installation fee shall be imposed for such installations. No monthly service charge shall be made for distribution of services to these locations.

SECTION 6.: EXTENSION OF SERVICE

1. **Scope:** COMPANY shall install its service to all applicants within the CITY's boundaries, as they are now or hereafter may be constituted. 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 CITY's "Standard Specifications" and city 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 150 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 150 feet of extension;

- ii. Grantee and subscriber shall share equally the actual cost of the extension for the distance over 150 feet but less than 500 feet.
 - iii. The subscriber shall pay all 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 150 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 sixty (60) days of the time when a dwelling unit is occupied.

3. **Service to Individual Subscribers:** Where a subscriber can be served from the COMPANY's system without extension of a trunk cable, the COMPANY 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 150 feet.
- b. If the aerial connection drop exceeds 150 feet, the prospective subscriber may be charged the actual cost of the distance exceeding 150 feet plus standard installation charge, and COMPANY 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 COMPANY, backfilling, and restoring to original conditions, and COMPANY 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 COMPANY 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 COMPANY's installation of conduit, pedestals and/or vaults, and laterals which are to be provided at COMPANY's expense. COMPANY shall also provide specifications as needed for trenching.
- b. **Costs of Trenching and Easements** required to bring service to the development shall be borne by the developer or property owners, except that if COMPANY fails to install its conduit, pedestals and/or vaults, or the laterals within two (2) 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 COMPANY.

5. **Aerial Extension of System:** In any area where utility lines are permitted above ground, COMPANY shall extend its system to provide service upon request pursuant to Section 6.2 of this ordinance, 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. **Extension of Service by Agreement:** Nothing herein shall be construed to prevent COMPANY from serving areas not covered under this section upon agreement with developers, property owners, or residents. Any such agreement shall be in writing and filed with CITY.

7. **As-Built Drawings:** At the completion of any extension, installation, modification, or enhancement of the system, the COMPANY will provide complete, accurate, and verified as-built drawings to the CITY in accordance with the methods prescribed within the CITY's adopted standard specifications. Such as-built information will be delivered as requested by the CITY.

SECTION 7.: COMPLIANCE WITH CONSTRUCTION AND TECHNICAL STANDARDS

1. **Channel Capacity:** The cable communication system shall be installed with a minimum channel capacity of 54 standard channels outbound and shall be available by January 1, 1997.

2. **Emergency Alert Capability:** In the case of any emergency or disaster, the COMPANY shall, upon request of the CITY, make available its facilities for emergency use during the emergency or disaster period at no cost to the CITY. The system shall be designed so that viewers on all channels can receive immediate notice of the emergency cablecast in conformance with Emergency Alert Regulations of the FCC.
3. **Standby Power:** Grantee shall maintain standby power systems supplies, rated at least two (2) 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.
4. **Technical Standards:**
 - a. 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, following negotiations with the Grantee, to the extent that applicable law allows the Grantor to do so without the consent of the Grantee.
 - b. **Residential Network, Forward Signals:** The communication system shall be capable of carrying a minimum of 54 standard video television channels and the full FM broadcast band available by January 1, 1997. 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.
5. **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;
 - 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 8.: RATES FOR INSTALLATION AND SERVICE

The Stayton City Council is the regulator and shall approve and/or modify rates from time to time as allowed by FCC rules. The adopted rate schedule shall be on file at the CITY.

1. **Rate Regulation**

- a. **Rate Regulation Right Reserved:** Grantor shall regulate Grantee's rates and charges to the full extent authorized by applicable federal, state, and local law, as these may change during the period of the franchise agreement; and to establish rate regulation policies and guidelines for carrying out its authority.
- b. **Regulation of Service to the Hearing-Impaired:** Grantor has the right to and may regulate the installation and the provision of equipment which facilitates the reception of basic subscriber television service by the hearing-impaired. Such regulation may include the establishment by the Grantor of specific policies and administrative rules, subject to applicable law.
- c. **The provisions of this section 8.1** shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Policy Act of 1984) as amended from time to time. It is not intended that this section expand or diminish the rights of the Grantor in relation to regulation of rates and charges under the provisions of the Act, and any provision of this section or any other provision of this franchise agreement that purports to expand or diminish such rights shall be deemed superseded by those provisions of the cable act.

2. **Schedule of Rates:** COMPANY shall keep on file with the CITY a current schedule of subscriber rates and charges which shall not be increased except as provided by this franchise agreement. COMPANY may, without approval or additional filing, temporarily reduce any such rates and charges in connection with its marketing or other business purpose. A copy of the current schedule shall be furnished the CITY and be made available for public review.

3. **Advance Charges:** COMPANY may require subscribers to pay for each month of basic service in advance at the beginning of each month.

4. **Prohibition of Discriminatory or Preferential Practices:** The COMPANY 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, or to any user or prospective subscriber to the system, and shall not

subject any such persons to any prejudice or disadvantage; provided nothing herein shall prevent COMPANY from establishing different rates for uniform classes of subscribers or reducing rates as permitted by FCC regulations.

5. **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 fifteen (15) days after the due date of the fee, COMPANY may cause disconnection of the subscriber's cable installation after ten (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 COMPANY shall reinstate the subscriber's service.
6. **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 COMPANY, if the amount equals \$1.00 or more.
7. **Rate Change Procedures**
 - a. The commission is hereby empowered to review rates, programming categories, and scheduling change notices made by the COMPANY for all cable services as allowed by the FCC within the franchise area.
 - b. COMPANY agrees to submit to the commission advance notice to change COMPANY's rates for services. Notices shall be in writing to the commission. COMPANY further agrees rate changes will not be effective until thirty (30) days from the date the notice was submitted to the commission.
 - c. The commission's recommendations shall be submitted to the Stayton City Council for final action.

SECTION 9.: USE OF PUBLIC WAYS

1. **Street Openings or Obstructions:** Any opening or obstruction in or disturbance of the streets made by the COMPANY in the exercise of its rights under this franchise agreement shall comply with the standard specifications of the CITY 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 COMPANY without first obtaining a permit from the CITY which requires a plan submittal and approval before installation begins. In the event of an emergency, the CITY shall be notified in sufficient time to witness any and all work being performed.

2. **Undergrounding and Pole Use:** The cable communications system's cables, wires, and associated equipment or facilities shall be placed underground in areas of the franchise territory where telephone and electric utility lines are underground. At no time shall the cable system be the only aerial facility. Undergrounding of COMPANY's equipment and facilities shall comply with code provisions of the CITY, and in cooperation with the telephone company and electric utility board operating in the area. In all matters relating to undergrounding, CITY shall not discriminate against COMPANY 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 COMPANY with the telephone company or utility board for the use of existing poles in areas where the utilities are above ground, and no poles shall be erected by the COMPANY without prior approval of the CITY. Before placing equipment or facilities underground or above ground, it shall be the responsibility of the COMPANY 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 COMPANY 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 CITY. In the event the COMPANY fails to respond to the direction of the CITY to meet standards regarding utility restoration, the CITY, at its option, may cause such restoration and repair to be made at the expense of the COMPANY, or the CITY 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 COMPANY to make the restoration and repair within the allotted time, the CITY may cause such restoration and repair to be made at the expense of the COMPANY.

4. **City's Use of Streets:** Nothing in this franchise agreement shall be construed in any way to prevent the proper authorities of the CITY from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, easements, thoroughfares, and public ways within the franchise territory in or upon which the poles, wires, or other equipment of said COMPANY 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 COMPANY, the trimmings shall be done by competent employees, agents, or contractors of the COMPANY after application for and granting of a written permit by the CITY, and it shall be done without cost or expense to the CITY. The COMPANY shall hold the CITY harmless from any and all liability which may arise as a result of its use of COMPANY's poles or other installation.
6. **City's Use of Poles:** CITY reserves to itself the right at any time to use the poles and other installations COMPANY erected or installed under the authority granted in this franchise agreement for any city-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere or compete with COMPANY's use thereof. The CITY shall hold the COMPANY harmless from any and all liability which may arise as a result of its use of COMPANY's poles or other installations.
7. **Equipment Maintenance:** COMPANY 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 CITY of and from any and all damages of any kind or character growing out of or arising by reasons of COMPANY's failure to so maintain the cable communications system in the franchise territory.
8. **Temporary Removal of Facilities**
 - a. COMPANY shall, at its expense, protect, support, temporarily disconnect, or relocate any of its equipment when required to do so by CITY 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 improvements by the CITY or such duly established utility boards as the Santiam Water Control District Board.
 - b. COMPANY shall, within fifteen (15) days' written request of any person holding an appropriate permit issued by the CITY, 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 COMPANY 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 COMPANY, and, if required by COMPANY, shall provide a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by COMPANY.

- 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 ordinances of the CITY.
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 CITY to cut or move any of the wires, cables, amplifiers, or other appurtenances to the system of the COMPANY, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the COMPANY, at its sole expense, provided that such repairs are not necessitated by a negligent act of the CITY, in which case costs for repairs shall be borne by the CITY.
10. **Alternate Routing of Facilities:** In the event continued use of a street is denied to the COMPANY by the CITY for any reason, the COMPANY shall provide service to affected subscribers over such alternate routes as shall be determined by the COMPANY within a reasonable period of time.

SECTION 10.: PAYMENT TO CITY

1. **Franchise Fee:** As compensation for the franchise granted herein and in consideration of permission to use the streets and public ways of the CITY in the franchise area for the construction, operation, maintenance, and reconstruction of a cable communications system within the franchise territory, the COMPANY shall pay to the CITY an annual amount equal to five percent (5%) of the COMPANY's gross annual revenues as defined in Section 2. herein.
2. **Payment Schedule:** Payments due the CITY under this provision shall be computed quarterly for the preceding quarter as of March 31st, June 30th, September 30th, and December 31st. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed. Duplicate statements shall be presented to the commission at the time of payment.
3. **Late Penalty:** The COMPANY shall furnish to the CITY, with each payment of compensation required by this section, a written statement, under oath, executed by an authorized agent of the COMPANY, showing the amount of gross annual revenues of the COMPANY within the franchise territory 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 annual revenues so reported. If the COMPANY fails to pay the entire amount of compensation due the CITY, through error or otherwise, within the times allotted for payment in subsection 2. of this section, the amount of the fee due for that 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 penalty.

4. **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 CITY may have for further or additional sums payable under the provisions of this franchise agreement. All amounts paid shall be subject to audit and recomputation by the CITY; and all records required to conduct such an audit shall be made available to the CITY auditor and shall be limited to cable system operations and remain proprietary and confidential; and shall be provided at the expense of the COMPANY.
5. **Compensation not a Credit Against Certain Taxes and Fees:** Nothing contained in this franchise agreement shall give the COMPANY any credit against any nondiscriminatory business tax or *ad valorem* property tax now or hereafter levied against real or personal property within the CITY; or against any local improvement assessment imposed on the COMPANY; or against any permit fees or inspection fees required by the construction codes or other ordinances of the CITY 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 16.1 of this franchise agreement, the COMPANY 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 \$15,000. Evidence of the surety/agreement shall be on file with the CITY and shall thereafter be filed annually. The bond or agreement shall be so conditioned that, in the event that COMPANY 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 CITY 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 COMPANY shall have satisfied in full any and all obligations to the CITY which arise out of or pertain to said franchise. In lieu of the bond or agreement, COMPANY may deposit cash with the CITY, or in a federal or State of Oregon bank or savings and loan association, on terms and conditions approved by the CITY and the COMPANY. Neither the provisions of this section nor any damages recovered by the CITY thereunder,

nor any withdrawal from any cash deposit, shall be construed to excuse faithful performance by the COMPANY or to limit the liability of the COMPANY 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 the franchise, COMPANY shall furnish to the CITY 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 thirty (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:** COMPANY shall indemnify and save the CITY 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 CITY, a good and sufficient insurance policy (or policies) covering \$1,000,000.00 combined single limit liability 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 CITY 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 CITY 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 COMPANY hereunder which may in any way cause liability by reason thereof.

4. **Reimbursement of Costs:** The COMPANY shall pay all justifiable expenses incurred by the CITY 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 COMPANY 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 thirty (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 provisions of this franchise agreement nor any insurance accepted by the CITY pursuant hereto, nor any damages recovered by the CITY thereunder, shall be construed to excuse faithful performance by the COMPANY under the franchise agreement for damages, either to the full amount of the bond or otherwise. Nor shall maintenance of this insurance pursuant to this section be construed to impose liability to third parties or COMPANY 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 COMPANY, shall be repaired fully and promptly by the COMPANY.
2. **Removal of Facilities Upon Request:** Upon termination of service to any subscriber, the COMPANY shall remove promptly all its above ground external facilities and equipment from the premises at the subscriber's or the owner's request.
3. **Complaint Procedures and Inquiries:** The CITY is committed to assuring quality service for its citizens who subscribe to cable services. The CITY will make every effort to monitor, require a response, and effect change whenever such quality is perceived by subscribers as insufficient.
 - a. COMPANY 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 COMPANY and of the office procedures followed to satisfy these complaints, shall be maintained by the COMPANY for a period of not less than three (3) years, and be made available for inspection by the commission on reasonable notice to the COMPANY. This record shall be considered by the commission in evaluating the system.

- c. All complaints not resolved during initial customer contact will be followed up by the COMPANY.
 - i. The COMPANY will ascertain customer satisfaction or lack therefore within two (2) days following the resolution offered or performed by the COMPANY.
 - ii. Non-resolved complaints or those extending over four or more days, consecutively or in recurrence, will be forwarded to the cable commission in written form on a monthly basis.
 - iii. The COMPANY will provide the CITY, within fifteen (15) days of the end of the month, a monthly "trouble report" identifying customer complaints. The COMPANY will provide sufficient explanatory responses to inquiries from the CITY regarding complaints and shall provide written summaries, basic analysis, or specific detail as requested by the CITY.

4. Maintenance of Service

- a. COMPANY shall maintain a repair and troubleshooting team which shall respond to subscriber complaints within two (2) service days after receipt of the complaint, other than as may be due to circumstances beyond the reasonable control of the COMPANY. No charge shall be made to the subscriber for maintenance of company-owned facilities. Repairs shall be accomplished at the convenience of the subscriber by having the COMPANY set an appointment or schedule a repair. The COMPANY 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. COMPANY shall put, keep, and maintain all parts of the cable communications 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 commission, casts doubt on the reliability of the quality of the cable service, the commission shall have the right and authority to compel the COMPANY to test, analyze, and report on the performance of the system. Such test or tests shall be made in accordance with Section 7.5 of this franchise agreement and the reports of such test or tests shall be delivered to the commission within seven (7) 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.

Any other information pertinent to the special test(s) shall be recorded and reported.

- d. At the commission's option, said tests and analyses shall be supervised at the COMPANY's expense by a professional engineer not in the permanent employ of the COMPANY. The aforesaid engineer shall sign all records of special tests and forward the same to the commission within the time prescribed, with a report interpreting the results of the tests, and recommending actions to be taken by the commission and/or the COMPANY.
- e. In addition to testing under section 12.4.d, the commission may at any time employ, at its own expense, a registered, qualified engineer to test, analyze, and report on the performance of the system. COMPANY agrees to make all of its testing equipment available at no charge or cost to the engineer selected by the commission to perform these tests.

5. **Monitoring and Cable Tapping Prevention:** COMPANY shall not monitor or tap any subscriber terminal unless such procedures are necessary to insure the proper functioning of the system or unless prior written authorization from the subscribers affected is first obtained.

6. **Sale of Subscriber Lists Prohibited:** The COMPANY 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 COMPANY's service.

7. **Company Rules, Regulations:** The COMPANY 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 COMPANY to exercise its rights and to perform its obligations under this franchise agreement. Two (2) 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 CITY. An additional copy thereof shall be maintained for public inspection during normal business hours at COMPANY's office in the City of Stayton; and no such rules, regulations, terms, conditions, or amendments, additions, or deletions thereto, shall take effect unless and until so filed.

8. **Equal Employment Requirements:** COMPANY shall adhere strictly to the equal employment opportunity requirements of the FCC, as expressed in Section 76.13(a)(3) and 76.311 of Chapter I and Title 47 of the Code of Federal Regulations. COMPANY shall comply at all times with all other valid and applicable federal, state, city, and county laws relating to non-discrimination.
9. **Theft of Service:** It shall be unlawful for any person to obtain cable communication by tapping into communication lines (or by any other means) to avoid making payment for the service. Violators will be prosecuted under criminal law of the State of Oregon.

SECTION 13.: REPORTS AND RECORDS

1. Annually, within one-hundred and fifty (150) days after the close of the fiscal year for which the financial records of the COMPANY are maintained, COMPANY shall file with the commission 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 of plans for expansion and improvement of the system during the next fiscal year.
 - f. The financial status of the cable communications system as allowed by the FCC. This report shall be signed by an authorized agent of the corporation and an accountant who participated in its preparation or review.
2. **Copies of Reports:** Copies of all petitions, applications, and communications submitted by the COMPANY 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 communications system, authorized pursuant to this franchise agreement, shall also be submitted simultaneously to the CITY.

3. **Costs of Reports:** The cost of preparing and furnishing the commission the records and reports required by this section shall be borne by the COMPANY.
4. **Documentation:** Documentation for the financial report required above shall be made available for inspection by the CITY at the COMPANY's expense. It shall be the responsibility of the CITY to protect any proprietary or confidential material or information provided by the COMPANY.

SECTION 14.: SOLICITATION BY COMPANY

COMPANY may solicit subscribers for any of the COMPANY's services through house-to-house or place-to-place solicitation without the necessity of obtaining a license, permit, or other form of approval from the CITY, provided COMPANY shall maintain an up-to-date list of solicitors, filed with the CITY and the local law enforcement agencies.

SECTION 15.: 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 communication matters. To this end, the procedures set forth in subparagraphs 2. and 3. below may be implemented upon the election of either the CITY or COMPANY 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 subparagraph 4. below, but only upon agreement of both the CITY and the COMPANY. 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 CITY and the COMPANY, but the costs and expenses of any court action arising from a dispute between the CITY and the COMPANY shall be borne by the non-prevailing party, pursuant to Section 18. of this franchise agreement.
2. **Fact Finding:** Any controversy or dispute upon the election of either the CITY or the COMPANY 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 CITY or the COMPANY 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 CITY and the COMPANY, 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 ORSA 33.210 through 33.340.
5. **Selection Procedures**
 - a. In the case of fact finding or mediation, both parties shall present a maximum of three (3) names each for possible service or 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 CITY, one person shall be named by the COMPANY, and the third person shall be named by agreement between the CITY and the COMPANY. 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 16.:

DURATION, RENEWAL, AND RENEGOTIATION

1. **Duration and Renewal:** This franchise agreement and the rights and privileges granted herein shall take effect thirty (30) days after the date this adopting ordinance has been approved by the CITY and shall remain in effect for five (5) years from that date unless terminated sooner under provisions of subsection 4. of this section; provided, however, the terms of the franchise must be unconditionally accepted by the COMPANY, in writing, signed by an officer of the COMPANY, within thirty (30) days after the date this franchise agreement is approved by the CITY. At the end of the initial 5-year term, at the discretion of the CITY, this franchise agreement may be

renewed for an additional five (5) year period upon a showing by the COMPANY that it is in substantial compliance with the terms and conditions of the franchise agreement and is rendering service commensurate with standards generally adhered to in the cable television industry.

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 commission shall 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 in Section 5.;
 - ii. Service extension policies set forth in section 6., including but not limited to changes in urban service boundaries affecting areas to be served by the COMPANY;
 - 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 7.;
 - iv. New technological, regulatory, or legal developments affecting the franchise, COMPANY operations, or CITY's regulatory authority hereunder, including changes in FCC authority, rules, or regulations; and
 - v. The franchise fee set forth in section 10.
- b. The COMPANY shall be represented at these meetings by a representative of the COMPANY authorized to speak on behalf of the COMPANY on questions of COMPANY practice, policy, plans, or other matters concerning the cable communications system in the franchise territory.
- 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 15. herein, without need of further agreement to arbitrate, as otherwise required in Section 15.4. Upon decision of the arbitrator(s), this franchise agreement shall be amended to the extent necessary to implement said decision.

4. Termination

- a. The CITY reserves the right to terminate this franchise agreement, and all rights and privileges pertaining hereto, in the event that:
 - i. The COMPANY 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 COMPANY deliberately fails to operate the system without prior approval of the city council without just cause; or
 - iii. The COMPANY intentionally evades any of the provisions of this franchise, or is found to have practiced any fraud or deceit upon the CITY or any subscriber.
- b. Prior to any termination proceedings under this section, the COMPANY shall be given sixty (60) days' prior notice, in writing, which notice shall state with particularity the grounds upon which the CITY relies. If, at the end of the sixty day period, the COMPANY has not cured the matter to the CITY's satisfaction, which provides grounds for termination, the franchise shall be subject to termination at the CITY's election.

SECTION 17.: CHANGE OF OWNERSHIP

1. Transfers and Assignments

- a. This franchise agreement shall not be assigned or transferred, either in whole or in part; or leased, sublet, or mortgaged in any manner; nor shall title thereto, either legal or equitable; or any right, interest, or property therein, pass to or vest in any person without the prior written consent of the CITY. The COMPANY may, however, transfer or assign the franchise to a wholly-owned subsidiary of the COMPANY and such subsidiary may transfer or assign the franchise back to the COMPANY without such consent. The proposed assignee must show financial responsibility as determined by the CITY and must agree to comply with all provisions of the franchise agreement. The CITY shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to the COMPANY within sixty (60) days following receipt of written notice of the proposed transfer or assignment.
- b. The COMPANY shall promptly notify the CITY of any actual or proposed change in or transfer of or acquisition by any other part or control of the COMPANY. 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 COMPANY shall make the franchise agreement subject to cancellation unless and until the CITY 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 CITY may authorize the commission to inquire into the qualifications of the prospective controlling party; and the COMPANY shall assist the commission in any such inquiry. If the CITY does not authorize an inquiry by the commission within thirty (30) days after notice of change or proposed change is received from the COMPANY, the CITY shall be deemed to have consented.

3. 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 COMPANY are honored. In the event that the COMPANY elects to overbuild, rebuild, modify, or sell the system, or the CITY gives notice of intent to revoke or fails to renew this franchise agreement, the COMPANY shall make a best effort to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. In the event of a change of COMPANY, or in the event a new operator acquires the system, the current COMPANY shall cooperate with the CITY in maintaining continuity of service to all subscribers, and shall be entitled to the revenues for any period during which the COMPANY operates the system.
- b. In the event the COMPANY fails to operate a substantial part of the system for seven (7) consecutive days without prior approval of the Stayton City Council or without just cause, the council may operate or cause to have operated the system until such time as a new operator is selected. If the council decides to fulfill this obligation for the COMPANY, the COMPANY shall reimburse the CITY for any costs, including attorneys fees or damages that are the result of the COMPANY's failure to perform.

4. **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 CITY 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 sixty (60) days following foreclosure, other judicial sale, or termination of such lease, or CITY shall be deemed to have approved such successor in interest to the COMPANY.

5. **Receivership:** The CITY shall have the right to terminate this franchise one-hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the COMPANY, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship have been vacated prior to the expiration of said 120 days, or unless:
- a. Within 120 days after the election or appointment, such receiver or trustee shall have fully complied with all provisions of this franchise and remedied all defaults thereunder; and
 - b. Such receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this franchise agreement.

6. **City Purchase of System Upon Expiration/Termination:**

- a. The CITY shall have the right to purchase the cable communication system in accordance with applicable federal, state, and local laws, upon expiration of the terms of this franchise agreement or any extension thereof, or in the event the CITY terminates the franchise prior to the end of the franchise term. Should the CITY decide to purchase the system, it shall do so at a price not to exceed its then fair market value. 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 to 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.

7. **Disposition of Facilities**

- a. Upon expiration or termination of the franchise, the COMPANY, upon request of the CITY, shall promptly remove all of its equipment above ground in the public right-of-way.
- b. In removing its equipment, the COMPANY 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 COMPANY'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 CITY has inspected and approved the condition of the public ways and places. The liability insurance and indemnity 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 COMPANY 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 CITY, or to the satisfaction of the CITY, the CITY may cause such work to be done and the COMPANY shall reimburse the CITY the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or the CITY may recover such costs as provided in Section 11.

SECTION 18. 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 19. PENALTIES

- a. For violations of this franchise agreement occurring without just cause or excusable neglect, the CITY may, at its discretion, assess penalties against the COMPANY in the amounts of damages plus costs.
- b. As a condition precedent to imposition of a penalty, the CITY shall give the COMPANY written notice specifying the nature of the COMPANY'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 COMPANY shall be subject to penalty if the violation of the franchise agreement is not cured within ten (10) days after notice is given; or, in the event the violation cannot be cured for reasons beyond the control of the COMPANY within ten days, it shall be sufficient if the COMPANY initiates all reasonable measures to cure the violation within ten days, provided that, in any event, the violation must be cured not later than sixty (60) days after notice is given. Notice shall be directed to the manager of the COMPANY.

SECTION 20.: REMEDIES NOT EXCLUSIVE

All remedies and penalties under this ordinance, on application of the COMPANY, 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 CITY 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 COMPANY pursuant to this franchise agreement. A specific waiver of a particular term, condition, or obligation imposed upon the COMPANY 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 21.: NEW DEVELOPMENTS

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

SECTION 22.: 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 CITY 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 COMPANY.

CITY OF STAYTON

Date: 2-17-96

By:

Willmer Van Vleet
WILLMER VAN VLEET, Mayor

Date: 2/15/96

By:

Thomas L. Barthel
THOMAS L. BARTHEL, City Administrator

SCS COMMUNICATIONS & SECURITY

Date: 2/14/96 By: Robert Schumacher

Date: _____ By: _____

APPROVED AS TO FORM:

Date: FEB 12 1996 By: David A. Rhoten
DAVID A. RHOTEN, City Attorney