

FILE NO. 991521

Amendment of the Whole

7/20/00

ORDINANCE NO. 204-00

1 [RCN Cable Franchise]
2 GRANTING A FIFTEEN YEAR FRANCHISE, WITH A FIVE YEAR EXTENSION OPTION, TO
3 RCN TELECOM SERVICES OF CALIFORNIA, INC. FOR USE OF THE PUBLIC RIGHTS OF
4 WAY WITHIN THE CITY AND COUNTY OF SAN FRANCISCO TO PROVIDE CABLE
5 SERVICES, CABLE INTERNET SERVICES AND OTHER SERVICES UPON PAYMENT OF
6 FIVE PERCENT OF GROSS REVENUES TO THE CITY AND COUNTY OF SAN
7 FRANCISCO.

8 Note: This entire section is new.

9 Be it ordained by the People of the City and County of San Francisco:

10 RECITALS. This Franchise is granted by the City and County of San Francisco, a municipal
11 corporation ("City"), to RCN Telecom Services of California, Inc., a California Corporation
12 ("Grantee") pursuant to Chapter 11 of the City's Administrative Code, as amended by
13 Ordinance No. 58-00.

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15 This Franchise is granted in reliance upon the following facts and circumstances:

- 16
17 1. The California Public Utilities Commission ("CPUC") issued a Certificate of Public
18 Convenience and Necessity ("CPCN") to Grantee to provide telecommunications services
19 in California pursuant to CPUC Decision No. 98-09-066.
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21 2. On September 17, 1998, the CPUC approved and adopted a Final Negative Declaration
22 ("Negative Declaration")(Docket No. I.95-04-044) for the issuance of the CPCN to Grantee.
23 The CPCN authorizes Grantee to provide facilities-based and resold local exchange,
24 interLATA and intraLATA telecommunications services throughout the State of California.

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- 1 3. Grantee is authorized by the Federal Communications Commission to provide interstate
2 interLATA telecommunications services.
- 3 4. Pursuant to its authority under federal, state, and local law, the City issued a Utility
4 Conditions Permit ("UCP") to Grantee on March 25, 1999, prescribing terms and
5 conditions for Grantee's use of the public rights of way in San Francisco to construct,
6 install, and maintain facilities in the public rights of way solely for the provision of
7 telecommunications services.
- 8 5. Grantee's UCP has been extended twice, once in September 1999 and again in March
9 2000. To date, Grantee covenants that it has complied with all of the terms and provisions
10 of the UCP and applicable law as it relates to the UCP.
- 11 6. Grantee is currently constructing, installing, and maintaining facilities in the public rights of
12 way and is authorized to provide telecommunications services within the City.
- 13 7. On July 30, 1999, Grantee submitted a written application for a cable system franchise
14 ("Application") to the Board of Supervisors ("Board") and on September 7, 1999 submitted
15 the necessary application processing fee.
- 16 8. Pursuant to the Application, Grantee sought authority to provide cable services, cable
17 internet service, and other service within the geographic area of the City and County of
18 San Francisco.
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- 1 9. The Department of Telecommunications and Information Services (“DTIS”) reviewed the
2 Application and on September 15, 1999 submitted a report to the Board and requested
3 information from Grantee necessary to complete its Application and for the Board to
4 evaluate Grantee’s proposal.
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- 6 10. The Application was referred by the Board to DTIS on October 25, 1999 in Resolution No.
7 976-99.
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- 9 11. By April 18, 2000, Grantee had provided all of the information requested by DTIS.
- 10 12. The City has authority pursuant to Article XI, Sections 7 and 9 of the California
11 Constitution, and Section 16.111 of its Charter, to grant a franchise to Grantee to install
12 facilities in the public rights of way and to provide services using such facilities.
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- 14 13. The City has authority pursuant to 47 U.S.C. section 541 of the Telecommunications Act to
15 grant a franchise to Grantee to install a cable system in the public rights of way and to
16 provide services using such facilities.
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- 18 14. On August 7, 2000 Grantee and the DTIS Director executed this Franchise, signifying
19 Grantee’s agreement to the terms and conditions contained herein, and the DTIS
20 Director’s recommendation of the terms and conditions contained herein to the Board.
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- 22 15.
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- 24 16. This Franchise will permit Grantee to provide cable services, cable internet service, and
25 other services within the geographic area of the City and County of San Francisco. In

1 resolution of the parties' dispute over the interpretation of the Ninth Circuit's decision in
2 Portland v. AT&T, Case No. 99-35609 (9th Cir. 6/22/00), the parties have agreed that the
3 terms and conditions of this Franchise, as they pertain to cable internet service, will be
4 tolled as of the effective date. Notwithstanding the tolling, Grantee has agreed to the
5 following obligations regarding cable internet service: (i) Grantee will voluntarily comply
6 with certain customer service requirements set forth in this Franchise during the tolling
7 period, although enforcement of those requirements is tolled; (ii) Grantee will pay the City
8 a fee on gross revenues received for the provision of cable internet service, and comply
9 with customer service requirements and enforcement mechanisms, if Grantee agrees to
10 do so elsewhere in California; and (iii) Grantee has agreed to be bound by any lawful
11 ordinance of the Board of Supervisors requiring Grantee and other persons granted a
12 franchise to provide cable or cable internet services to provide nondiscriminatory access to
13 broadband transport services and establish consumer protection standards regarding
14 cable internet service. The Board of Supervisors may terminate the tolling by resolution at
15
16 any time.
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18 17. In compliance with Charter Section 16.111 and Section 11.13(a) of Chapter 11 which
19 require a "competitive process" before a franchise is awarded, the City issued a request for
20 proposals on June 1, 2000 for the grant of a cable franchise, on terms and conditions
21 similar to those set forth herein. The notice was distributed to all facilities-based
22 telecommunications providers licensed to do business in the state of California, distributed
23 by mail and electronic mail to all cable overbuilders and Open Video System providers
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1 identified by DTIS in a review of national cable publications, published in the San
2 Francisco Independent and Multichannel News, and posted on the San Francisco
3 Telecommunications Commission's website.

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5 18.

6 No proposals were received in response to the request for proposals prior to the June 22,
7 2000 deadline.

8
9 19. In accordance with Chapter 11 of the Administrative Code, DTIS has submitted a final
10 report to the Board of Supervisors recommending approval of Grantee's proposed
11 Franchise. DTIS has determined that it is in the best interest of the City to award this
12 Franchise to Grantee.

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14 20. The Public Utilities and Deregulation Committee of the Board of Supervisors held a public
15 hearing on July 20, 2000 to consider the proposed Franchise and its procedural and
16 substantive impacts on the City. The Board has determined that this Franchise is
17 sufficient to meet current and future community needs and interests and that it is in the
18 best interest of the City to award this Franchise to Grantee. The Board also finds that this
19 Franchise will have numerous positive impacts on the City and consumers.

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21 21. Under this Franchise, Grantee will deploy advanced telecommunications infrastructure
22 and services to all San Francisco neighborhoods, including residential neighborhoods, and
23 provide an additional source of cable service and cable internet service to residents and
24 businesses.
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1 22. The Board finds that granting an additional cable television franchise within the
2 geographic area of the City may provide competition in the provision of cable service and
3 cable internet service.

4
5 23. Competition between Grantee and the incumbent cable television franchise holder may
6 result in lower prices for cable services and cable internet service, innovative service
7 offerings to consumers, and increased incentives for franchisees to provide high quality
8 customer service.

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10 24. Among other benefits, under this Franchise Grantee will provide additional channel
11 capacity, facilities, and support and for public, education, and government (“PEG”) access
12 cable television programming. Grantee has agreed to provide 7 PEG access channels.
13 Grantee has also agreed to a procedure for converting those channels into digital
14 equivalents at an equitable ratio for the City. Grantee has agreed to provide 17 video
15 feeds for PEG channels and PEG financial support, on a per subscriber basis, equivalent
16 to the support currently provided by the incumbent cable provider. Grantee has also
17 agreed to provide \$1.7 million, to be adjusted for inflation, in one-time grants for PEG
18 support over the first ten years of the Franchise.

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21 25. In addition, Grantee will pay to the City a five percent (5%) fee on gross revenues derived
22 from operation of the system to provide services to compensate the City for the benefits
23 derived from use of the public rights of way. Grantee will also pay all of the fees and taxes
24 required by applicable law, including the Street Damage Restoration Fee set forth in
25 Section 2.4.44 of the San Francisco Public Works Code.

1 26. Grantee will provide to the City, for City use, fiber optic infrastructure, cable service or
2 cable internet service and conduit for installing fiber optic infrastructure.

3 27. By the terms of this Franchise, Grantee has agreed to serve most locations within the
4 entire geographic area of the City.
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6 28. Grantee has also agreed to criteria for the deployment of its system that will preclude
7 discrimination on the basis of the income level or minority status of the residents of a
8 neighborhood and has agreed to specific provisions that explicitly prohibit discrimination.
9

10 29. Grantee will provide eligible low income subscribers a discounted rate on cable service
11 that should make cable service more affordable and may increase subscribership among
12 low income consumers.
13

14 30. Pursuant to the terms of the letter agreement dated ^{July 10, 2000} _____ and adopted by
15 Resolution of the Board No. ⁷³⁰⁻⁰⁰ _____, Grantee will also provide, at no cost to the City, cable
16 drops, cable modems, and cable internet services for use in a City-administered pilot
17 project designed to address and bridge the digital divide.
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19 31. Grantee has demonstrated that it has the technical and financial qualifications and ability
20 to provide cable service and cable internet service as authorized in this Franchise.

21 Grantee is currently providing such services to consumers in the New York, Boston and
22 Washington D.C. metropolitan areas. In addition, Grantee has begun offering service in
23 South San Francisco, Daly City, and San Mateo. As of March 31, 2000, Grantee was
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1 providing service to 266,000 consumers nationwide. Grantee currently has sufficient
2 financing to fund construction through 2003.

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4 32. The technical capabilities and performance standards of the proposed facilities are equal
5 to or exceed those generally being deployed on a large scale for residential consumers
6 throughout the nation and currently within the City.

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8 33. An additional cable television system in the City appears to be economically feasible.
9 Grantee intends to provide and generate revenue from not only cable service, but cable
10 internet service and telecommunications service as well. The combination of these
11 revenue streams increases the viability of an additional cable system.

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13 34. Grantee has committed to meeting all of the City's construction and physical requirements
14 for the proposed system.

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16 35. The Board finds that this Franchise will not cause unreasonable disruption or
17 inconvenience to existing users of utility poles, public easements, or public rights of way.
18 Under this Franchise, Grantee will arrange for any necessary relocation of facilities on
19 poles, public easements, and public rights of way at its own cost.

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21 36. Grantee's use of poles, public easements, and public rights of way is unlikely to have any
22 significant impact on future use by existing occupants. However, to the extent that
23 Grantee occupies space on utility poles, public easements, and public rights of way there
24 may be less space for subsequent entrants.

1 37. By the terms of this Franchise, Grantee has agreed to be subject to all governing
2 applicable law as it is now and as it may be adopted, including all policies and procedures
3 that the City adopts governing the placement of facilities in the public right of way. Those
4 policies and procedures may mitigate any aesthetic impact due to additional cables,
5 nodes, and power supplies attached to utility poles or additional utility boxes placed in the
6 public right of way by Grantee pursuant to its authorization under this Franchise.
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8 38. Grantee has demonstrated its commitment to abide by City conditions, applicable law and
9 the terms of the Franchise by agreeing to enforcement mechanisms and strong incentives
10 for compliance.
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13 39. The Director of the City's Planning Department has found that the grant of this Franchise
14 was in conformity with the City's General Plan and consistent with the Eight Priority
15 Policies of City Planning Code Section 101.1.
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18 40. The Environmental Review Officer of the City's Planning Department, by letter dated
19 May 29, 2000 (the "Environmental Review Letter"), a copy of which is on file with the Clerk
20 of the Board of Supervisors, determined that the City may act as a responsible agency in
21 the grant of this Franchise pursuant to CEQA Guidelines Section 15381. The
22 Environmental Review Letter analyzes the potential impacts from the grant of this
23 Franchise in accordance with CEQA Guidelines Section 15164.
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1 41. The Board of Supervisors has reviewed and relied upon the Negative Declaration, the
2 Environmental Review Letter, and the above-referenced public hearing by the Public
3 Utilities and Deregulation Committee for the basis of its actions. The Board of Supervisors
4 finds on the basis of the whole record before it that the Negative Declaration is adequate
5 and complete. In exercising its independent judgment, the Board of Supervisors concurs
6 with and adopts the findings and conclusions made in the Negative Declaration and the
7 Environmental Review Letter, and incorporates said findings and conclusions as though
8 fully set forth herein. The Board of Supervisors also finds, on the basis of substantial
9 evidence and in light of the whole record, that there have been no changes to the
10 proposed activities, no changes to the circumstances surrounding the proposed activities
11 have occurred, and no new information has become available, since adoption of the
12 Negative Declaration that would alter the findings set forth therein.
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15 42. The Board of Supervisors finds that, while the proposed construction activities associated
16 with this Franchise may be potentially disruptive at each location that is under construction
17 for the duration of that construction, the activities would not result in impacts that exceed
18 those generally accepted in an urban environment where construction work is a fact of life.
19 With implementation of the mitigation measures set forth in the Negative Declaration, the
20 Environmental Review Letter and this Franchise, site specific impacts will be mitigated to a
21 less than significant level, and the project overall will not have a significant adverse effect
22 on the environment.
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1 43. The mitigation measures included in the Negative Declaration and Environmental Review
2 Letter are adopted as conditions of approval to this Franchise and will be implemented as
3 set forth in the Negative Declaration and the Environmental Review Letter. The City's
4 Department of Public Works and DTIS will enforce and monitor implementation of the
5 Mitigation Measures through the permitting process.
6

7 In consideration of the mutual covenants, terms and conditions set forth herein, the receipt
8 and sufficiency of which are hereby acknowledged, and intending to be legally bound, the City
9 and Grantee agree as follows:

10 Preamble: The above recitals are incorporated into this Franchise. Each party represents
11 that the recitals are true and correct as they relate to that party's acts.
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13 **PART 1 – DEFINITIONS**

14 **Section 1. DEFINITIONS.** For purposes of this Franchise, the following terms, phrases,
15 words, abbreviations and their derivations, when capitalized, shall have the meanings given
16 herein. When not inconsistent with the context, words used in the present tense include the
17 future tense; words in the plural number include the singular number; and words in the
18 singular number include the plural number. The words "shall" and "will" are mandatory.
19 "May" is permissive. The use of the term "including," "such as" or words of similar import
20 when following any general term, statement or matter shall not be construed to limit such
21 term, statement or matter to the specific items or matters, whether or not language of non-
22 limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all
23 other items or matters that could reasonably fall within the scope of such statement, term or
24 matter. Unless expressly stated otherwise, words not defined herein shall be given the
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1 meaning given them in Chapter 11, and if not defined therein, their common and ordinary
2 meaning. To the extent there is any difference between a definition set forth in this Franchise
3 and a definition set forth in Chapter 11, the definition used in this Franchise shall govern.
4 References to governmental individuals or entities refer to those individuals, entities, or their
5 successors in authority. Unless expressly stated otherwise, if specific provisions of law
6 referred to herein are renumbered or amended, then the reference shall be read to refer to the
7 renumbered or amended provision.

8 **(a)** "Accepted the Partial System" shall have the meaning set forth in Section 8(c)
9 below.

10 **(b)** "Accepted the Final System" shall have the meaning set forth in Section 8(c)
11 below.

12 **(c)** "Affected Service" shall have the meaning set forth in Section 52(b) below.

13 **(d)** "Agent," when used with reference to either party to this Franchise, means the
14 members, officers, directors, commissioners, employees, agents, contractors and
15 subcontractors of such party, and their respective heirs, legal representatives, successors and
16 assigns, when acting under this Franchise.

17 **(e)** "Affiliate," when used in relation to any Person, means another Person who
18 owns or Controls, is owned or Controlled by, or is under common ownership or Control with,
19 such Person.

20 **(f)** "Analog Channel" means a six (6) Megahertz (MHz) frequency band.

21 **(g)** "Analog PEG Channel" shall have the meaning set forth in Section 49(a)
22 below.

23 **(h)** "Applicable Law" means all applicable Federal, State, and City laws,
24 ordinances, codes, rules, regulations and orders, as the same may be amended or adopted
25 from time to time.

1 **(i)** "Attorneys Fees and Costs" means any and all attorneys' fees, costs,
2 expenses and disbursements, including, but not limited to, expert witness fees and costs,
3 travel time and associated costs, transcript preparation fees and costs, document copying,
4 exhibit preparation, courier, postage, facsimile, long-distance and communications expenses,
5 court costs and the costs and fees associated with any other legal, administrative or
6 alternative dispute resolution proceeding, fees and costs associated with execution upon any
7 judgment or order, and costs on appeal.

8 **(j)** "Bandwidth" means the extent of the range of frequencies between minimum
9 and maximum endpoints measured in megahertz (MHz).

10 **(k)** "Board" means the City's Board of Supervisors.

11 **(l)** "Board Approval" means the approval of the San Francisco Board of
12 Supervisors by resolution or ordinance, as applicable, and the approval of the Mayor unless
13 the Mayor's disapproval is overridden by the Board of Supervisors. Board approval shall not
14 be deemed to have occurred unless and until the applicable resolution or ordinance becomes
15 effective in accordance with Applicable Law.

16 **(m)** "Bona Fide Institutional Lender" means any one or more of the following: (1) a
17 savings bank, a savings and loan association, a commercial bank or trust company, an
18 insurance company, a real estate investment trust, or any other Person which, at the time a
19 pledge in trust or mortgage is recorded in favor of such Person, has assets of at least
20 \$500 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged
21 in the financial services business; or (2) any special account, managed fund, department,
22 agency or Affiliate of any of the foregoing; or (3) any Person acting in a fiduciary capacity for
23 any of the foregoing. For purposes hereof: (1) acting in a "fiduciary capacity" shall be deemed
24 to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan
25 agreement, indenture or other loan document; and (2) a lender, even if not a Bona Fide

1 Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if, no more than
2 thirty (30) City business days after such loan is consummated, the note(s) or other evidence
3 of indebtedness or the collateral securing the same are assigned to a Person then qualifying
4 as a Bona Fide Institutional Lender.

5 (n) "Cable Drop" shall have the meaning set forth in Section 46 below.

6 (o) "Cable Internet Service" means "Online Computer Services" and "Internet
7 Access," as those terms are defined in Section 65003 of the California Revenue and Taxation
8 Code as of the Effective Date, that are offered using any of Grantee's Facilities in the
9 Required Service Area.

10 (p) "Cable Service" means the one way transmission to Subscribers of video
11 programming or other programming service and Subscriber interaction, if any, required to
12 select or use such video programming or other programming service.

13 (q) "Capacity" means the maximum transmission capability of the System. The
14 Capacity for the System can be expressed in terms of bandwidth measured in hertz (cycles
15 per second) between minimum and maximum endpoints.

16 (r) "Channel" means both Analog Channels and Digital Channel Equivalents.

17 (s) "Chapter 11" means Chapter 11 of the San Francisco Administrative Code, as
18 it may be amended from time to time.

19 (t) "City" means the City and County of San Francisco, a municipal corporation of
20 the State of California.

21 (u) "City business day" shall mean each Monday through Friday, excluding any
22 day recognized as an official holiday by the City.

23 (v) "City Conduit" shall have the meaning set forth in Section 47(a) below.

24 (w) "City Deposit" shall have the meaning set forth in Section 54(b) below.

25 (x) "C/N" shall have the meaning set forth in Section 49(g)(3) below.

1 **(y)** “Communications Project Grant” shall have the meaning set forth in Section
2 45(e).

3 **(z)** “Complete Construction Schedule” shall have the meaning set forth in Section
4 17(a)(3) below

5 **(aa)** “Complete Outage” means loss of picture and sound on all Channels to one or
6 more Subscribers.

7 **(bb)** “Completion Notices” shall have the meaning set forth in Section 8(c) below.

8 **(cc)** “Construction Sequence Plans” shall have the meaning set forth in Section
9 17(a) below.

10 **(dd)** “Control” means the power to control the affairs and key decisions of another
11 Person, in whatever manner exercised, whether directly or indirectly.

12 **(ee)** “CPI-U” means the Consumer Price Index for All Urban Consumers (base
13 years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the
14 United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that
15 the base year differs, the Index shall be converted in accordance with the conversion factor
16 published by the United States Department of Labor, Bureau of Labor Statistics. If the Index
17 is discontinued or revised during the Term, such other government index or computation with
18 which it is replaced shall be used in order to obtain substantially the same result as would be
19 obtained if the Index had not been discontinued or revised. Adjustments in CPI-U shall be
20 calculated by comparing the CPI-U most recently published with the CPI-U in effect on
21 February 1, 2000. If the CPI-U has increased, then the sum or amount payable on the
22 calculation date shall be set by multiplying the sum or payment by a fraction, the numerator of
23 which is the CPI-U as of the calculation date and the denominator of which is the CPI-U in
24 effect on February 1, 2000.

25 **(ff)** “CPUC” means the California Public Utilities Commission.

- 1 **(gg)** "CULCOP" shall have the meaning set forth in Section 6(d) below.
- 2 **(hh)** "Demarcation Point" shall be the point within a building or otherwise
3 designated by the City where Grantee's fiber terminates.
- 4 **(ii)** "Deposits" shall have the meaning set forth in Section 54(b) below.
- 5 **(jj)** "Digital Channel Equivalent" means the portion of the Capacity of the System
6 required to deliver a digital video Signal, with accompanying audio, meeting or exceeding
7 National Television System Committee ("NTSC") quality standards.
- 8 **(kk)** "DTIS" means the City's Department of Telecommunications and Information
9 Services.
- 10 **(ll)** "DTIS Director" means the Director of DTIS, or his or her designee.
- 11 **(mm)** "DPW" means the City's Department of Public Works.
- 12 **(nn)** "EAS" shall have the meaning set forth in Section 43(i) below.
- 13 **(oo)** "Effective Date" means 60 days after approvals.
- 14 **(pp)** "Eligible Employee" shall have the meaning set forth in Chapter 12-O of the
15 San Francisco Administrative Code.
- 16 **(qq)** "Excavator" means "Utility Excavator" as defined in Section 2.4.4(s) of the
17 City's Public Works Code.
- 18 **(rr)** "Extended Term" shall have the meaning set forth in Section 2(h)(1) below.
- 19 **(ss)** "Facilities" includes any physical element of the System used in connection
20 with, or designed to be used in connection with, the provision of Services or
21 Telecommunication Services, whether or not located in the Public Rights-of-Way, including,
22 without limitation, Hubs, Nodes, the Hub Ring, the Headend, pedestals, cabinets, ducts and
23 conduits (whether empty or occupied), transformers, equipment, drains, handholds, lines,
24 manholes, poles, power supplies and generators, splice boxes, surface location markers,
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1 vaults, tunnels, amplifiers, power guards, coaxial cables, and fiber strands (whether active or
2 dark).

3 **(tt)** "FCC" means the Federal Communications Commission.

4 **(uu)** "Fiber Drop" shall have the meaning set forth in Section 45(b) below

5 **(vv)** "Fiber Optic Infrastructure" or "FOI" means the Fiber Strands and Fiber Drops
6 provided by Grantee to the City pursuant to Section 45 below.

7 **(ww)** "Fiber Route" shall have the meaning set forth in Section 9(b) below.

8 **(xx)** "Fiber Strands" shall have the meaning set forth in Section 45(a) below.

9 **(yy)** "Final System" means the System as it is required to be constructed, installed
10 and operating as of the fifteenth anniversary of the Effective Date pursuant to Section 8(a)
11 below.

12 **(zz)** "Financial Arbitration" shall have the meaning set forth in Section 51(i)(5)
13 below.

14 **(aaa)** "Financial Arbitrator" shall have the meaning set forth in Section 51(i)(5) below.

15 **(bbb)** "First Report" shall have the meaning set forth in Section 17 below.

16 **(ccc)** "First Source Hiring Agreement" shall have the meaning set forth in Section
17 91(a) below.

18 **(ddd)** "Franchise" means this Ordinance No. 204-00 of the City's Board of
19 Supervisors, as it may be amended from time to time, and all the terms and conditions
20 thereof. "Franchise" shall not mean or include any license or permit required for the privilege
21 of transacting and carrying on a business within the City as required by other ordinances or
22 laws of the City, including, without limitation: (1) any permit, agreement or authorization
23 required in connection with operations on public streets or property such as permits and
24 agreements for placing devices on or in poles, conduits or other structures, whether owned by
25 the City or a private entity, or for excavating or performing other work in or along Public

1 Rights-of-Way; and (2) express or implicit authorization to provide Service to, or install
2 Facilities on, private property without owner consent.

3 (eee) "Grantee" means RCN Telecom Services of California, Inc., and any lawful
4 permitted successor or assign.

5 (fff) "Gross Revenues" means any and all income, receipts, consideration and
6 other revenue of any kind or nature, including but not limited to the value of goods or services
7 received in-kind or in a barter arrangement, derived by Grantee or any Affiliate from the
8 operation or use of the System to provide Service within the Required Service Area. The use
9 of the phrase "within the Required Service Area" does not limit Gross Revenues to those
10 generated solely from operations within the City. Rather, Gross Revenues include any
11 revenues derived in any part through or in connection with the operation of the System,
12 including, but not limited to, such portion as is attributable to the Required Service Area, in
13 accordance with general accounting principles, of advertising or other revenues generated on
14 a regional or national basis from Grantee's operations both within and outside the City. Gross
15 Revenues include, by way of illustration and not limitation: any amounts or fees collected from
16 Subscribers, regardless of how they are enumerated on the bill, including subscriber fees,
17 capacity fees, usage-based fees, installation fees, disconnection fees, reconnection fees,
18 change-in-service fees, late fees, and administrative fees; revenues derived from other
19 Persons using the System, including without limitation, Lessees, except to the extent such
20 Persons pay a franchise fee to the City for the use of the System; revenues received from
21 programmers for carriage of programming on the System; revenues from rentals or sales of
22 Service-related equipment; advertising revenues; revenues from program guides; revenues
23 from home shopping channels; and any other revenues derived from Grantee's operations in
24 the City. This provision shall be read broadly to prevent the avoidance of franchise fees by
25 Grantee through special billing techniques or bundling of Services, or arrangements with

1 Affiliates. Gross Revenues shall not include: (i) any taxes on Services that are imposed
2 directly on any Subscriber or user by the State, City, or other governmental unit and which are
3 collected by Grantee on behalf of said governmental unit; (ii) actual bad debt write offs to the
4 extent consistent with generally accepted accounting principles consistently applied, provided
5 however, that any part of such bad debt that is written off but subsequently collected shall be
6 included in Gross Revenues; or (iii) amounts paid by a Subscriber but subsequently refunded
7 to the Subscriber. The franchise fee required pursuant to Section 11 below is not such a tax,
8 and Grantee shall not exclude from Gross Revenues amounts collected from Subscribers that
9 are attributable to Grantee's payments of franchise fees to the City or that are designated on
10 Subscriber bills as franchise fees. Gross Revenues shall not be reduced by the amount of
11 any costs or expenses incurred by the Grantee, including but not limited to amounts
12 attributable to the franchise fee.

13 **(ggg)** "Hazardous Material" means any material that, because of its quantity,
14 concentration or physical or chemical characteristics, is deemed by any federal, state or local
15 governmental authority to pose a present or potential hazard to human health or safety or to
16 the environment. Hazardous Material includes, without limitation, any material or substance
17 defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the
18 Comprehensive Environmental Response, Compensation and Liability Act of 1980
19 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections
20 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any
21 "hazardous waste" as defined in Section 25117 or listed pursuant to Section 25140 of the
22 California Health & Safety Code; any asbestos and asbestos containing materials whether or
23 not such materials are part of any Facilities to be constructed on the Public Rights-of-Way by
24 or on behalf of Grantee, or are naturally occurring substances on, in or about the Public

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1 Rights-of-Way, and petroleum, including crude oil or any fraction thereof, and natural gas or
2 natural gas liquids.

3 **(hhh)** "Headend" means the point in the System where all Signals are collected and
4 formatted for transmission on the System.

5 **(iii)** "Hub" means the equipment in the distribution system that receives Signals
6 from the Headend for transmission to a number of Nodes.

7 **(jjj)** "Hub Area" shall have the meaning set forth in Section 9(a) below.

8 **(kkk)** "Hub Ring" means Grantee's backbone fiber optic cable loop which
9 interconnects all of Grantee's Hubs in the geographic area of the City.

10 **(lll)** "Incremental Labor and Materials Costs" means the actual, out-of-pocket
11 additional labor and materials cost incurred by the Grantee for a specific activity performed for
12 the benefit of the City that Grantee would not have incurred but for the City's request.
13 Incremental Labor and Materials Costs must be supported by appropriate invoices, which may
14 include a certified bill of labor, payroll and/or bill of materials.

15 **(mmm)** "Indemnified Parties" means City, including, but not limited to, all of its boards,
16 commissions, departments, agencies and other subdivisions; all of the Agents of the City, and
17 all of their respective heirs, legal representatives, successors and assigns, and each of them.

18 **(nnn)** "Indemnify" means indemnify, protect, defend, reimburse and hold harmless
19 forever.

20 **(ooo)** "Initial Term" shall have the meaning set forth in Section 2(g) below.

21 **(ppp)** "Loan" shall have the meaning set forth in (kkkkk) below.

22 **(qqq)** "Local Channel" shall have the meaning set forth in Section 50 below.

23 **(rrr)** "Local Origination Programming" means Programming produced in
24 San Francisco or containing San Francisco-related content.

1 **(sss)** "Loss" or "Losses" when used with reference to any Indemnity means any and
2 all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable
3 consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and
4 other proceedings, judgments and awards and costs and expenses, (including, without
5 limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs).

6 **(ttt)** "Material Breach" means a breach of this Franchise that has a substantial
7 and significant effect on the rights or benefits either party to the Franchise has secured
8 pursuant to the Franchise. Material Breach shall include, but not be limited to, those breaches
9 designated as such in this Franchise and in Chapter 11. Additionally, any breach not
10 identified as a Material Breach in this Franchise may become a Material Breach if it occurs
11 frequently or remains uncured for such a length of time that it has a substantial and significant
12 effect of the rights or benefits of either party to this Franchise.

13 **(uuu)** "Mid-Term Report" shall have the meaning set forth in Section 51(b) below.

14 **(vvv)** "Mid-Term Technical Review" shall have the meaning set forth in Section
15 51(a) below.

16 **(www)** "Mitigation Measures" shall have the meaning set forth in Appendix 3 below.

17 **(xxx)** "Negotiation Period" shall have the meaning set forth in Section 52(a) below.

18 **(yyy)** "Node" means the equipment that receives Signals from a Hub and
19 redistributes the Signals to individual Subscribers.

20 **(zzz)** "Node Area" shall have the meaning set forth in Section 9(a) below.

21 **(aaaa)** "Normal Business Hours" means a total of sixty (60) hours per week and
22 shall include the hours between 9:00 a.m. and 6:00 p.m. Monday through Friday and 10:00
23 a.m. and 6:00 p.m. on Saturday. The remaining seven (7) hours shall include some hours
24 after 6:00 p.m. during the week.

25 **(bbbb)** "NTSC" shall have the meaning set forth in (jj) above.

1 **(cccc)** "One Year Construction Plan" shall have the meaning set forth in Section
2 17(a)(1) below.

3 **(dddd)** "Option" shall have the meaning set forth in Section 2(h)(1) below.

4 **(eeee)** "Option Notice" shall have the meaning set forth in Section 2(h)(1) below.

5 **(ffff)** "Partial System" means the System as it is required to be constructed,
6 installed and operating as of the eighth anniversary of the Effective Date pursuant to Section
7 8(a) below.

8 **(gggg)** "PEG Channel" means any Analog Channel or Digital Channel Equivalent
9 designated for transmission of public, educational or governmental audio, video and/or digital
10 Signals pursuant to the requirements of Section 49 below.

11 **(hhhh)** "PEG Digital Channel Equivalents" shall have the meaning set forth in
12 Section 49(b) below.

13 **(iiii)** "PEG Operating Contributions" shall have the meaning set forth in Section
14 48(a) below.

15 **(jjjj)** "PEG Signal" means the audio, video, and/or digital Signal generated by a
16 public, educational, or governmental source for transmission over a PEG Channel.

17 **(kkkk)** "Person" means any individual, group, company, partnership, association,
18 joint stock company, trust, corporation, society, syndicate, club, business, or governmental
19 entity. Person shall not include the City.

20 **(llll)** "Pesticide Ordinance" shall have the meaning set forth in Section 90 below.

21 **(mmmm)** "Programming" means any video, audio, text or data coded Signals carried
22 over the System.

23 **(nnnn)** "Proposal" shall have the meaning set forth in Chapter 11.

24 **(oooo)** "Proposed Ordinance" shall have the meaning set forth in Section 51(b)
25 below.

1 **(pppp)** "Public Rights-of-Way" shall have the meaning set forth in Chapter 11.

2 **(qqqq)** "Quarterly Meeting" shall have the meaning set forth in Section 18 below.

3 **(rrrr)** "Quarterly Reports" shall have the meaning set forth in Section 17.

4 **(ssss)** "Required Service Area" means the entire geographic area within the legal
5 boundaries of the City and County of San Francisco, including any property owned by
6 governmental and quasi-governmental entities.

7 **(tttt)** "Residential Unit" means a residence, whether located in a single family
8 residence, lodging house, apartment building, condominium, cooperative building, or
9 dormitory, or any other type of residential dwelling unit.

10 **(uuuu)** "Revocation" means the City's affirmative act of Terminating this Franchise.

11 **(vvvv)** "SAP" shall have the meaning set forth in Section 49(g)(4) below.

12 **(wwww)** "Scheduled Appointment" means a scheduled time with a Subscriber for
13 service, installation or disconnection, specified by date, not to exceed a four (4) hour window
14 in which a service representative shall arrive.

15 **(xxxx)** "Security Interest" shall have the meaning set forth in Section 54(a) below.

16 **(yyyy)** "Service" means all of the Services Grantee is permitted to provide under this
17 Franchise pursuant to Section 2(b) below. "Service" shall not include Telecommunications
18 Service unless and until Applicable Law permits local governments to require telephone
19 corporations in California to obtain a local Franchise or pay fair and reasonable compensation
20 for the use of the Public Rights-of-Way in connection with the provision of
21 Telecommunications Service.

22 **(zzzz)** "Service Interruption" means loss of picture or sound on one or more
23 Channels to one or more Subscribers.

24 **(aaaaa)** "Signal" means any electromagnetic or optical energy transmitted over the
25 FOI or over the System from one location to another.

1 **(bbbb)** "Street Furniture Policy" shall have the meaning set forth in Section 7(b)
2 below.

3 **(cccc)** "Subscriber" means the City, except where expressly stated otherwise, and
4 any Person who legally receives any Service from Grantee. "Subscriber" shall include
5 residential, commercial, industrial, public and institutional customers.

6 **(dddd)** "Subscriber Deposit" shall have the meaning set forth in Section 54(b) below.

7 **(eeee)** "System" means the totality of Grantee's Facilities owned, constructed,
8 installed, or operated to provide Services or Telecommunication Services in the Required
9 Service Area.

10 **(ffff)** "System Acceptance Tests" shall have the meaning set forth in Section 36(a)
11 below.

12 **(gggg)** "Telecommunications Service" means any service regulated by the CPUC or
13 the FCC as a telecommunications service and provided to customers by Grantee in its
14 capacity as a telephone corporation regulated by the CPUC and certificated pursuant to recital
15 Number 1 above.

16 **(hhhh)** "Term" shall have the meaning set forth in Section 2(g) below.

17 **(iiii)** "Termination" means the conclusion of a Franchise by any means, including,
18 but not limited to, by expiration of its term, abandonment, or Revocation.

19 **(jjjj)** "Termination Date" shall have the meaning set forth in Section 52(b)(1)
20 below.

21 **(kkkk)** "Transfer" means any transaction in which: (1) all or a portion of any
22 Facilities or any rights to use or operate Facilities located in the Public Rights-of-Way are sold,
23 conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole
24 or in part, directly or indirectly, by one or more transactions to another Person, whether
25 voluntarily or by operation of law or otherwise; or (2) there is any change, acquisition, or

1 transfer in the identity of the Person in Control of Grantee, or any Person that controls
2 Grantee, including, without limitation, forced or voluntary sale, merger, consolidation, or
3 receivership; or (3) the rights or obligations under the Franchise are sold, conveyed,
4 transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part,
5 directly or indirectly, by one or more transactions to another Person, whether voluntarily or by
6 operation of law or otherwise. It will be presumed, for purposes of clause (2) above, that any
7 transfer or cumulative transfer of a voting interest by a Person or group of Persons acting in
8 concert of twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or
9 any change in the managing general partners of a Grantee is a change of Control. "Transfer"
10 does not include: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the
11 transmission of a commodity or electronic signal using Facilities on a common carrier basis;
12 (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224,
13 California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in
14 trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a
15 Bona Fide Institutional Lender in connection with a loan or other financing required to secure
16 the construction, operation, or repair of the Facilities ("Loan") provided that such Loan is
17 subject to the rights and powers of the City pursuant to the Franchise and Applicable Law,
18 including, without limitation, the right of the City to approve any Transfer upon foreclosure.
19 "Transferring" and "Transferee" shall have correlative meanings.

20 (lllll) "TSC" shall have the meaning set forth in Section 45(e) below.

21 (mmmmm) "Two Year Construction Plan" shall have the meaning set forth in Section
22 17(a)(2) below.

23 (nnnnn) "Update" shall have the meaning set forth in Section 17(c)(3) below.

24 (ooooo) "Video Feeds" shall have the meaning set forth in Section 49(g)(2) below.

25 (ppppp) "WDS" shall have the meaning set forth in Section 91(a) below.

1 notify the City before providing Telecommunications Services. Grantee's failure to obtain City
2 approval prior to providing any service not authorized pursuant to this Franchise shall be a
3 Material Breach of this Franchise.

4 **(c) Telecommunications Services.** Subject to the conditions set forth in subparts
5 (a) through (d) of this subsection, the City hereby acknowledges and agrees (i) that Grantee
6 may operate and use its Facilities to provide Telecommunications Services and shall not be
7 liable for payment of franchise fees on Gross Revenues from the operation of the System to
8 provide Telecommunications Services pursuant to Part 4 below, and (ii) that the Utility
9 Conditions Permit issued to Grantee which became effective on March 29, 1999 as modified
10 by Modifications 1 and 2, shall expire pursuant to its terms, and Grantee shall not be required
11 to obtain another Utility Conditions Permit pursuant to Section 11.9 of Chapter 11. The City's
12 acknowledgment and agreement is subject to the following conditions: (a) There is no change
13 in §7901 of the California Public Utilities Code or its interpretation, which, as of the Effective
14 Date, is interpreted to prohibit local governments from requiring telephone corporations in
15 California to obtain a local Franchise or pay fair and reasonable compensation for use of the
16 Public-Rights-of-Way in connection with the provision of Telecommunications Services; (b)
17 Grantee maintains a current Certificate of Public Convenience and Necessity from the
18 California Public Utilities Commission authorizing Grantee to provide Telecommunications
19 Services, or other successor authorization presented to the City pursuant to subpart (d) below
20 and accepted by the City, and (c) Grantee is in compliance with all the provisions of its
21 Certificate of Public Convenience and Necessity from the California Public Utilities
22 Commission or other successor authorization presented to and accepted by the City; and (d)
23 Grantee provides the City written notice within 10 City business days of any material
24 modification to its Certificate of Public Convenience and Necessity. Grantee shall promptly
25 provide to the City a copy of any modification to its Certificate of Public Convenience and

1 Necessity. If, at any time, any of the aforementioned conditions are not satisfied, DTIS may
2 deem the acknowledgment and agreement set forth in this subsection to be null and void
3 upon 20 City business days written notice to Grantee, may require RCN to apply for a UCP
4 pursuant to Section 11.9 of Chapter 11, or may require Grantee to obtain any other lawful
5 authorization that it may deem appropriate in its sole discretion. With the exception of the
6 franchise fee requirements of Part 4 below, notwithstanding their use to provide
7 Telecommunications Services, Grantee's Facilities and the operation and use of its Facilities
8 and System shall be subject to all the terms and conditions of this Franchise.

9 **(d) Cable Internet Services.**

10 (1) RCN disputes the City's authority to include Cable Internet Services as part of
11 this Franchise and to charge a franchise fee therefor as a result of the decision of the U.S.
12 Court of Appeals for the Ninth Circuit in AT&T v. City of Portland, Case No. 99-35609, filed
13 June 22, 2000. The City asserts that it has such authority under the California Constitution,
14 California law, and the San Francisco Charter and Codes (collectively, "State and Local Law"),
15 notwithstanding the Portland decision.

16 (2) As a result of the Portland decision, the City agrees that as of the Effective Date
17 of this Franchise, the terms and conditions of this Franchise as they pertain to Cable Internet
18 Service shall be tolled and City shall not enforce such terms and conditions against Grantee,
19 nor shall Grantee have any obligation to comply therewith during such tolling; provided,
20 however, the City may terminate this tolling at any time at its sole discretion, by resolution by
21 the City's Board of Supervisors, so long as and to the extent City is permitted to enforce such
22 provisions against Grantee under Applicable Law. If City terminates the tolling, it shall do so
23 by ninety (90) days' prior written notification of such termination to Grantee. Upon termination
24 of such tolling, Grantee shall comply with all of the applicable terms and provisions of this
25 Franchise as they pertain to Cable Internet Services. Nothing in the foregoing tolling is an

1 admission by the City or by Grantee of the current state of Applicable Law, and neither party
2 has waived any rights by agreeing to this current tolling. The City acknowledges and agrees
3 that Sections 3(c), 3(e), and 52(a) shall not apply with respect to any challenge by Grantee
4 upon the City's notification to Grantee of any termination of the tolling relative to Cable
5 Internet Service. In addition, with regard to Cable Internet Service, the procedures set forth in
6 this Section shall be followed prior to application of Section 52(b) below.

7 (3) Notwithstanding the foregoing, (a) in the event Grantee pays a fee to, or complies
8 with customer service requirements or agrees to any enforcement mechanisms in connection
9 therewith for the benefit of, any municipality in the State of California in connection with the
10 provision of Cable Internet Services, Grantee shall promptly notify the City of same and shall
11 pay an equivalent fee to, and comply with equivalent customer service and enforceability
12 requirements for the benefit of, the City under this Franchise, and (b) Grantee further agrees
13 during the tolling to comply with the customer service requirements in Sections 27, 28, 29 and
14 30 of this Franchise, not subject, however, to the provisions of Section 59 and 60, in
15 Grantee's provision of Cable Internet Service. Grantee further agrees to be bound by any
16 lawful ordinance adopted by the City's Board of Supervisors that may: (i) require Grantee and
17 other persons granted a franchise to provide Cable Service or Cable Internet Service within
18 the City to provide internet service providers with nondiscriminatory access to broadband
19 transport services; and (ii) establish consumer protection standards for Cable Internet Service
20 or requirements for access to information, data and programming generally available on the
21 internet that may be accessed using Grantee's Facilities.

22 (e) **Type Of Franchise.** For purposes of distinguishing between a Cable System
23 Franchise and an OVS Franchise under Chapter 11, this Franchise is granted for a Cable
24 System.

1 **(f) Effective Date.** Provided it has been accepted by Grantee pursuant to Section
2 11.13 of Chapter 11, the Term of this Franchise shall commence (the "Effective Date") on the
3 effective date of the ordinance of the San Francisco Board of Supervisors enacting this
4 Franchise.

5 **(g) Term.** The term of this Franchise shall be fifteen (15) years, commencing upon
6 the Effective Date (the "Initial Term"), subject to Grantee's right to extend the Initial Term as
7 set forth in subsection (h) below. The Initial Term as it may be extended is referred to herein
8 as the "Term."

9 **(h) Extension Option.**

10 (1) Extended Term. The City hereby grants to Grantee the option (the
11 "Option") to extend the Initial Term of this Franchise for an additional five (5) year period (the
12 "Extended Term"). The Extended Term shall be on the same terms and provisions as the
13 Initial Term, excluding the right to an additional five (5) year extension. Grantee may exercise
14 the Option, if at all, by giving written notice to the City of the exercise of the Option (the
15 "Option Notice") not more than thirty-six (36) months and not less than thirty (30) months
16 before the expiration of the Initial Term. Submission of an Option Notice shall constitute
17 submission of a Proposal for purposes of the Proposal Fee required pursuant to Section 11.11
18 of Chapter 11 but shall not otherwise constitute a proposal within the meaning of Section
19 11.1(z) of Chapter 11. If Grantee fails to exercise the Option during this period, the Option
20 shall terminate and be of no further force or effect. Time is of the essence with respect to the
21 date of delivery for the Option Notice and all other dates relative to the Option, and failure to
22 exercise by such date shall absolutely and finally waive the Option. Any extension of the
23 Initial Term shall be governed by the procedures and processes set forth in this Section 2(g)
24 without resort to the Revocation procedures and processes set forth in Section 11.16
25 [Franchise Revocation] of Chapter 11.

1 (2) Conditions Precedent: Lack of Breach. Grantee's right to exercise the
2 Option is subject to the following: (i) if Grantee is in Material Breach of this Franchise on the
3 date of giving the Option Notice, the Option Notice will not be effective; (ii) if Grantee is in
4 Material Breach on the date the Extended Term is to commence, the Option will terminate and
5 the Term will not be extended; and (iii) if Grantee is in breach of any provision of this
6 Franchise, but such breach is not deemed a Material Breach as defined herein, on the date of
7 giving the Option Notice or on the date the Extended Term is to commence, the Option Notice
8 shall be effective and the Term will be extended so long as Grantee cures the breach within
9 the time periods required hereunder. Notwithstanding anything to the contrary set forth in
10 Section 59(d) below regarding the City's right not to give certain notices after multiple
11 violations within a calendar year, the City agrees that it shall give to Grantee written notice of
12 any known breach existing on the date of the Option Notice; provided, nothing in this section
13 shall require the extension of, or an additional, cure period. If the Extended Term commences
14 but then Grantee does not cure the breach within the required time period, the Extended Term
15 will terminate on the date that Grantee's cure rights expire. If, at the time of giving the Option
16 Notice or at the commencement of the Extended Term, there is a breach which is capable of
17 being cured by the payment of money but which is subject to a good faith dispute between
18 Grantee and the City, Grantee may timely exercise the Option and extend the Initial Term if on
19 or before such exercise or extension Grantee deposits into an escrow account with a title
20 company or other escrow holder selected by the City an amount estimated by the City to be
21 required to cure the breach plus interest at the rate of the City's pooled funds, together with
22 instructions that such money shall be held for any payment to the appropriate party upon
23 resolution of the dispute.

24 (3) Conditions Precedent: System Acceptance. Without limiting the
25 foregoing, Grantee's right to extend the Initial Term is also subject to the following: (i) Grantee

1 shall have completed the Partial System on or before the end of the eighth (8th) year of the
2 Initial Term, and the City shall have Accepted the Partial System; (ii) Grantee shall have
3 completed construction of the Final System on or before the end of the Initial Term, and the
4 City shall have Accepted the Final System; and (iii) Grantee shall have provided to City the
5 Fiber Optic Infrastructure for the City's use as and when required in accordance with Section
6 45 below. The City's Acceptance or Rejection of the Partial System and the Final System
7 shall occur per the terms of Section 8(c) below. Because the initial Term may expire before
8 the City Accepts or Rejects the Final System, commencement of the Extended Term shall not
9 be deemed an Acceptance of the Final System or a waiver of this condition, and this
10 Franchise will extend, if Grantee has satisfied all other conditions set forth in this (h), on a
11 conditional basis until such time as the City Accepts or Rejects the Final System, and shall
12 terminate if the City Rejects the Final System pursuant to Section 8(c) below.

13 (4) Documentation with Notice of Exercise. In order to be effective, an Option
14 Notice must be delivered to the City at the address set forth in Section 62 below, and must
15 include a written statement by an authorized representative of Grantee certifying (i) the
16 percentage of the System which is completed, the Services then being offered, and an
17 estimate of the date on which the System will be complete, (ii) the absence of any Material
18 Breach or other known breach of Grantee, (iii) the continued truth and accuracy of all
19 representations and warranties of Grantee set forth in this Franchise, or, if there have been
20 any changes, a detailed explanation of the changes; and (iv) the absence of any pending or
21 threatened legal proceedings or actions against Grantee which may affect the Franchise or
22 Grantee's ability to Operate the System or provide Service or Telecommunications Service. It
23 is the intent of the parties that DTIS shall independently verify Grantee's compliance with this
24 Franchise, and accordingly Grantee shall forward to DTIS, within ten (10) days following
25 request, any and all additional documents relating to the Franchise, the Services, and/or

1 Grantee's performance, as may be reasonably requested by DTIS following receipt of
2 Grantee's Option Notice and following Grantee's completion of the System.

3 (5) DTIS Agreement to Extend Term. Following receipt of the Option Notice
4 and all documentation as set forth above but before the commencement of the Extended
5 Term, DTIS shall determine, in its reasonable discretion, whether Grantee is in compliance
6 with this Franchise and has satisfied all of the conditions set forth in this (h) (except for
7 Acceptance or Rejection of the Final System which may occur after commencement of the
8 Extended Term). If DTIS determines that Grantee is in compliance and has satisfied all
9 conditions, DTIS shall inform Grantee that the Extended Term will commence subject to
10 termination if (i) Grantee breaches this Franchise between the date of DTIS' notice and the
11 date the Extended Term commences and Grantee fails to cure any breach within the required
12 cure period as set forth in subsection (2) above; (ii) the City Rejects the Final System as set
13 forth in Section 8(c) below; or (iii) Grantee does not pay any amounts owed to the City
14 pursuant to subsection (d) of Section 11.11 of Chapter 11 (Proposal Fee). If DTIS determines
15 that Grantee is not in compliance or has otherwise failed to satisfy any of the conditions set
16 forth in this (h) (except for Acceptance or Rejection of the Final System), DTIS shall notify
17 Grantee of such decision and the reasons therefore (the "City's Rejection Notice"), and this
18 Franchise shall terminate at the later of (i) the end of the Initial Term, or (ii) Grantee's receipt
19 of the City's Rejection Notice. Upon satisfaction of all conditions set forth in this (h) (including
20 but not limited to Acceptance of the Final System), DTIS shall notify Grantee and City shall be
21 deemed to have granted "Final Consent to the Extended Term."

22 (6) Effect of Grantee's Submission of Option Notice and Renewal Notice. If
23 Grantee submits both an Option Notice pursuant to this Section and a renewal notice
24 pursuant to Section 11.15 of Chapter 11 or 47 U.S.C. Section 546(a), the DTIS Director may,
25 in his or her sole discretion, after taking any steps necessary to commence proceedings in

1 compliance with federal law, suspend any proceedings thereunder. If and when the City has
2 granted Final Consent to the Extended Term, the renewal notice shall be null and void and
3 dismissed with prejudice. Upon Grantee's receipt of the City's Rejection Notice or upon the
4 City's Rejection of the Final System, Grantee may, within twenty (20) City business days elect
5 either to (i) release any claim Grantee may have to the Extended Term and, consistent with
6 any rights Grantee may have under 47 U.S.C. Section 546 and Section 11.15 of Chapter 11,
7 request that the DTIS Director continue any renewal proceedings that may have been
8 suspended pursuant to this subsection, or (ii) to waive any rights it may have under 47 U.S.C.
9 §546 and Section 11.15 of Chapter 11 and pursue any remedy it may have as a result of the
10 City's Rejection Notice or the City's Rejection of the Final System. If Grantee fails to make an
11 election within the time required, Grantee agrees that the Extended Term shall be of no force
12 and effect and the Franchise shall expire without reference to the Extended Term. Nothing in
13 this subsection shall limit Grantee's renewal rights under Applicable Law in relation to the
14 expiration of the Extended Term.

15 (7) Maximum Term. Upon the City's Acceptance of the Final System,
16 Grantee's rights and obligations under this Franchise shall then continue for the remainder of
17 the Extended Term subject to all of the terms and conditions of the Franchise.
18 Notwithstanding anything to the contrary contained herein, the maximum Term of this
19 Franchise shall not exceed twenty (20) years from the Effective Date.

20 (8) Lack of Waiver. The City's grant of the Extended Term or Acceptance of
21 the Final System shall not be deemed a waiver or release of any known or unknown breach or
22 Material Breach of this Franchise.

23 (i) **As Is Condition of City Property.** Grantee agrees that the use of the Public
24 Rights-of-Way is being offered by the City and accepted by Grantee in its "AS IS WITH ALL
25 FAULTS" condition. Grantee specifically acknowledges and agrees that neither the City nor its

1 Agents has made, and there is hereby disclaimed the making of, any representation or
2 warranty, express or implied, of any kind, with respect to the condition of the Public Rights-of-
3 Way or appurtenances thereto, or the suitability of the Public Rights-of-Way for Grantee's
4 intended uses. In connection with Grantee's use of the Public Rights-of-Way, Grantee hereby
5 releases the City from any and all claims relating to the matters set forth in this Section.

6 **Section 3. EFFECT OF ACCEPTANCE.** By executing and accepting this Franchise
7 Grantee hereby expressly, and for the benefit of the City:

8 (a) Accepts and agrees to comply with each provision of: (1) this Franchise; (2)
9 Chapter 11; and (3) any lawful future amendments to Chapter 11.

10 (b) Acknowledges and accepts the legal power of the City: (1) to require Grantee to
11 obtain this Franchise; (2) to grant this Franchise; and (3) to enforce this Franchise and
12 Applicable Law related to this Franchise;

13 (c) Agrees that this Franchise was granted pursuant to processes and procedures
14 consistent with Applicable Law, and that it will not raise any claim to the contrary, or allege in
15 any claim or proceeding by Grantee against the City that any provision, condition or term of
16 Applicable Law or this Franchise at the time of its acceptance was unreasonable, arbitrary, or
17 void, or that the City had no power or authority to make or enforce any such provision,
18 condition or term; provided, that nothing in the foregoing is intended to limit Grantee's ability to
19 challenge or dispute any interpretation of any provision of this Franchise.

20 (d) Agrees that it will not oppose intervention by the City in any proceeding affecting
21 the City's rights under this Franchise or the City's exercise of its regulatory authority.

22 (e) Releases, waives and discharges forever, to the maximum extent permitted by
23 Applicable Law, any and all claims, demands, rights, and causes of action against, and
24 covenants not to sue, the City and its Agents, under any present laws, statutes, or regulations,
25 arising out of any acts, omissions, or matters relating to this Franchise as of the Effective

1 Date. In connection with the foregoing release, Grantee acknowledges that it is familiar with
2 Section 1542 of the California Civil Code, which reads:

3 A general release does not extend to claims which the creditor does not know or suspect to
4 exist in his favor at the time of executing the release, which if known by him must have
5 materially affected his settlement with the debtor.

6 Grantee acknowledges that the release contained herein includes all known and unknown,
7 disclosed and undisclosed, and anticipated and unanticipated claims, demands, rights and
8 causes of action under any present laws, statutes or regulations arising out of any acts,
9 omissions, or matters relating to this Franchise as of the Effective Date. Grantee realizes and
10 acknowledges that it has entered into this Franchise in light of this realization and, being fully
11 aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542,
12 or any statute or other similar law now or later in effect. The foregoing release shall survive
13 the termination of this Franchise. Subject to the foregoing, the City and Grantee reserve all
14 other rights they may now or hereafter possess under Applicable Law, unless expressly
15 waived herein.

16 (f) Nothing in this Section 3 shall alter or limit Grantee's rights under Section 52
17 below.

18 **Section 4. TRANSFERS: CITY APPROVAL REQUIRED.** This Franchise is a privilege that
19 is in the public trust and personal and specific to Grantee and is granted in consideration of
20 the unique knowledge, skill and expertise possessed by Grantee. Consequently, the City and
21 other Subscribers shall not be required to accept performance of this Franchise from a third
22 party who has not submitted its qualifications for review and approval pursuant to Section
23 11.14 of Chapter 11. Any Transfer shall be subject to all the terms and conditions of Section
24 11.14 of Chapter 11. Any Transfer without the approval of the City as set forth in Chapter 11
25 shall be considered to impair the City's assurance of due performance, and may, at the City's

1 sole option, be voidable and/or constitute a Material Breach of this Franchise.

2 Notwithstanding anything to the contrary in this Franchise or other Applicable Law, until
3 expressly determined otherwise by the Board, Facilities constructed, installed, operated, or
4 used to provide Services or Telecommunications Services under this Franchise shall remain
5 subject to this Franchise and the payment of franchise fees regardless of any Transfer,
6 whether or not City approval was obtained.

7 **Section 5. NON-EXCLUSIVITY OF FRANCHISE.** Pursuant to Section 11.8 of Chapter 11,
8 this Franchise is non-exclusive and shall not affect the power of the City to grant any other
9 Person a Franchise or right to occupy or use the Public Rights-of-Way for the construction,
10 installation, operation or maintenance of any facilities, including a similar system within the
11 City, or the power of the City to use or permit the use of the Public Rights-of-Way for any
12 purpose whatsoever. Grantee hereby acknowledges the City's power to make such grants
13 and to use and permit such uses pursuant to Applicable Law.

14 **PART 3 – CONSTRUCTION OF SYSTEM**

15 **Section 6. CONDITIONS ON CONSTRUCTION.**

16 (a) **No Waiver.** Unless expressly stated otherwise herein, nothing in this Franchise
17 is intended to constitute a waiver in favor of Grantee of any construction, excavation, or
18 Facility placement requirement, or any fee, tax, charge, or assessment that may be required
19 by Applicable Law.

20 (b) **Grantee Shall Obtain All Necessary Permits And/Or Approvals.** Consistent
21 with Grantee's obligation to comply with all Applicable Laws, Grantee shall not commence any
22 construction, installation or relocation of Facilities within the Public Rights-of-Way until any
23 necessary permits and/or approvals have been issued by the proper City officials. Grantee
24 shall pay all fees required as a condition precedent to the issuance of any such permits and/or
25 approvals in accordance with the applicable rates and charges then in effect. Additionally, the

1 City may impose such conditions and regulations on a permit or approval as are necessary, in
2 the discretion of the City, consistent with Applicable Law, including, without limitation,
3 conditions imposed for the purpose of protecting and/or preserving the Public Rights-of-Way
4 and any structures in the Public Rights-of-Way, and the protection of the public or the
5 continuity of pedestrian or vehicular traffic over the Public Rights-of-Way.

6 **(c) Grantee Shall Submit Permit And Other Requests In A Timely Manner.**

7 Grantee shall apply for utility company pole and conduit agreements and all other necessary
8 and appropriate permits, Franchises, consents or approvals early enough so that ordinary
9 processing delays will not contribute to any failure of Grantee to meet the construction
10 schedule set forth in Section 8 below.

11 **(d) CULCOP Participation.** Grantee shall participate in DPW's Pavement

12 Management Program and the Committee for Utility Liaison on Construction and Other
13 Projects ("CULCOP") established by Section 5.63 of the San Francisco Administrative Code,
14 or any successor organization established by the City, in the manner prescribed by the DPW
15 Director. At a minimum, Grantee shall regularly attend CULCOP meetings and shall provide
16 its construction plans to DPW pursuant to Public Works Code Section 2.4.11 so as to
17 effectuate the excavation coordination goals of CULCOP and the Public Works Code.
18 Additionally, Grantee shall take all reasonable precautions to protect all other facilities located
19 in the Public Rights-of-Way.

20 **(e) Underground Service Alert.** In accordance with the provisions of Chapter 3.1

21 of Division 5 of Title I of the Government Code of the State of California (Section 4216 et
22 seq.), Grantee as an operator of a subsurface installation shall obtain and maintain
23 membership in a regional notification center (e.g., Underground Service Alert - Northern
24 California), and shall otherwise comply with the provisions of the referenced chapter, division
25 and title upon demand. Grantee shall furnish written proof of such membership to DPW within

1 10 days of the Effective Date. Repeal of any Law requiring such membership shall not negate
2 Grantee's obligation to maintain such membership.

3 **(f) Emergency Response Plan.** Prior to conducting any work in the Public Rights-
4 of-Way, Grantee shall provide to City a current emergency response plan identifying staff who
5 have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or
6 complaints resulting from the System.

7 **(g) Public Notices.** The Grantee shall endeavor to notify all residents concerning
8 the impact of the installation of its Facilities in a neighborhood in which it plans construction
9 prior to commencing construction and periodically during the course of its construction by
10 letter and when appropriate through neighborhood newspapers and neighborhood
11 associations. At a minimum, Grantee shall comply with the requirements of Section 2.4.50 of
12 the City's Public Works Code. For construction activities involving excavation that is
13 incidental to aerial construction, Grantee shall comply with Section 2.4.50(a) of the Public
14 Works Code even if such compliance is not otherwise required by the terms of Section
15 2.4.50(a). For all other excavation, Grantee shall comply with Section 2.4.50(b) of the Public
16 Works Code, even if such compliance is not otherwise required by the terms of Section
17 2.4.50(b). In addition, Grantee shall deliver written notice of its aerial construction activities to
18 affected residents not less than seventy-two (72) hours prior to commencing construction. All
19 notices issued to residents pursuant to this Section shall provide a toll free number that
20 residents may call to report problems or request additional information.

21 **Section 7. INSTALLATION OF FACILITIES.**

22 **(a) Guiding Principles.** Grantee shall construct, install, operate and maintain its
23 Facilities in accordance with the maps and other documents submitted pursuant to Part 5
24 herein. All Facilities shall be located, installed, constructed and maintained in a manner that
25 minimizes: (1) interference with vehicular or pedestrian traffic in the Public Rights-of-Way; (2)

1 visual blight; and (3) interference with the rights and convenience of property owners. The
2 erection and location of all Facilities in the Public Rights-of-Way shall be fixed with the prior
3 written approval and under the supervision of DPW.

4 **(b) New Policy Will Apply To Grantee.** Without limiting Grantee's obligations
5 under Section 74 below to comply with all Applicable Laws, Grantee understands and
6 acknowledges that at the time of the Effective Date, DPW, in conjunction with the
7 Telecommunications Commission, is in the process of developing policies and procedures to
8 address the placement of Facilities in the Public Rights-of-Way. This policy will likely address
9 the placement of those Facilities that have the effect of interfering with the use of the Public
10 Rights-of-Way or that create visual blight in the Public Rights-of-Way, including overhead
11 Facilities that may be installed on utility poles ("Street Furniture Policy"). Without limiting
12 Grantee's obligations under Section 74 below to comply with all Applicable Laws, Grantee
13 specifically understands and agrees that the City has not in this Franchise relinquished its
14 authority to adopt and enforce a Street Furniture Policy and that Grantee will be subject to the
15 Street Furniture Policy that is adopted by DPW. The adoption of the Street Furniture Policy
16 shall not excuse Grantee from any of its obligations under this Franchise. DPW shall apply
17 the Street Furniture Policy in a nondiscriminatory and competitively neutral manner to all
18 similarly situated Persons seeking to place facilities in the Public Rights-of-Way.

19 **(c) Installation Shall Be Permanent In Nature.** All Facilities installed in the Public
20 Rights-of-Way shall be of a permanent nature, using durable components, except where
21 maintenance or emergency repairs require the installation of temporary Facilities. Temporary
22 Facilities shall be replaced as soon as possible. Grantee shall notify DTIS in writing if
23 replacement of temporary Facilities will not be achieved within sixty (60) days of their
24 installation. Nothing in the foregoing shall be deemed to grant to Grantee a permanent right
25

1 or interest in the Public Rights-of-Way, or to limit the City's relocations rights as set forth in
2 any Applicable Law or permit.

3 **(d) Termination of Franchise.** Upon Termination of the Franchise, Grantee shall
4 transfer to City or remove all or any portion of the Facilities in accordance with Admin. Code
5 Sections 11.17 and 11.18. Grantee shall repair, at no cost to the City, any damage caused by
6 Grantee's removal of the Facilities.

7 **Section 8. CONSTRUCTION SCHEDULE AND CITY ACCEPTANCE.**

8 **(a) Service Obligation.** Grantee shall provide or offer to provide Services, which
9 shall include, at a minimum Cable Services and Cable Internet Services, at standard
10 installation rates and without any charge for extension of plant and pursuant to the terms of
11 Section 9(d) below, to (i) each Residential Unit in a building with an exterior wall within one
12 hundred fifty feet of any Public Right-of-Way or utility easement within the Required Service
13 Area, and (ii) each commercial, institutional, or public unit within one hundred fifty feet (150')
14 of Grantee's Facilities in any Public Right-of-Way or utility easement within the Required
15 Service Area installed pursuant to clause (i) above.

16 **(b) Construction Schedule.** Grantee shall complete construction of its Hub Ring
17 no later than the third anniversary of the Effective Date. On or before the eighth (8th)
18 anniversary of the Effective Date, Grantee shall complete construction of, and activate all of
19 its Facilities on the Public Rights-of-Way within Zones 1, 2, and 3, and within seventy-five
20 percent (75%) of Zone 4 (the "Partial System"), so that Grantee has the capability to provide
21 all of the Services offered by Grantee at that time to each Person within those areas who is
22 required to be served pursuant to subsection (a) above. On or before the fifteenth (15th)
23 anniversary of the Effective Date, Grantee shall complete construction of, and activate, all of
24 its Facilities on Public Rights-of-Way in the remainder of the Required Service Area so that
25 Grantee has the capability to provide all of the Services which are offered by Grantee at that

1 time to each Person in those areas who is required to be served pursuant to subsection (a)
2 above within the Required Service Area.

3 **(c) City's Acceptance.** Upon Grantee's completion of the Partial System and
4 Grantee's completion of the Final System, Grantee shall notify DTIS in writing of such
5 completion (the "Completion Notices"). To the extent not previously delivered by Grantee to
6 DTIS in a Quarterly Report or otherwise, the Completion Notices shall include as-built plans or
7 other materials designed to evidence the status of the System as it exists on the date of the
8 Completion Notice. Following a Completion Notice, Grantee shall perform the Partial or Final
9 System Acceptance Test in accordance with Section 36 below. Each System Acceptance
10 Test shall be completed no later than three (3) months following the delivery of the applicable
11 Completion Notice. Grantee shall notify DTIS upon completion of each System Acceptance
12 Test, which notice shall include (i) a copy of any written materials or reports which summarize
13 the test results, and (ii) a written statement from an authorized representative of Grantee
14 certifying that the Partial System or Final System, as applicable, has been completed, and
15 that it complies with this Franchise, FCC rules, and other Applicable Laws (or, if it does not so
16 comply, an explanation of the noncompliance and Grantee's plan and schedule for
17 remediating such noncompliance). Grantee shall also forward to DTIS, upon request, any
18 additional information requested by DTIS to confirm such compliance. DTIS shall determine,
19 in its reasonable discretion, whether the Partial System or the Final System, as applicable,
20 has been completed and is operating in accordance with the terms of this Franchise, FCC
21 rules and Applicable Law. If DTIS determines that the Partial or Final System has been
22 completed and is so operating, then DTIS shall so notify Grantee in writing and upon
23 Grantee's receipt of such notice, the City shall be deemed to have "Accepted" the Partial
24 System or the Final System. If DTIS determines that the Partial or Final System has not been
25 completed or is not so operating, then DTIS shall notify Grantee in writing and state the

1 reasons for the failure to Accept the Partial or Final System. If Grantee has not previously
2 been given notice of the failure or breach at issue and a cure period therefore per the terms of
3 this Franchise, then the DTIS notice shall include a statement of the corrective action that
4 Grantee must take and the period in which such action must be completed in order for DTIS to
5 Accept the Partial or Final System. If Grantee has previously been given notice of the failure
6 or breach at issue and a cure period per the terms of this Franchise and DTIS determines, in
7 its sole discretion, not to grant an additional cure period, then the DTIS notice will include a
8 statement that Grantee may petition the Board, by written notice sent to the president of the
9 Board requesting a hearing, to challenge DTIS' failure to Accept the Partial or Final System. If
10 Grantee does not petition the Board within fifteen (15) City business days following receipt of
11 the DTIS notice, or if the Board does not, acting in its sole discretion, overrule DTIS'
12 determination by duly enacted resolution passed within sixty (60) City business days following
13 Grantee's petition (or such extended period as may be granted by the Board), then the City
14 shall be deemed to have "Rejected" the Partial or Final System. A Rejection of the Partial or
15 Final System pursuant to the foregoing process shall not be deemed a Revocation of this
16 Franchise under Chapter 11. Nothing in the foregoing is intended to provide to Grantee the
17 right to extend the applicable dates for Acceptance of the Partial or the Final System, or to
18 require additional notices or cure periods for any breach or Material Breach for which a notice
19 or cure period has already been given.

20 **(d) Joint Excavation.** Notwithstanding the foregoing, throughout the Initial Term,
21 Grantee shall take advantage of every opportunity to participate in joint excavation in areas of
22 Zone 4 and Zone 5 where underground facilities are required and where installation of
23 Facilities will be required in order to meet Grantee's obligations pursuant to subsections (a)
24 above, provided that DPW determines that installation of dry utility facilities is feasible. This
25 provision shall not be read to expand any of Grantee's obligations pursuant to Article 2.4 of

1 the Public Works Code with respect to excavations solely to connect Facilities in the Public
2 Rights of Way to an individual building.

3 **(e) Completion Dates.** Grantee's failure to meet the completion dates for the
4 Partial System or Final System shall constitute a Material Breach of this Franchise. Any force
5 majeure delay incurred by Grantee, pursuant to Section 61 below, shall not be deemed to
6 extend the dates for completion of the Partial System or completion of the Final System as set
7 forth above unless Grantee satisfies each of the following requirements: (i) Grantee provides
8 to the City written notice within thirty (30) days following its reasonable determination that the
9 force majeure delay will impact Grantee's ability to complete the Partial System or Final
10 System on the required completion date; (ii) Grantee provides proof, to the reasonable
11 satisfaction of the City, that the force majeure delay will prevent Grantee from satisfying the
12 required completion date and that Grantee would have met the applicable completion date but
13 for the force majeure delay; and (iii) Grantee provides proof, to the reasonable satisfaction of
14 the City, that Grantee cannot, through commercially reasonable and diligent efforts, make up
15 for the delay within the time period remaining prior to the applicable completion date. In
16 addition to the above requirements and the requirements set forth in Section 61 below, (a) if
17 Grantee seeks to extend a completion date as a result of any delay relative to the failure to
18 obtain a City permit, the delay must be not less than thirty (30) days in duration (commencing
19 on the date that Grantee would have obtained the City permit but for the delay), and (b) if
20 Grantee seeks to extend a completion date as a result of a delay relative to the failure to
21 obtain a utility pole attachment, the delay must be not less than ninety (90) days in duration
22 (commencing on the date that Grantee would have obtained the utility pole attachment but for
23 the delay). It is understood and agreed that the completion dates in this Section 8 are a
24 material part of this Franchise, and that Grantee has sufficient time to complete construction
25 on or before these dates subject to extraordinary force majeure delays as set forth above. In

1 the event Grantee has established a force majeure delay that results in an extension of a
2 completion date as set forth above, the extension shall be for only so long as is required for
3 Grantee to complete construction working as quickly as commercially possible under all of the
4 facts and circumstances.

5 **Section 9. CONSTRUCTION SEQUENCE.**

6 (a) **System Description.** Grantee constructs its System by building a Hub to
7 provide Service in a particular geographic area ("Hub Area") and then installing Fiber to
8 connect the Nodes in the Hub Area to the Hub. All Hubs will be connected by a backbone
9 fiber optic ring ("Hub Ring"). Grantee represents and covenants: (1) that the System shall
10 contain no less than four (4) Hubs; and (2) that no more than six hundred and forty (640)
11 Nodes will be served by a single Hub. Grantee warrants: (1) that each Node will be
12 connected to its Hub via a fiber bundle consisting of an average of twelve (12) single-mode
13 fibers; and (2) that each Node will serve approximately one hundred and fifty (150)
14 Subscribers or potential Subscribers ("Node Area").

15 (b) **Location of Hubs.** Grantee shall locate each Hub within a geographic area
16 based upon the following criteria: geographic centrality to the Nodes designated for a Hub
17 Area, proximity to the Hub Ring, and the cost to lease or purchase real estate in which to
18 locate the Hub. Once a Hub location is established, Grantee shall identify the routes along
19 which Fiber will be constructed to connect each Node in the Hub Area to the Hub ("Fiber
20 Route").

21 (c) **Sequence of Construction of Fiber Routes.** Subject to any necessary
22 approvals and physical considerations, Grantee shall schedule the sequence of construction
23 of each Hub Area and each Fiber Route in a Hub Area based upon the following criteria: the
24 density of Residential Units along the Fiber Route, the percentage of the Fiber Route that will
25 be aerial Facilities, and the amount of excavation along a Fiber Route being performed by

1 other Excavators. Subject to any necessary approvals and to the extent physically practical,
2 Grantee shall first construct in a Hub Area and along those Fiber Routes in a Hub Area with
3 the highest density of Residential Units, those served by aerial Facilities, and those with a
4 significant amount of excavation being performed by other Excavators.

5 **(d) No Discrimination.** Grantee shall: (i) provide the same scope and quality of
6 Service throughout the City; (ii) shall not differentiate the technical qualities of its System in
7 any geographic area of the City, or plan, schedule or perform construction or Service
8 activation in a Hub Area, a Node Area, or of a Fiber Route in a discriminatory manner; or (iii)
9 otherwise discriminate against Persons located in a Hub Area, a Node Area, or along a Fiber
10 Route on the basis of the fact or perception of a Person's or area's income, race, color, creed,
11 religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic
12 partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV
13 status (AIDS/HIV status). Grantee's failure to comply with the non-discrimination provisions of
14 this subsection shall be a Material Breach of this Franchise.

15 **(e) Sequence of Service Activation.** Once a Fiber Route is constructed or under
16 construction, Grantee shall use its best efforts to activate its System in a sequential fashion
17 along the Fiber Route from the Node closest to the Hub to the Node furthest from the Hub.
18 Grantee shall activate a Node and offer Service within a Node Area as soon as possible after
19 completion of construction in a Node Area.

20 **(f) Construction and Activation.** Grantee shall commence construction and
21 installation of its System within 60 days of the Effective Date. Grantee shall diligently proceed
22 to construct and activate the System in a manner that reasonably enables Grantee to meet its
23 obligations pursuant to Section 8 above. At a minimum, Grantee shall construct at least sixty-
24 five (65) miles each year until the City has Accepted the Partial System. Nothing in this
25 Section shall be construed to limit the Grantee's obligations pursuant to Section 8 above.

1 Grantee's failure to satisfy the requirements of this Section shall constitute a Material Breach
2 of the Franchise.

3 **Section 10. UNDERGROUNDING.** Grantee shall not install overhead Facilities in the
4 Public Rights-Of-Way within Legislated Underground Districts, pursuant to San Francisco
5 Public Works Code Section 911, or in areas where utility services are provided by rear yard
6 feeds. Upon receipt of a demand from City pursuant to Applicable Law, Grantee shall, at no
7 cost to the City, replace any of its overhead Facilities with underground Facilities in
8 accordance with all Applicable Laws. As soon as possible, but no less than forty five (45) City
9 business days prior to any planned undergrounding, Grantee shall notify DTIS so that DTIS
10 may elect to have City Conduit installed pursuant to Section 47 below.

11 **PART 4 - FRANCHISE FEE PAYMENTS**

12 **Section 11. AMOUNT OF FRANCHISE FEE.** While the City does not agree that
13 franchise fees in such an amount adequately reflect the full value of the use of the Public
14 Rights-of-Way, Grantee shall pay the City a franchise fee equal to five percent (5%) of
15 Grantee's Gross Revenues.

16 **Section 12. PAYMENT.** Grantee's payment of franchise fees shall be subject to the
17 provisions of Chapter 11. Grantee shall make quarterly franchise fee payments pursuant to
18 Section 11.22 of Chapter 11 and shall owe interest on any late franchise fee payments
19 pursuant to Section 11.27 of Chapter 11. All franchise fees and any other payments due to
20 the City hereunder shall be paid by Grantee to the City, without offset or prior demand, in
21 immediately available funds of the United States of America at the address for notices to the
22 City specified in this Franchise or to such other Person or at such other place as the City may
23 from time to time designate by written notice to Grantee. Grantee's failure: (1) to place any
24 disputed amount of franchise fees in an escrow fund pursuant to Section 11.26 of Chapter 11
25 within 30 days following written demand from the City; or (2) to make two successive quarterly

1 franchise fee payments to the City in full as and when required hereunder shall constitute a
2 Material Breach of this Franchise.

3 **Section 13. GRANTEE RESPONSIBILITY FOR FEES OF THIRD PARTIES.** Grantee
4 shall fully cooperate with the City in collection of franchise fees owed to the City by any
5 Person using Grantee's Facilities.

6 **Section 14. ACCEPTANCE OF PAYMENT NOT A RELEASE.** No acceptance by the City
7 of any franchise fee payment shall be construed as an accord that the amount paid is in fact
8 the correct amount owed, nor shall such acceptance of such franchise fee payment be
9 construed as a release or waiver of any claim the City may have for additional sums payable
10 or any known or unknown breach of this Franchise.

11 **PART 5 - REPORTING REQUIREMENTS**

12 **Section 15. REQUIRED REPORTS AND NOTICES.** Grantee shall comply with the
13 reporting requirements of Article IV of Chapter 11. In addition, Grantee shall give City notice
14 promptly of any material deficiency in the System including, but not limited to, any of the
15 following: (i) material defects in construction or installation; (ii) deterioration or obsolescence
16 of the System which has caused any material portion of it to become dysfunctional; and
17 (iii) failure to meet any material requirement of any regulatory agency with jurisdiction.

18 Grantee shall promptly develop and implement a plan to address any such deficiency, and
19 shall make, upon request, periodic reports to City of its progress in correcting such deficiency

20 **Section 16. FAILURE TO COMPLY.** Grantee's failure to provide reports as required by
21 this Franchise and Article IV of Chapter 11 may be a Material Breach of this Franchise.

22 **Section 17. INFORMATION DUE DURING SYSTEM CONSTRUCTION.** No later than ten
23 (10) City business days after the Effective Date of this Franchise, Grantee shall provide to
24 DTIS the information described in this Section ("First Report"). Thereafter, Grantee shall
25 provide such information to DTIS every three (3) months, on the same day of the month as

1 the First Report was due, or the next City business day, if the day is not a City business day,
2 until the City has Accepted the Final System ("Quarterly Reports"). Both the First Report and
3 the Quarterly Reports shall be provided in a paper and electronic form acceptable to the DTIS
4 Director.

5 **(a) Construction Sequence Plans.** Grantee shall provide DTIS with System
6 construction plans, as described below, showing the anticipated sequence of Grantee's
7 construction ("Construction Sequence Plans"). The Construction Sequence Plans shall
8 contain all information at a level of detail and in a form acceptable to the Director of DTIS.
9 Grantee shall also include written summaries regarding its planned sequence of construction
10 with both the One and Two Year Construction Plans, providing information sufficiently detailed
11 for the City to establish that its construction projections comply with the criteria set forth in
12 Section 9 above.

13 **(1) One Year Construction Plan.** One set of Construction Sequence Plans
14 shall include Grantee's anticipated construction sequence for no less than one (1) year from
15 the date the plan is provided to the City ("One Year Construction Plan"). The One Year
16 Construction Plan shall designate which quarter of the year the Grantee intends to begin the
17 construction in each area scheduled for construction.

18 **(2) Two Year Construction Plan.** One set of Construction Sequence Plans
19 shall include Grantee's anticipated construction sequence for no less than two (2) years from
20 the date the plan is provided to the City ("Two Year Construction Plan"). The Two Year
21 Construction Plan shall designate which quarter of the year the Grantee intends to begin the
22 construction in each area scheduled for construction.

23 **(3) Complete Construction Schedule.** One set of Construction Sequence
24 Plans shall include Grantee's anticipated construction schedule for the entire Required
25 Service Area over the term of this Franchise ("Complete Construction Schedule").

1 **(b) Certifications.** Grantee shall include a written certification with the Construction
2 Sequence Plans certifying that, to the best of its knowledge, Grantee shall not deviate by
3 more than fifteen percent (15%) from the construction sequence set forth in the One Year
4 Construction Plan (measured by total mileage) and that it shall not deviate by more than
5 twenty five percent (25%) from the construction sequence set forth in the Two Year
6 Construction Plan (measured by total mileage), and that it has not planned, and will not
7 execute, any construction sequence in a manner that would improperly discriminate against
8 any Person in violation of Section 9(d) above.

9 **(c) Technical Information.** Grantee shall provide the following technical
10 information to DTIS, in a form approved by the DTIS Director:

11 (1) **System Architecture Maps.** System architecture maps, of industry-
12 standard scale and using standard symbology, depicting all electronic and physical features of
13 the System;

14 (2) **System "Turn-Up" Maps.** A System "Turn-Up" Map which tracks the
15 Construction Sequence Plans provided to DTIS pursuant to subsection (a) above, stating
16 when Grantee anticipates Service will be provided in each Node Area and indicates where
17 Service is being offered; and

18 (3) **Explanation Of Deviation From Prior Construction Sequence Plans.**
19 Grantee shall construct the System substantially in accordance with the Construction Plans
20 submitted to the City. Upon deviating from such plans, Grantee shall submit a written
21 explanation and any necessary maps to clearly demonstrate how Grantee's actual System
22 construction has deviated from the representations made by Grantee in its System
23 Construction Plans submitted in its prior Quarterly Report to DTIS ("Update"). Deviations in
24 excess of the amounts set forth in (b) above in three successive reports may be deemed a
25

1 breach of this Franchise if Grantee does not submit a satisfactory explanation for such
2 deviation.

3 (4) **Location Of Hubs.** Hub locations, as they are designated, and a map
4 showing the anticipated Hub Areas.

5 (5) **As Built Maps.** As-built maps depicting all Facilities as actually installed
6 and constructed.

7 (6) **Fiber Route Maps.** A map of the fiber routes which will be constructed in
8 the next year which shows the number of strands in each cable segment, the location of
9 splices and the location of Nodes.

10 **Section 18. QUARTERLY MEETINGS.** No later than ten (10) City business days following
11 Grantee's production of its First Report and Quarterly Reports to DTIS pursuant to Section 17
12 above, Grantee shall meet with DTIS to review the First Report or Quarterly Report
13 ("Quarterly Meeting"). Among other things, DTIS shall work with Grantee to designate Fiber
14 Drop locations and City Conduit routes at the Quarterly Meetings. In addition, Grantee shall
15 consider any good faith changes suggested by the City to any construction plan. Failure to
16 submit two successive Quarterly Reports or attend two Quarterly Meetings shall constitute a
17 Material Breach of this Franchise.

18 **Section 19. INFORMATION DUE UPON REQUEST.** Grantee shall, no later than ten (10)
19 City business days after a written request, provide DTIS with the following information in
20 writing:

21 (a) Plans showing the exact location of Grantee's Headend, anticipated Hub
22 locations, and anticipated Hub Areas;

23 (b) Plans showing the location of the City's Fiber Drops, Cable Drops, and City
24 Conduit and manholes and when they will be available for City use;

25 (c) An Update, as described in Section 17(c)(3) above;

1 (d) Technical specifications for the Facilities installed, or intended to be installed, at
2 the Headend, Hubs, and Nodes, including, without limitation, amplifiers, other active and
3 passive devices, optical equipment, power supplies and other related equipment;

4 (e) A technical description of how Grantee intends to transmit PEG Signals to
5 Subscribers, including a description of the interconnection equipment that will be used, the
6 method of transport to the interconnection point (to the extent Grantee is responsible for any
7 connection or has obtained such information from any other cable operators involved in PEG
8 interconnection) and from the interconnection point to the System, and PEG Signal origination
9 and destination locations; and

10 (f) Documents setting forth Grantee's engineering guidelines and construction
11 practices in the geographic area of the City; and

12 (g) Such additional information or documents relating to this Franchise as is
13 reasonably requested by the City.

14 **Section 20. CUSTOMER SERVICE REPORTS.**

15 (a) **FCC Reports.** No later than ten (10) City business days after a written request
16 from DTIS, Grantee shall provide DTIS any and all customer service reports generated by
17 Grantee pursuant to 47 C.F.R. Section 76.309 or other Applicable Law.

18 (b) **Subscriber Complaint Reports.** Simultaneous with each Franchise Fee
19 payment, Grantee shall provide to DTIS, in a form acceptable to DTIS, a quarterly report
20 tracking each Subscriber complaint referred to Grantee by the City and each Subscriber
21 complaint escalated to the corporate office of Grantee or its Affiliates, how and when it was
22 received, the nature of the complaint, how and when it was responded to, whether the
23 complaint was referred to Grantee by the City, and the ultimate resolution of the issue. If a
24 complaint is not resolved at the end of the quarter, its resolution shall be reported in the
25 following quarterly report. The report shall quantify Grantee's response performance so that

1 City and Grantee may easily determine whether Grantee is meeting the requirements of
2 Section 30(f) below. Should Grantee become able to provide the information required by this
3 Section 20(b) for calls from Subscribers under this Franchise in addition to calls referred to
4 Grantee by the City and Subscriber complaints escalated to the corporate office of Grantee or
5 its Affiliates, Grantee shall also provide such additional information in its quarterly reports.

6 **Section 21. CITY REVIEW DOES NOT CONSTITUTE WAIVER.** The City's receipt and
7 review of any of the information provided to it, including, without limitation, the information
8 provided to it pursuant to this Part, shall not operate to excuse or waive any violation or non-
9 performance under this Franchise or other Applicable Law.

10 **Section 22. CONFIDENTIALITY OF PROPRIETARY INFORMATION.** Pursuant to
11 Section 11.20 of Chapter 11, Grantee shall have the opportunity to protect from disclosure to
12 the public any information provided to the City pursuant to this Franchise that is proprietary,
13 trade secret or is otherwise protected from disclosure under the California Public Records Act
14 (Cal. Gov't Code Section 6254, et seq.), the City's Sunshine Ordinance (S.F. Admin. Code
15 Chapter 67) and other Applicable Law.

16 **PART 6 – RECORD REVIEW, RETENTION, AND ACCESS RIGHTS**

17 **Section 23. MAINTENANCE OF RECORDS.** Grantee shall maintain and keep, in
18 accordance with generally accepted accounting principles, detailed and accurate books and
19 records relative to this Franchise, including but not limited to records of all revenues received
20 from any source whatsoever and all amounts due and owing to Grantee from any third party.
21 Grantee shall further maintain and keep all customer service agreements or contracts
22 provided to Subscribers, billing records, solicitations, correspondence between the Grantee
23 and any Subscriber, and documentation relating to Subscriber complaints. Grantee's failure
24 to comply with the provisions of this Section may constitute a Material Breach of this
25 Franchise.

1 **Section 24. ACCESS TO RECORDS.** Grantee shall comply with all provisions of Article V
2 of Chapter 11, provided that any amount owed to the City pursuant to Section 11.41 of
3 Chapter 11 shall be paid within ten (10) City business days following the City's written
4 demand. Grantee's failure to comply with the provisions of this Section may constitute a
5 Material Breach of this Franchise.

6 **PART 7- CUSTOMER SERVICE**

7 **Section 25. APPLICABILITY.** The provisions of this Part shall apply to all Services
8 provided by Grantee pursuant to this Franchise. Additionally, Grantee shall comply with all of
9 the provisions of Chapter 11, Article VI, as a Cable System Grantee and Grantee shall provide
10 all Services authorized pursuant to this Franchise in a manner consistent with those
11 provisions.

12 **Section 26. CUSTOMER SERVICE REGULATIONS.** Pursuant to Section 11.51 of
13 Chapter 11, Grantee shall comply with all customer service standards and consumer
14 protection laws established by Applicable Law, including, without limitation, 47 C.F.R. 76.309,
15 those set forth herein, and those set forth in Chapter 11. The City reserves the right to adopt
16 additional or more stringent customer service standards or consumer protection laws and to
17 impose them upon Grantee and other similarly situated Persons providing the same Services
18 authorized by this Franchise, using Facilities installed in the Public Rights-of-Way, in a fair
19 and non-discriminatory manner.

20 **Section 27. EMERGENCY MAINTENANCE.** Grantee shall respond to Service
21 Interruptions and System malfunctions that may result in a Service Interruption by maintaining
22 an emergency maintenance and repair staff capable of responding to and repairing, on a
23 timely basis, System malfunctions, or Service Interruptions, on a twenty four (24) hour, seven
24 (7) days a week basis.

1 **Section 28. LANGUAGES.** Grantee shall have employees able to respond to billing
2 inquiries and Service requests in all languages in which Grantee markets Services. At a
3 minimum, Grantee shall have employees able to respond to billing inquiries and Service
4 requests in English and the 5 other languages DTIS determines to be spoken by the largest
5 number of San Francisco residents.

6 **Section 29. CREDITS.** Grantee shall provide credits to Subscribers (or potential
7 Subscribers) pursuant to the procedures set forth in 47 C.F.R. 76.309(c)(3)(iv) under the
8 following circumstances:

9 **(a) Failure To Maintain A Scheduled Appointment.** In the event Grantee fails to
10 make or timely cancel a Scheduled Appointment pursuant to 47 C.F.R. 76.309(2)(iii)-(v) and
11 California Civil Code Section 1722, Grantee shall clearly and immediately, with no prompting
12 from the Subscriber, notify the Subscriber in writing that he or she may choose among the
13 following remedies: (i) waiver of the fee if the Scheduled Appointment was for a Service for
14 which a fee was to be charged; (ii) one free month of either basic Cable Service plus the other
15 most widely subscribed to Cable Service tier or Cable Internet Service based upon the service
16 for which the Scheduled Appointment was made, or if the Scheduled Appointment was to
17 have been provided free of charge; or (iii) an opportunity to pursue up to five hundred dollars
18 (\$500) in damages pursuant to California Civil Code Section 1722, if applicable.

19 **(b) Failure To Perform Installation.** In the event Grantee fails to perform a
20 standard installation within seven (7) business days as required pursuant to 47 C.F.R.
21 76.309(c)(2)(i) Grantee shall clearly and immediately, with no prompting from the Subscriber,
22 notify the Subscriber in writing that he or she may choose between: (i) waiver of the
23 installation fee if a fee was going to be charged; or (ii) one free month of either basic Cable
24 Service plus the other most widely subscribed to Cable Service tier or Cable Internet Service
25

1 based upon the service that Grantee failed to install, if the installation was to have been
2 provided free of charge.

3 **(c) Service Interruption.** Grantee shall begin to repair any Service Interruption
4 within twenty four (24) hours. In the event Grantee Fails to correct a Service Interruption
5 within twenty four (24) hours, Grantee shall, upon Subscriber request, credit an affected
6 Subscriber 1/30th of the monthly Service charge for each twenty four (24) hour period, or
7 fraction thereof, that the Service Interruption continues. In the event of a Complete Outage
8 lasting more than twenty four (24) hours, Grantee shall automatically (without a Subscriber
9 request) credit all affected Subscribers the same refund. This provision shall not apply to
10 Subscribers who experience a Service Interruption as a result of their own intentional act(s).

11 **(d) Rate Change Notification.** Grantee may not increase Subscriber rates until it
12 has provided at least thirty (30) days written notice of any rate increase to Subscribers.

13 **Section 30. SUBSCRIBER COMPLAINTS.** Grantee shall establish written procedures for
14 receiving, acting upon and resolving Subscriber complaints. These procedures shall require,
15 at a minimum, that Grantee:

16 **(a)** Acknowledge receipt of any complaint made in person, by telephone, or
17 electronic mail, no later than the next business day after receiving the complaint;

18 **(b)** Acknowledge receipt of any complaint made in writing by mail within five (5)
19 business days of receipt of the complaint;

20 **(c)** Inform a complainant regarding the option of reporting a complaint to the City's
21 representatives;

22 **(d)** Designate a liaison responsible for working with the City to resolve Subscriber
23 complaints; and

1 (e) Respond by telephone to complaints referred to it by the City no later than the
2 next business day after the referral and follow up in writing no later than two (2) business days
3 after the referral; and

4 (f) Comply with the time frames specified in this Section not less than ninety
5 percent (90%) of the time, as measured on a quarterly basis. The phrase “of the time” refers
6 to the number of complaints or referrals received by Grantee, so that if Grantee receives one
7 thousand (1000) complaints or referrals in a quarter, at least nine hundred (900) of those
8 complaints or referrals shall be responded to within the time frames set forth in this Section.

9 **Section 31. RATES AND CHARGES.**

10 (a) **Rate Regulation.** Pursuant to Section 11.48 of Chapter 11, the City reserves all
11 power to implement and impose regulation on Grantee’s rates and charges to the maximum
12 extent permissible under Applicable Law.

13 (b) **Low Income Rate.** Any Person receiving federal, state, or local cash income
14 maintenance benefits or food assistance (“Eligible Subscribers”) shall be eligible to receive
15 Cable Services at a reduced rate. For the term of this Franchise, Grantee shall provide to
16 Eligible Subscribers a reduced rate for the most widely subscribed to tier or combination of
17 tiers, and any less expensive tiers, of Cable Services offered by Grantee, excluding pay-per-
18 view and premium add-on services for which Subscribers pay an additional fee or charge.
19 The reduced rate shall reflect a discount equal to at least twenty percent (20%) off the rates
20 charged to Subscribers not receiving the discount. Grantee shall not require Eligible
21 Subscribers to receive additional or bundled Services (Cable Internet Services,
22 Telecommunications Services, or other Services) in order to receive the reduced rate for
23 Cable Services. Grantee shall be under no obligation to provide a special tier of Cable
24 Service distinct from the Cable Service tiers offered to other Subscribers. Grantee shall
25 provide notice to all Subscribers and potential Subscribers about the availability of reduced

1 rates as set forth in this Section in accordance with reasonable rules agreed to by DTIS and
2 Grantee. All Grantee's marketing materials shall include notification of the low income rate,
3 and shall be subject to DTIS's prior review and approval for this purpose. Following the
4 renewal of the TSC franchise (Ordinance 105-64) or the grant of a subsequent franchise to
5 TSC, RCN's obligations under this section shall be automatically adjusted to correspond to
6 the low income requirements to be provided by TSC under its new franchise.

7 **Section 32. FRANCHISE ADMINISTRATION ACCOUNT.** The first one hundred thousand
8 dollars (\$100,000) of franchise fees paid by Grantee annually pursuant to Part 4 herein shall
9 be allocated by the City to fund the City's administration and oversight of the City's cable
10 television franchises and related Applicable Law. This potential allocation is intended for the
11 benefit of the City only, and no other Person, including but not limited to Grantee, may rely
12 upon, or seek to enforce or benefit from, the proposed allocation or failure to allocate. The
13 terms of this Franchise shall be governed by and subject to the budgetary and fiscal
14 provisions of the City's Charter. Notwithstanding anything to the contrary contained herein,
15 there shall be no obligation for the allocation, payment or expenditure of money by the City
16 unless the City's Controller first certifies, pursuant to Section 3.105 of the Charter, that there is
17 a valid appropriation from which the expenditure may be made and that unencumbered funds
18 are available for the allocation or expenditure.

19 **Section 33. CABLE TELEVISION ACCESS AND DEVELOPMENT FUND.** After the
20 allocation provided in Section 32 above, an amount equivalent to two tenths of one percent
21 (0.2%) of Grantee's Gross Revenues shall be allocated by the City to the Cable Television
22 Access and Development Fund for public, educational, and municipal access activities. The
23 not-for-profit corporation designated by the Board pursuant to the terms of Ordinance 105-64,
24 as amended, shall receive not less than one-third of any amount that may be allocated
25 pursuant to this Section. This potential allocation is intended for the benefit of the City only,

1 and no other Person, including but not limited to Grantee, may rely upon, or seek to enforce or
2 benefit from, the proposed allocation or failure to allocate. The terms of this Franchise shall
3 be governed by and subject to the budgetary and fiscal provisions of the City's Charter.
4 Notwithstanding anything to the contrary contained herein, there shall be no obligation for the
5 allocation, payment or expenditure of money by the City unless the City's Controller first
6 certifies, pursuant to Section 3.105 of the Charter, that there is a valid appropriation from
7 which the expenditure may be made and that unencumbered funds are available for the
8 allocation or expenditure.

9 **PART 8 - TESTING AND TECHNICAL REQUIREMENTS**

10 **Section 34. TECHNICAL STANDARDS.** The System shall meet or exceed the applicable
11 technical standards set forth in 47 C.F.R. Part 76 and any other Applicable Law.

12 **Section 35. MONITORING TESTS.** Throughout the term of this Franchise Grantee shall
13 perform all tests necessary to demonstrate compliance with the requirements of this
14 Franchise and Applicable Law, and to ensure that the System components are operating
15 properly. Grantee shall repeat any specified test until identified problems or flaws have been
16 corrected. All tests shall be conducted at Grantee's expense and in accordance with
17 Applicable Law. Grantee shall conduct tests as follows:

18 (a) Initial acceptance tests on newly constructed or rebuilt Facilities. (Successful
19 completion of the first semi-annual FCC proof of performance test for the newly constructed or
20 rebuilt Facilities shall constitute the initial acceptance test for that newly constructed or rebuilt
21 portion.)

22 (b) Proof of performance tests on the System at least once every six months or as
23 required by FCC rules, whichever is more often, except as and to the extent Applicable Law
24 otherwise limits Grantee's obligation;

25 (c) Special tests when Subscriber complaints indicate tests are warranted; and

1 (d) Special tests at DTIS's reasonable request, upon a showing of need.

2 **Section 36. SYSTEM ACCEPTANCE TESTS.**

3 (a) **Tests Required.** Upon Grantee's completion of construction of the Partial
4 System and the Final System, Grantee shall perform the following tests to establish that the
5 Partial System and the Final System comply with this Franchise, FCC rules, and other
6 Applicable Laws ("System Acceptance Tests"). As applicable, System Acceptance Tests shall
7 be conducted at end-of-line locations served by five percent (5%) of all Nodes within the
8 Partial System or the Final System:

- 9 (1) Visual carrier levels on each activated Channel;
- 10 (2) Aural carrier levels on each activated Channel;
- 11 (3) The calculated difference between the visual and aural carrier levels on
12 each activated Channel;
- 13 (4) Adjacent Channel video difference on activated Channels;
- 14 (5) The difference between the highest video carrier level on any activated
15 Channel and the lowest video carrier level on any activated Channel;
- 16 (6) Carrier-to-noise ratio on six (6) Channels selected by City;
- 17 (7) Hum and low frequency disturbances on six (6) Channels selected by
18 City;
- 19 (8) Intermodulation distortions on six (6) Channels selected by City;
- 20 (9) Subjective expert rating of picture quality, if any, on all activated
21 Channels; and
- 22 (10) Industry standard tests which demonstrate whether Grantee's Cable
23 Internet Service is performing at levels represented by Grantee to Subscribers and at levels
24 required by Applicable Law.

1 The System Acceptance Tests will be complete when, after any necessary
2 corrective action pursuant to Section 42 below, the DTIS Director determines that the Partial
3 System or Final System meet applicable requirements.

4 **(b) Measurements Prior To Tests.** Prior to the System Acceptance Tests,
5 Grantee shall take the following measurements at its Headend, under the City's supervision:
6 (i) video carrier levels and picture quality on all Channels leaving the Headend; (ii) audio
7 carrier levels on all Channels leaving the Headend; and (iii) FM radio carrier levels, if any.
8 Additionally, prior to the tests, Grantee shall present the City with copies of current calibration
9 certificates issued by an independent calibration laboratory for all frequency/voltage sensitive
10 equipment that will be used in the tests.

11 **(c) City Interference.** The City recognizes and understands that some of the Final
12 System Acceptance Tests required in (a) above may interfere with the quality of Grantee's
13 video programming. Consequently, the City shall take all reasonable steps to minimize such
14 interference during the performance of the tests.

15 **Section 37. SUPERVISION OF TESTS.** DTIS may supervise and specify the location of
16 Facilities to be tested for the tests performed pursuant to Section 35(c), Section 35(d), and
17 Section 36 above.

18 **Section 38. REIMBURSEMENT OF CITY COSTS.** Grantee shall reimburse the City's
19 reasonable costs to supervise any tests requested by DTIS pursuant to this Part, not to
20 exceed a total of thirty thousand dollars (\$30,000) during the term, provided that any
21 unexpended portion of such reimbursement cap shall be increased by the CPI-U from the
22 Effective Date to the time a test is performed.

23 **Section 39. NOTICE OF TESTS.** Grantee shall provide DTIS at least five (5) City
24 business days' notice of, and opportunity to observe, any tests performed on the System
25 pursuant to this Part .

1 **Section 40. TEST RESULTS.** Upon DTIS's written request, Grantee shall provide DTIS a
2 written report of the results of any test and any other written materials in Grantee's control or
3 possession relating to the test, no later than ten (10) City business days after the test unless
4 otherwise instructed by DTIS. The complete results of all tests performed pursuant to this
5 Part shall be retained by Grantee and shall be available for inspection or copying by DTIS for
6 five (5) years after they are completed.

7 **Section 41. CITY RIGHT TO INSPECT.** The City reserves the right to inspect the System
8 pursuant to Section 11.43 of Chapter 11. However, such inspection does not relieve Grantee
9 of its obligation to construct the System in compliance with this Franchise and other
10 Applicable Law.

11 **Section 42. CORRECTIVE ACTION.** If any test indicates that any portion of the System
12 fails to meet applicable requirements, Grantee shall, without the requirement of additional
13 notice or a request from DTIS, take corrective action, retest the locations and advise DTIS of
14 the action taken and results achieved. Grantee shall continue corrective action and repeat
15 tests until tests indicate that the System meets applicable requirements. Nothing herein shall
16 constitute a waiver of the City's right to require compliance with any FCC standard or other
17 Applicable Law.

18 **Section 43. SYSTEM CHARACTERISTICS.** The System shall, at all times during the
19 Franchise term, meet or exceed the following requirements:

20 (a) **Capacity.** The System shall have a downstream bandwidth of at least 806 MHz
21 and an upstream bandwidth of at least 35 MHz, and shall be capable of meeting all FCC
22 performance requirements while carrying the equivalent of at least 110 analog NTSC video
23 channels.

24 (b) **Continuous 24-Hour Operation.** The System shall be capable of operating
25 twenty four (24) hours a day without severe material degradation of Signal except during

1 extremely inclement weather or immediately following extraordinary storms or other Force
2 Majeure events that adversely affect utility services or damage major System components.

3 **(c) Temperature Specifications.** The System shall be capable of operating over
4 an outdoor temperature range of negative ten (-10) degrees Fahrenheit to one hundred and
5 twenty five (125) degrees Fahrenheit and over variation in supply voltages from 105 to 130
6 volts AC without catastrophic failure or irreversible performance changes.

7 **(d) No Interference.** Grantee shall operate the System in such a manner as to
8 minimize interference with Subscribers' reception of off-the-air signals. Grantee shall ensure
9 that signals carried by the System, or originating outside the System Facilities, do not ingress
10 or egress into or out of the System in excess of FCC or other applicable standards. In
11 particular, and without limitation, Grantee shall not operate the System in such a manner as to
12 pose unwarranted interference with emergency radio services, aeronautical navigational
13 frequencies or any airborne navigational reception in normal flight patterns, or any other type
14 of wireless communications, pursuant to FCC regulations.

15 **(e) No Deterioration Of Access Signals.** The System shall be constructed and
16 operated so that there is no significant deterioration in the quality of PEG Signals resulting
17 from the transmission of the PEG Signals, either upstream or downstream, as compared with
18 any other Channel on the System. Deterioration refers to any Signal transmission problem,
19 including but not limited to ghost images and other interference and distortions

20 **(f) Electrical Power Purchases.** At two year intervals, commencing with the first
21 anniversary of the Effective Date, Grantee shall provide the City with a full description of the
22 electrical power required to operate Grantee's System and a full description of all terms and
23 conditions under which Grantee is purchasing or proposes to purchase electrical power to
24 meet these needs. Grantee shall provide the Hetch Hetchy Water & Power Division
25 (HHW&P) of the City's Public Utilities Commission not less than eighty (80) City business

1 days to review Grantee's requirements and current and proposed service terms to determine
2 whether HHW&P can offer comparable service on terms equal to or better than Grantee has
3 been able to obtain through other electrical service providers. If HHW&P offers power to
4 Grantee on terms equal to or better than those terms that Grantee is able to obtain from any
5 other power supplier, Grantee shall purchase HHW&P power unless doing so would create an
6 undue hardship on Grantee, provided however that Grantee shall not enter into any long term
7 agreement for the purchase of electrical power without providing to HHW&P the information
8 and opportunity to offer a competitive proposal as set forth in this section. By written notice
9 from its General Manager, HHW&P shall have the authority to waive the periodic report and
10 notice provisions of this section so long as such waiver is consistent with the purposes of this
11 Section.

12 **(g) Stand-By Power.** Grantee shall provide standby power generating capacity for
13 the Headend, Hubs, Nodes, and distribution Facilities comprising its System meeting the
14 following specifications:

15 (1) **Headend.** Grantee shall maintain motorized standby power generators
16 capable of maintaining all Services at the Headend for at least twenty four (24) hours duration
17 after loss of normal commercial power.

18 (2) **Hubs.** Grantee shall provide battery standby power capable of
19 maintaining all services at each Hub for at least twenty-four (24) hours duration after loss of
20 normal commercial power, with automatic response systems to alert the Headend when
21 commercial power is interrupted. Grantee shall maintain portable generators to deploy to
22 each Hub in the event that the duration of a power disruption is expected to exceed twenty-
23 four (24) hours.

24 (3) **Nodes and Distribution Plant.** The power generators serving the
25 Nodes and distribution plant to Subscribers shall be capable of maintaining all Services to

1 those portions of the System for no less than six (6) hours, according to manufacturer
2 specification, after loss of normal commercial power.

3 **(h) Service for the Disabled.** All closed-caption programming retransmitted on the
4 System shall include the closed-caption signal. For hearing impaired Subscribers, Grantee
5 shall provide information concerning the cost and availability of equipment to facilitate the
6 reception of all Services for the hearing impaired. In addition, Grantee must have TDD/TTY
7 (or equivalent) equipment available for use in its local office, and a publicly listed telephone
8 number to access such equipment so that hearing impaired Subscribers may communicate
9 with Grantee for all their service needs. When such equipment is commercially available,
10 Grantee shall offer, for purchase or lease, remote control devices to operate any Grantee-
11 provided equipment for those Subscribers who are mobility-limited.

12 **(i) Emergency Alert System.** In conjunction with the construction of its System,
13 Grantee shall install and thereafter maintain an emergency alert system capable of overriding
14 audio and video on all channels to provide an emergency alert to all Subscribers ("EAS"). The
15 EAS shall be available for the City's use no later than sixty (60) days after Grantee begins
16 providing Service to Subscribers. At that time, Grantee shall provide written notice to DTIS of
17 the EAS's availability and instructions for its operation. The EAS shall be designed and
18 maintained so that City-designated officials can activate it remotely without Grantee's
19 assistance, using a telephone and secure password, or by such other technical means as the
20 City may approve. The EAS shall also be designed and maintained so that City-designated
21 officials, from a touch-tone telephone, can activate a pre-recorded text message, and, at their
22 option, an accompanying live audio voice message lasting up to two (2) minutes. The City
23 shall have the right to run test messages on the EAS at least four times each year and shall
24 provide reasonable notice to Grantee prior to any such test. Grantee shall fully cooperate with
25 the City in conducting any such test. The City and Grantee shall meet periodically to discuss

1 operational procedures for use of the EAS. As part of those discussions, the City and
2 Grantee may agree on alternative capabilities and activation procedures for the EAS. The
3 EAS should be integrated, to the extent reasonably possible, with Grantee's EASs in other
4 communities. Grantee's failure to install and maintain the EAS pursuant to this Section shall
5 be deemed a Material Breach.

6 **Section 44. SYSTEM MAINTENANCE.**

7 (a) **Service Interruptions to be Minimized.** Grantee shall schedule System
8 maintenance to minimize the likelihood of Service Interruptions.

9 (b) **Maintenance Practices Subject to Regulation.** Grantee shall perform
10 System maintenance in accordance with FCC requirements and standards and other
11 Applicable Law. The City may monitor Grantee's maintenance practices and, to the extent
12 permitted by Applicable Law, the Telecommunications Commission may adopt regulations
13 waiving maintenance requirements or, upon a showing of need, adopting additional
14 maintenance requirements to ensure the System remains capable of providing high-quality
15 service and to protect the public health, safety, and welfare. Such requirements shall be
16 applied to all similarly situated Persons providing the same Services as authorized by this
17 Franchise using Facilities installed in the Public Rights-of-Way, in a fair and non-
18 discriminatory manner.

19 **PART 9 - CITY FACILITIES AND BENEFITS**

20 **Section 45. FIBER OPTIC INFRASTRUCTURE FOR CITY USE.** Grantee shall provide
21 the following Fiber Optic Infrastructure ("FOI") for the City's use and failure to provide such
22 FOI as set forth below shall constitute a Material Breach of this Franchise:

23 (a) **Fiber Strands Provided To City.** Within thirty (30) City business days of a
24 DTIS request made after Grantee has completed construction of its Hub Ring, Grantee shall
25

1 provide and maintain for the City's use and at no cost to the City, up to four (4) dark fiber optic
2 strands along the same route as its Hub Ring ("Fiber Strands").

3 **(b) Fiber Drops.** Grantee shall, at no cost to the City, connect up to 350 City-
4 designated locations to the Fiber Strands on the Hub Ring through its Hubs using two single-
5 mode Fiber Strands from the Hub to each location ("Fiber Drops"). The City may designate
6 some locations in which multiple Fiber Drops shall be installed, provided that Grantee shall
7 have no obligation to provide a total of more than 350 Fiber Drops. The designation of a
8 Fiber Drop will reduce the number of free Cable Drops available to the City under Section 46
9 below by 1.5 Cable Drops per Fiber Drop. Grantee shall make Fiber Drops available to the
10 City pursuant to the procedure set forth in subsection (f) below.

11 **(c) Access To Hubs And Equipment.** The City shall have the right to install
12 optical amplifiers and other equipment necessary for the City's operation of the FOI in
13 Grantee's Hubs and to access the optical amplifiers and other equipment in the Hubs twenty
14 four (24) hours a day, seven (7) days a week in a manner reasonably assuring security of the
15 Hub. Grantee shall provide equipment racks necessary for placement of the optical amplifiers
16 and all other equipment in the Hubs as well as the back up power and shared environmental
17 equipment necessary for the operation of the equipment.

18 **(d) Monitoring and Maintenance Of Fiber Strands.** Grantee shall be responsible
19 for providing continuity of the City's Signal at useful signal levels from any Demarcation Point
20 to another, but shall not be responsible for the maintenance of the City equipment on the City
21 side of the Demarcation Point, or any termination equipment used by the City at the Fiber
22 Drops, except as set forth in subsection (b) above. Grantee shall be responsible for
23 maintaining and repairing, at no cost to the City, the Fiber Strands up to the Demarcation
24 Point. Grantee shall use the same efforts to maintain and repair the City's Fiber Strands and
25 Fiber Drops as it uses to maintain and repair its own fiber strands. Grantee shall strive to

1 ensure that outages are minimized by monitoring the Fiber Strands as part of its System, shall
2 notify a DTIS-designated City employee as soon as possible in the event Grantee detects an
3 outage or problem with the Fiber Strands, and shall test and remedy the outage or problem in
4 as efficient a manner as possible. DTIS shall contact Grantee in the event that the City
5 experiences service problems or an outage on the FOI and Grantee shall cooperate with DTIS
6 and perform testing to determine the source and resolve the problem as soon as possible.
7 Grantee shall notify a DTIS-designated City employee of scheduled System maintenance
8 activities which may impact the City's use of the Fiber Strands at least two (2) City business
9 days prior to such scheduled maintenance.

10 **(e) Communications Project Grant.** On each anniversary of the Effective Date up
11 to and including the fifth (5th) anniversary, Grantee shall pay to DTIS fifty thousand dollars
12 (\$50,000) for the City's purchase of equipment and services related to City communications
13 projects and related uses as determined by the City in its sole discretion ("Communications
14 Project Grant"). The Communications Project Grant may be used, without limitation, to fund
15 the City's use of the FOI, including, without limitation, consultants, equipment, and
16 administrative costs. On the sixth (6th) anniversary of the Effective Date, Grantee's funding
17 obligation shall be automatically adjusted on a prospective basis (without credit for prior
18 contributions) to match similar contributions agreed to by Television Signal Corporation or its
19 successor in interest ("TSC") in Ordinance 105-64, as it may be amended. The adjustment
20 shall be made equitably and proportionally. Accordingly, if the TSC Communications Project
21 Grant to the City is a lump sum contribution based upon the total number of TSC subscribers,
22 then Grantee's funding shall be a lump sum contribution prorated based upon the comparative
23 number of Subscribers (TSC grant amount divided by the number of TSC subscribers and
24 then multiplied by the number of Grantee's Subscribers) and paid in the same manner as
25 TSC's funding. If the TSC Communications Project Grant is in cash, but is based upon a

1 percentage of TSC's Gross Revenues or some other formula, then Grantee's contribution
2 shall be in cash and based upon the same percentage or other formula. If the TSC
3 Communications Project Grant is in the form of a service or in the provision of certain goods
4 or equipment, then the City shall have the option of either: (i) requiring the same service,
5 goods or equipment from the Grantee, equitably prorated based upon the comparative
6 number of Subscribers, to the extent Grantee can reasonably provide the service, goods or
7 equipment; or (ii) requiring Grantee to pay to the City an equivalency in cash, determined on
8 the basis of the cost to TSC of providing the service, goods or equipment, equitably prorated
9 based upon the comparative number of Subscribers. Notwithstanding the foregoing, in no
10 event shall Grantee's contribution be less than ten thousand dollars (\$10,000) per year after
11 the 5th anniversary of the Effective Date, adjusted annually from the Effective Date by the CPI-
12 U.

13 **(f) Designation of Fiber Drops.** Grantee shall deploy the Fiber Strands and Fiber
14 Drops in conjunction with the construction of its System. Connection to City-designated
15 locations will be made in the course of construction when Grantee's System reaches within
16 one hundred and twenty five feet (125') of the City-designated location. The City shall pay
17 Incremental Labor and Materials Costs to Grantee for any installation required beyond the one
18 hundred and twenty five foot (125') limit. DTIS shall designate the location of Fiber Drops to
19 Grantee in writing at least six (6) months prior to the time at which Grantee's construction is
20 anticipated to reach the Fiber Drop location, as set forth in its One Year Construction Plan
21 provided to DTIS pursuant to Section 17(a)(1) above. Nothing herein prevents DTIS from
22 designating a Fiber Drop location in advance of receiving any Construction Sequence Plan
23 showing that the location will be passed. In the event DTIS fails to timely designate a Fiber
24 Drop location, Grantee shall use its best efforts to accommodate an untimely request from
25 DTIS to the extent such accommodation does not create Incremental Labor and Materials

1 Costs for Grantee or the City is willing to pay any Incremental Labor and Materials Cost.
2 Notwithstanding the foregoing, in no event will a DTIS failure to timely designate a Fiber Drop
3 location be allowed to delay construction of Grantee's System; provided, however, that
4 Grantee shall be responsible for providing any requested Fiber Drop in the event Grantee fails
5 to provide DTIS at least nine (9) months notice through a One Year Construction Plan of its
6 intent to pass DTIS's designated Fiber Drop location. Additionally, notwithstanding DTIS's six
7 (6) month notice obligation, DTIS may designate its first round of Fiber Drop locations along
8 any route shown on the first set of One Year Construction Reports provided to it within thirty
9 (30) City business days of receipt and Grantee shall install Fiber Drops at those locations
10 pursuant to the provisions of this Section. Grantee shall provide a Fiber Drop no later than
11 twenty (20) City business days after activating Service in the Node Area where the Fiber Drop
12 is located.

13 **(g) Use of Fiber Strands.** The City may use the FOI for any lawful municipal or
14 public purpose acting in its governmental or proprietary capacity, including making the FOI
15 available to third parties; provided, however, that the City shall not use or permit the use of the
16 FOI for any commercial purpose. The FOI shall be available for the City's sole, continuous,
17 and permanent use and shall not be used by any Person without written authorization by the
18 DTIS Director. Grantee shall not exercise any control over the content of transmissions over
19 the FOI, whether video, data, or voice.

20 **(h) Technical Specifications.** The FOI shall be capable of providing two-way
21 voice and video and point-to-point data communications. The Fiber Strands shall be
22 connected at a Demarcation Point specified to Grantee by the City. It shall be the City's
23 responsibility to purchase, install, operate, and maintain any and all electronic and other
24 equipment necessary to activate the Fiber Strands provided to the City for its own use
25 pursuant to this Section, except as provided in subsection (c) above.

1 **(i) Additional Fiber Drops.** In the event the City desires to designate more Fiber
2 Drops than are provided in subsection (b) above, the City may pay Grantee the Incremental
3 Labor and Materials Cost for installing a Fiber Drop. The remaining provisions of this Section
4 regarding Fiber Drops shall apply to all Fiber Drops installed pursuant to this subsection.

5 **(j) Additional Fiber Locations.** Grantee shall notify DTIS As soon as possible
6 prior to the installation of any fiber optic capacity in locations not contemplated by the initial
7 design of the System so that the City may elect to have two (2) additional Fiber Strands
8 installed for it's own use at the Incremental Labor and Materials Cost of adding any such Fiber
9 Strands. DTIS shall have forty (40) City business days after receipt of Grantee's notification
10 to notify Grantee regarding whether and where it would like to have additional Fiber Strands
11 installed for the City's use.

12 **(k) Upgrades to City's Facilities.** When performing modifications or upgrades to
13 the System, Grantee shall perform such modifications or upgrades to the Facilities installed
14 for the City's use per this Part 9: (i) to the extent such modifications or upgrades do not result
15 in Incremental Labor and Materials Costs, or (ii) upon City's agreement to pay for any such
16 Incremental Labor and Materials Costs.

17 **(l) Support for Incremental Labor and Materials Costs.** With regard to any
18 Incremental Labor and Material Cost that may be payable by the City in this Part 9, Grantee
19 shall provide to the City, not less than ten (10) days in advance, a statement of the
20 Incremental Labor and Material Cost (or, a good faith estimate thereof) so that City can decide
21 whether to proceed and incur the Incremental Labor and Material Cost. If the City does not
22 agree to pay such Incremental Labor and Material Cost in writing, Grantee shall have no
23 obligation to perform the work relative to such Incremental Labor and Material Cost.

24 **Section 46. FREE SERVICE TO CITY-DESIGNATED BUILDINGS.** Grantee shall install
25 one (1) drop, including reasonable interior wiring, to as many as 525 City-designated buildings

1 with an exterior wall within 125 feet of Grantee's System for underground wiring and 150 feet
2 of Grantee's System for above-ground wiring ("Cable Drop"); provided, if a City-designated
3 building requires a Cable Drop in excess of the above-referenced length, Grantee shall
4 provide the Cable Drop so long as the City agrees to pay the Incremental Labor and Materials
5 Cost for the added length. In addition, the City shall elect one of the following, to be provided
6 by Grantee at no cost to the City, with respect to each of the above City-designated buildings:
7 (i) the most widely subscribed to tier or combination of tiers, and any less expensive tiers, of
8 Cable Services offered by Grantee, (but excluding pay per view and premium add-on services
9 for which Subscribers pay an additional fee) or (ii) Cable Internet Service. The provision of
10 Cable Internet Service shall include the use of a cable modem and any other equipment
11 provided by Grantee to its residential Cable Internet Service Subscribers that is necessary to
12 receive the Cable Internet Service, but shall not include personal computers or work stations.
13 The designation of a Fiber Drop according to Section 45(b) above will reduce the number of
14 Cable Drops available to the City by 1.5 Cable Drops per Fiber Drop. The Cable Drop
15 locations shall be identified by the DTIS Director on an as-needed basis during the Franchise
16 term and shall be installed by Grantee within the standard installation time provided to
17 Subscribers. The City shall also be entitled to additional Cable Drops in a number equal to the
18 number of buildings newly owned, leased or occupied after the Effective Date by the City, the
19 San Francisco Unified School District, the San Francisco Community College District, and
20 office of the San Francisco Housing Authority or the San Francisco Redevelopment Agency.
21 The City may use these additional Cable Drops to serve any City-designated building or may
22 exchange them for Fiber Drops as provided in this Section. Grantee's failure to comply with
23 the terms of this Section shall constitute a Material Breach of this Franchise.

1 **Section 47. CITY CONDUIT.**

2 (a) **Conduit For City's Sole and Exclusive Use.** During construction of its System
3 and whenever it places Facilities underground, Grantee, in conjunction with the installation of
4 its own conduit, shall install conduit for the sole and exclusive use of the City and without
5 charge to the City ("City Conduit"). The City shall have a right to a minimum of 539 linear
6 miles of one (1) two inch (2") conduit or any combination of conduit of equivalent value.
7 Consequently, the City may elect to trade the right to one (1) linear mile of one (1) two inch
8 (2") conduit for .54 (54/100) linear miles of (1) four inch (4") conduit; or .22 (22/100) linear
9 miles of (2) four inch (4") conduits. The City may also elect to have Grantee install additional
10 City Conduit upon payment to Grantee of Incremental Labor and Materials Costs. The DTIS
11 Director shall designate the placement of the City Conduit in the same manner as provided for
12 Fiber Drops in Section 45(f) above. Grantee's failure to provide City Conduit pursuant to this
13 Section shall constitute a Material Breach of this Franchise.

14 (b) **Technical Specifications.** The City Conduit shall be PVC pipe, shall contain a
15 pull string, and be clearly identified as City Conduit with an exterior marking. At the City's
16 request, the City Conduit may be terminated in specified Grantee-owned "pass-through
17 manholes" located no more than 600 feet apart ("pass-through manholes" are those manholes
18 not designated to contain any type of electronics, or splice closure). In the event the distance
19 between two pass-through manholes exceeds approximately 600 feet, the City may request
20 Grantee to sweep the City Conduit to a location in a sidewalk vault mutually agreed to by
21 Grantee and the City and install a City provided pull-box to provide access to the City Conduit.

22 (c) **Access To City Conduit.** The City shall have access to the City Conduit upon
23 three (3) City business days' notice to Grantee for scheduled maintenance. In the event of an
24 emergency, the City shall have access to the City Conduit immediately, upon oral or written
25 notice to Grantee.

1 **(d) Title To Conduit.** Upon request from the City, Grantee shall execute such
2 documents of title in a form acceptable to the City Attorney as will convey to the City, free and
3 clear of liens and/or adverse claims of title, all right, title, and interest in the City Conduit, or
4 any part thereof.

5 **(e) Use of Conduit.** The City, or any City-designated entity, may use the City
6 Conduit for any lawful municipal or public purpose for or on behalf of the City acting in its
7 governmental or proprietary capacity; provided, however, that the City shall not use or permit
8 the use of the City Conduit to provide any services for profit for any non-municipal or non-
9 public purpose in competition with services provided by Grantee over its Facilities. The City
10 may solicit bids to provide services using the City Conduit. Grantee shall be invited to
11 respond to any such solicitation.

12 **Section 48. PEG CONTRIBUTIONS.**

13 **(a) Operating Contributions.** Grantee shall pay the sum of twenty one cents
14 (\$0.21) per Subscriber per month to the City, concurrent with its franchise fee payments, to
15 fund the purchase of equipment, the development of programming, and the operation and
16 maintenance of the PEG Channels ("PEG Operating Contributions"). With each payment,
17 Grantee shall provide the City with a statement showing the number of Subscribers covered
18 by such payment which shall be the number of Subscribers as of the last day of the month.
19 The amount of the per Subscriber fee shall be adjusted annually on the anniversary of the
20 Effective Date, by the CPI-U.

21 **(b) Automatic Adjustment of Quarterly Contributions.** Grantee's PEG Operating
22 Contributions shall be automatically adjusted on a prospective basis (without credit for prior
23 contributions) to correspond to any payments provided to the City by TSC that may be used to
24 support the purchase of equipment, the development of programming or the operation and
25 maintenance of the PEG Channels upon the effective date of an act of the Board renewing the

1 franchise granted by Ordinance 105-64 to TSC or otherwise granting a subsequent franchise
2 to TSC. The adjustment shall be made equitably and proportionally. Accordingly, if the PEG
3 Operating Contributions are a lump sum contribution based upon the total number of TSC
4 subscribers, then Grantee's funding shall be a lump sum contribution prorated based upon the
5 comparative number of Subscribers (TSC grant amount divided by the number of TSC
6 subscribers and then multiplied by the number of Grantee's Subscribers) and paid in the same
7 manner as TSC's funding. If the TSC PEG Operating Contributions are in cash, but are
8 based upon a percentage of TSC's Gross Revenues or some other formula, then Grantee's
9 contribution shall be in cash and based upon the same percentage or other formula. If the
10 TSC PEG Operating Contributions are in the form of a service or in the provision of certain
11 goods or equipment, then the City shall have the option of either: (i) requiring the same
12 service, goods or equipment from the Grantee, equitably prorated based upon the
13 comparative number of Subscribers, to the extent Grantee can reasonably provide the
14 service, goods or equipment; or (ii) requiring Grantee to pay to the City an equivalency in
15 cash, determined on the basis of the cost to TSC of providing the service, goods or
16 equipment, equitably prorated based upon the comparative number of Subscribers.

17 **(c) Capital Contributions.** For the support of equipment and production facilities
18 for the PEG Channels, Grantee shall make the following payments to the City in addition to all
19 other payments set forth in this Franchise:

- 20 • \$200,000 within ten (10) days of the Effective Date.
- 21 • \$200,000, adjusted by the CPI-U, on or before the third (3rd) anniversary of the Effective
22 Date;
- 23 • \$675,000, adjusted by the CPI-U, on or before the fifth (5th) anniversary of the Effective
24 Date; and

- 1 • \$675,000, adjusted by the CPI-U, on or before the tenth (10th) anniversary of the Effective
2 Date.

3 (d) **Material Breach.** Grantee's failure to make any payment to the City required
4 pursuant to this Section shall constitute a Material Breach of this Franchise.

5 **Section 49. PEG CHANNELS.**

6 (a) **PEG Channels.** Grantee shall provide seven Analog Channels for public,
7 educational and/or governmental use within sixty (60) City business days of offering Services
8 under this Franchise ("Analog PEG Channels"). The PEG Channels shall be put in the same
9 location on Grantee's System as they occupy on Television Signal Corporation's system as of
10 the Effective Date. Grantee shall use its best efforts to give the City written notice ninety (90)
11 days prior to any change in any PEG Channel location, and shall, in no event, provide less
12 than thirty (30) days' prior written notice. Grantee shall not locate any Analog PEG Channel in
13 such a way as to make it unavailable to Subscribers who receive only the least expensive
14 level of Cable Services provided by Grantee. If at any time Grantee provides more than 806
15 MHz of downstream capacity on its System, Grantee shall, within sixty (60) City business
16 days, provide ten percent (10%) of all capacity devoted to Cable Service and Cable Internet
17 Service in excess of 806 MHz to the City for public, educational and/or governmental use.

18 (b) **Digital Capacity.** The City may, at its sole option and at any time during the
19 Term, obtain Digital Channel Equivalents as an alternative to any of the Analog Channels
20 provided pursuant to subsection (a) above ("PEG Digital Channel Equivalents"). The City
21 shall be entitled to as many Digital Channel Equivalents as can be provided at any given time
22 using the average analog to digital compression ratio in use for Channels on the System that
23 are not PEG Channels. For example, if Analog Channels on the System are being
24 compressed at an average ratio of 6 digital signals for every one analog signal, the City shall
25 be entitled to substitute 42 Digital Channel Equivalents for the 7 Analog PEG Channels

1 provided pursuant to Subsection (a) above and shall be entitled to 6 Digital Channel
2 Equivalents for any one Analog PEG Channel. Grantee shall make Digital Channel
3 Equivalents available to the City pursuant to this subsection within 30 City business days of
4 City's written request.

5 **(c) Automatic Adjustment of PEG Channels and Digital Channels.** Grantee's
6 obligations pursuant to subsections (a) and (b) above shall be adjusted to correspond to any
7 Analog PEG Channels or Digital Channel Equivalents required to be provided to the City by
8 Television Signal Corporation, or its successor, upon the effective date of an act of the Board
9 renewing the franchise granted by Ordinance 105-64 to Television Signal Corporation or
10 otherwise granting a subsequent franchise to Television Signal Corporation or its successor.

11 **(d) Grantee Use of PEG Capacity.** On a temporary basis, Grantee may use one of
12 the Analog PEG Channels and any of the PEG Digital Channel Equivalents for commercial
13 purposes so long as DTIS has certified in writing that such Analog PEG Channels or PEG
14 Digital Channel Equivalents are currently unused and that DTIS has no intention of using such
15 Analog PEG Channels or PEG Digital Channel Equivalents in the next one hundred eighty
16 (180) days. Any such Analog PEG Channels or PEG Digital Channel Equivalents used by
17 Grantee on a temporary basis shall be returned to the City upon written notice from DTIS of its
18 intent to use such Channel. DTIS shall use its best efforts to give Grantee ninety days prior
19 written notice of the Department's revocation of its permission, and shall, in no event, provide
20 less than thirty (30) days prior written notice. Grantee shall take full responsibility for
21 displacing any commercial programming that may temporarily be offered using Analog PEG
22 Channels or PEG Digital Channel Equivalents released to the Grantee.

23 **(e) Editorial Control.** Grantee shall not exercise any editorial control over any
24 PEG Analog Channel or PEG Digital Channel Equivalent (together "PEG Channel"); provided,
25 however, that Grantee shall have no obligation to indemnify, defend or hold harmless any

1 Person, firm or entity, including the City, from claims, damages or losses arising out of or
2 relating to any public, educational or governmental programming on any PEG Channel.

3 **(f) City May Designate PEG Operators.** The City, in its sole discretion, may
4 designate any Person to manage and/or control any PEG Channel or any portion thereof.

5 **(g) Interconnection And Transmission of PEG Channel Signals.**

6 **(1) PEG Signal Transmission.** Pursuant to Section 11.53 of Chapter 11,
7 the System shall be designed and constructed to permit interconnection with other systems.
8 Upon the DTIS Director's request, Grantee shall promptly interconnect to other systems as
9 may be necessary in order to transmit PEG programming to Subscribers.

10 **(2) Video Feeds.** Grantee shall install for the City's use and at no cost to the
11 City, up to seventeen (17) upstream video feeds from DTIS-designated locations to Grantee's
12 Headend ("Video Feeds") upon forty (40) City business days written notice. Grantee shall
13 also provide and install, for the City's use and at no cost to the City, any equipment necessary
14 for the City to transmit signals via the Video Feed to Grantee's Headend. Grantee's obligation
15 to install such a Video Feed shall not take effect until completion of construction in the Node
16 Area in which the City requests the Video Feed and such Video Feed location shall be no
17 more than 300 feet from Grantee's System.

18 **(3) Technical Standards.** The Carrier to Noise ("C/N") Ratio for the Video
19 Feeds and any PEG video programming facilities within the City shall be in the range of 45.8
20 dB to 49.0 dB. The maximum C/N Ratio at the end user shall not vary for each of the Video
21 Feeds by more than 2 dB from its respective C/N Ratio at the origination point. If the median
22 results of C/N Ratio tests fall below 42 dB in any month for any of the Video Feeds, the parties
23 agree to promptly fashion a remedy, including, if necessary, designating a new
24 interconnection point for the Video Feed.

1 conducting the Mid-Term Technical Review. Grantee's failure to fully cooperate and assist
2 the City in conducting the Mid-Term Technical Review, and to implement any proposed
3 changes pursuant to the procedure set forth in this Section shall constitute a Material Breach
4 of this Franchise.

5 **(b) Mid-Term Report.** In conducting the Mid-Term Technical Review, DTIS shall
6 collect information regarding the cable and Internet-related needs and interests of the City.
7 DTIS shall also compare the technical quality of the System and the Services available on the
8 System to systems in other similar communities identified by DTIS. DTIS may hold a public
9 hearing in furtherance of this inquiry. Based upon the comparisons conducted and the
10 reasonable cable and Internet-related needs and interests of the City, DTIS shall prepare a
11 written report addressing: (1) whether the System should be upgraded or rebuilt; (2) whether
12 the System's technical performance should be improved; and (3) whether any amendments
13 should be made to this Franchise to address reasonable concerns raised in this inquiry ("Mid-
14 Term Report"). Each recommendation in the Mid-Term Report shall also expressly consider
15 the costs to Grantee and the economic and technological feasibility of implementing the
16 recommendations in the Mid-Term Report during the remaining term of the Franchise. If
17 Franchise amendments are recommended, the Mid-Term Report shall contain a proposed
18 ordinance setting forth such proposed amendments ("Proposed Ordinance"). DTIS shall
19 report to the Board regarding the Mid-Term Report and provide a copy of the Mid-Term
20 Report to Grantee via certified mail.

21 **(c) Grantee's Report.** To assist in DTIS' preparation of the Mid-Term Report,
22 Grantee shall, within forty five (45) City business days of DTIS' request, submit a report to
23 DTIS describing advances in cable and Internet technology nationwide, the potential benefits
24 and disadvantages of those advances for consumers, and any plans or timetables Grantee
25 may have for instituting such changes in the System.

1 **(d) Presumption.** For purposes of this Section, it shall be presumed that it is
2 economically and technologically feasible to upgrade the System to include capabilities or
3 Service offerings available on half of the systems owned or operated by Grantee and its
4 Affiliates.

5 **(e) Grantee Response.** Grantee shall have forty (40) City business days from the
6 date of issuance of the Mid-Term Report to respond to its recommendations. If a Proposed
7 Ordinance is included in the Mid-Term Report, Grantee shall notify the City, in writing, that it:
8 (1) accepts the terms of the Proposed Ordinance; or (2) believes it can negotiate mutually
9 agreeable alternative amendments to this Franchise which will implement the intent of the
10 Proposed Ordinance; or (3) believes it is not economically or technologically feasible to
11 implement the terms of the Proposed Ordinance and shall provide detailed information and
12 supporting materials to justify this conclusion.

13 **(f) Failure to Respond.** If Grantee fails to notify the City pursuant to subsection
14 (e) above within the forty (40) City business day period, Grantee shall be deemed to have
15 agreed to comply with the Proposed Ordinance by operation of law, the Board may consider
16 adoption thereof and, if adopted, Grantee shall be bound thereby. In the event the Board
17 substantively modifies any provision of the Proposed Ordinance, Grantee shall have ten (10)
18 City business days from the effective date of any Board enactment to reject that modified
19 provision. Any unmodified provision of the adopted Proposed Ordinance, or any modified
20 provision not objected to by Grantee as set forth herein, shall be binding upon Grantee as
21 though fully set forth herein.

22 **(g) Grantee Agreement.** If Grantee agrees to the Proposed Ordinance, the Board
23 shall consider adoption thereof and, if adopted, Grantee shall be bound thereby.

24 **(h) Grantee Request For Negotiations.** In the event Grantee believes it can
25 negotiate mutually agreeable alternative amendments, or believes it is not economically or

1 technologically feasible to implement the terms of the Proposed Ordinance, Grantee and DTIS
2 shall engage in negotiations for no more than forty (40) City business days to determine
3 whether alternative amendments can be mutually agreed upon.

4 **(i) Arbitration.** If, after forty (40) City business days, or additional time if the City
5 and Grantee mutually agree, no agreement has been reached, Grantee and the City shall
6 submit their issues to binding arbitration to resolve their dispute.

7 (1) Either party may initiate the binding arbitration by sending a written notice
8 of intent to commence arbitration to the other party. Within fifteen (15) City business days
9 following the arbitration notice, each party will submit a list of three (3) Technical Experts,
10 together with a resume for each Technical Expert, to the other party. A Technical Expert shall
11 be a cable engineer or cable system analyst with not less than ten (10) years' of significant
12 experience or involvement with the cable industry, shall be certified by the Society of
13 Telecommunications Engineers as a Broadband Cable Engineer, and shall not be an existing
14 or former employee, agent, consultant or affiliate of the party who lists that individual. Each
15 party shall, within ten (10) City business days following the submission of both lists, strike two
16 of the three names listed by the other side. The remaining two Technical Experts will be
17 jointly hired and paid by both the City and Grantee, and they will be so informed. Neither will
18 be informed of which side designated them initially. They will be told that their determination
19 will be used to settle the dispute between the parties, and will be binding on the parties. In the
20 event that either party does not submit a list of three Technical Experts or fails to strike two
21 names from the other party's list within the time periods set forth above, the Technical Experts
22 shall be the individuals chosen by the other party.

23 (2) Within twenty (20) City business days following the engagement of the
24 Technical Experts, each party shall submit to the Technical Experts and to the other party a
25 statement as to the issues to be decided by the Technical Experts as well as any written

1 arguments or materials to support their position with respect to each issue. The issues to be
2 decided will be strictly limited to matters relating to the Mid-Term Technical Review, the Mid-
3 Term Report, and the Proposed Ordinance as set forth in this Section, and the parties shall
4 not allege or raise any other issues. Each party may, within thirty-five (35) City business days
5 following the engagement of the Technical Experts, submit rebuttal information to the
6 Technical Experts. At the request of the Technical Experts, the parties may be asked to
7 present information or attend an arbitration hearing in San Francisco to discuss and debate
8 the merits of each party's position. Notwithstanding anything to the contrary herein, there
9 shall be no communication whatsoever between a party hereto and any Technical Expert
10 except for communications: (i) in writing and sent simultaneously to the other party and to all
11 of the Technical Experts; or (ii) in person or telephonically in the presence of the other parties
12 and all of the Technical Experts.

13 (3) Within sixty (60) business days following the engagement of the
14 Technical Experts, the Technical Experts shall jointly issue a written report which addresses
15 and resolves the disputed issues between the parties. The Technical Experts shall make
16 clear all assumptions upon which their professional conclusions are based. The conclusions
17 set forth in the written report of the Technical Experts shall be binding on the parties. In the
18 event the Technical Experts do not agree upon any issue, they shall so state in their report. If
19 the parties are unable to resolve the matter within ten (10) City business days following
20 receipt of the report, then the Technical Experts shall jointly select and appoint a third
21 Technical Expert that meets the qualifications set forth above. Each party may submit to the
22 third Technical Expert and simultaneously to the other party, within ten (10) City business
23 days following the appointment of the third Technical Expert, written materials or arguments
24 addressing the issues not agreed upon by the first two Technical Experts. The third Technical
25 Expert shall review the written report of the first two Technical Experts, meet and confer with

1 them if necessary, and resolve the differences per a written report to be completed within
2 forty-five (45) days after having been hired. The parties shall equally pay the cost of the third
3 Technical Expert.

4 (4) If, notwithstanding the procedures set forth above, the parties cannot
5 agree upon the Technical Experts, or the first two Technical Experts cannot agree upon the
6 third Technical Expert, the parties may apply to the Superior Court of the State of California in
7 and for the County of San Francisco for appointment of a Technical Expert meeting the
8 foregoing qualifications. If the court denies or otherwise refuses to act upon such application,
9 either Party may apply to the American Arbitration Association for appointment in accordance
10 with the rules and procedures of such organization of an independent arbitrator meeting the
11 foregoing qualifications.

12 (5) The Technical Experts shall not have the power to modify any of the
13 provisions of this Franchise except to increase the Grantee's obligations to upgrade its
14 System. The determination of the Technical Experts as set forth above shall be conclusive,
15 final and binding on the parties; provided, however, (i) either party may challenge the findings
16 pursuant to California Code of Civil Procedure Section 1286.2 (as the same may be amended
17 from time to time), and (ii) either party may challenge the determination of the Technical
18 Experts with respect to the economic feasibility of requiring certain upgrades to Grantee's
19 System (the "Financial Arbitration") by sending a written notice of intent to commence an
20 arbitration with respect to the issue of economic feasibility only. The Financial Arbitration shall
21 be conducted by a single arbitrator ("Financial Arbitrator"), who shall be a member in good
22 standing of the California bar with substantial corporate accounting experience and/or not less
23 than ten (10) years' experience in determining issues of the economic feasibility of corporate
24 action, and who shall not be an existing or former employee, agent, consultant or affiliate of
25 either party. If the parties cannot agree on a Financial Arbitrator within fifteen (15) days

1 following the arbitration notice, then either party may request that one be appointed pursuant
2 to (4) above. The Financial Arbitration shall be in accordance with the rules of the American
3 Arbitration Association.

4 (6) Each Party shall bear its own fees, costs and expenses in connection
5 with the arbitration processes set forth in this Section; provided each party shall equally share
6 the fees and costs of the Technical Experts. The costs and fees of the Financial Arbitrator
7 shall be borne by the party that requests the Financial Arbitration; provided, the Financial
8 Arbitrator shall not be informed of the party that is paying its costs and fees. Each Party
9 waives any claims against the Technical Experts and the Financial Arbitrator for negligence,
10 malpractice or similar claims in the performance of the arbitration contemplated by this
11 Section.

12 (7) With respect to the arbitration provided for in this Section, the parties
13 agree as follows:

14
15 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE
16 ANY DISPUTE AS SET FORTH IN THIS SECTION 52(i) DECIDED BY NEUTRAL
17 ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP
18 ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A
19 COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING
20 UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE
21 RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES"
22 PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING
23 TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE
24 AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR
25 AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

1
2 WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT
3 DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION
4 OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.
5

6 _____
7 Grantee's Initials

_____ City's Initials

8
9 This arbitration provision does not affect the rights of either Party to seek
10 confirmation, correction or vacation of the arbitration award pursuant to California Code of
11 Civil Procedure Section 1285 et seq.

12 **Section 52. PREEMPTION / ABROGATION.**

13 (a) **General Provision.** In the event that a material provision of this Franchise is
14 preempted or otherwise declared unenforceable by a change in state or federal law, or the
15 parties agree that the underlying legal authority for a material provision of this franchise
16 results in preemption or abrogation, with the effect that a party to this Franchise is not
17 receiving the benefits of the bargain intended under this Franchise as evidenced by its terms,
18 the City and Grantee shall negotiate in good faith to amend this Franchise to redistribute the
19 benefits of the bargain to equitably maintain the balance of benefits between the parties. In
20 the event either the City or Grantee believes that such a preemption or abrogation has
21 occurred, it shall send a written notice to the other party requesting negotiations pursuant to
22 this Section. The notice shall, at a minimum, include: (1) citations to the applicable state or
23 federal law; (2) an analysis of which provisions of this Franchise are affected and the benefits
24 of the bargain that are consequently denied to the party by the preemption or abrogation; (3) a
25 proposal to redistribute the benefits of the bargain, including specific language changes to the

1 Franchise; and (4) a proposed schedule for negotiations. The parties shall have forty (40) City
2 business days after receipt of a request for negotiations pursuant to this Section to agree to
3 any proposed amendments ("Negotiation Period"). A notice which does not meet the criteria
4 set forth herein shall not trigger the Negotiation Period. In the event that the parties are
5 unable to agree to Franchise amendments within the Negotiation Period, either party may
6 request non-binding mediation. If the parties are unable to agree to Franchise amendments
7 after participating in mediation over a period of no less than twenty (20) City business days,
8 then the party against whom the preemption or abrogation was asserted may Terminate this
9 Franchise. The parties acknowledge and agree that any state or federal law shall be read and
10 construed as narrowly as possible so as to prevent preemption or abrogation of the terms of
11 this Franchise. Unless expressly prohibited by the applicable state or federal law, the terms
12 as reflected in this Franchise shall be deemed to have been "grandfathered" and not severed
13 or altered as a result of the change in state or federal law.

14 **(b) Single Franchise.** This Franchise, as to the provisions regarding Cable Service
15 and the Facilities related thereto, is issued pursuant to the City's authority under 47 U.S.C.
16 §521 *et seq.* and the City's authority under the California Constitution, California law, and the
17 San Francisco Charter and Codes. Grantee intends to build a System consisting of Facilities
18 over which it may provide Cable Services, Telecommunication Services and other Services.
19 Subject to Section 2(d) above, the provisions of this Franchise relating to the construction,
20 installation, repair, maintenance and operation of Facilities to provide Telecommunication
21 Services and other Services (other than Cable Services) represent an exercise of the City's
22 authority under the California Constitution, California law, and the City's Charter and Codes.
23 In connection with its construction of a single multi-purpose System, Grantee has requested a
24 single Franchise which grants the authority required and establishes the conditions under
25 which Grantee may occupy and use the Public Rights-of-Way to construct, install, repair,

1 maintain and operate Facilities to provide Cable Services as well as the conditions under
2 which it may occupy and use the Public Rights-of-Way to construct, install, repair, maintain
3 and operate Facilities to provide Telecommunication Services and other Services (other than
4 Cable Services). For that reason, for example, the franchise fee provisions reach both Cable
5 Services and other Services. If, as a result of the grant of a single Franchise in which the City
6 exercises its authority under Applicable Law with respect to Cable Services,
7 Telecommunication Services and other Services, any provision of this Franchise, including
8 but not limited to, the franchise fee provisions, is not fully enforceable according to its terms
9 with respect to a particular type of service other than Cable Service (the "Affected Service"),
10 the following shall occur.

11 (1) The City shall afford the Grantee 60 City business days from the date the
12 provisions are first declared unenforceable by a court or agency of competent jurisdiction (the
13 "Termination Date") to obtain a separate authorization from the City to use or occupy the
14 rights of way to construct, install, repair, maintain and operate any Facilities related to the
15 provision of the Affected Service.

16 (2) Grantee shall promptly seek and diligently pursue an authorization to
17 occupy and use the Public Rights-of-way to construct, install, repair, maintain and operate any
18 Facilities to provide the Affected Service.

19 (3) The authorization in this Franchise to occupy and use the Public Rights-
20 of-Way to provide the Affected Service and to construct, install and maintain the Facilities
21 related thereto shall continue pursuant to all the applicable terms and conditions of this
22 Franchise (including the payment of franchise fees on Gross Revenues from the Affected
23 Service pursuant to Part 4 above, to the extent permitted by law) until the City grants or
24 denies the separate authorization to provide the Affected Service.

25 **PART 11 - LIABILITY/INSURANCE/INDEMNIFICATION**

1 **Section 53. INSURANCE.**

2 (a) Without in any way limiting Grantee's liability pursuant to the "Indemnification"
3 section of this Franchise, Grantee must maintain in force, or require to be maintained during
4 the full term of the Franchise, insurance in the following amounts and coverages:

5 (1) Workers' Compensation, with Employers' Liability Limits not less than
6 \$1,000,000 each accident; and

7 (2) Commercial General Liability Insurance with limits not less than
8 \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage,
9 including Contractual Liability, Personal Injury, Products and Completed Operations; and

10 (3) Business Automobile Liability Insurance with limits not less than
11 \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage,
12 including Owned, Non-Owned and Hired auto coverage, as applicable.

13 (b) Without in any way limiting Grantee's liability pursuant to the "Indemnification"
14 section of this Franchise, Grantee or its contractor(s) must maintain in force, or require to be
15 maintained during the full term of the Franchise, insurance in the following amounts and
16 coverages:

17 (1) Pollution Liability Insurance with limits not less than \$1,000,000 each
18 occurrence combined single limit for bodily injury and property damage, including coverage for
19 all claims arising from pollution or contamination with respect to activities under this Franchise
20 with any deductible not to exceed \$25,000 each occurrence. Such insurance shall be
21 required during any period of construction or excavation.

22 (c) All Commercial General Liability, Business Automobile Liability and Pollution
23 Liability Insurance policies maintained by Grantee or its contractor as set forth above shall
24 provide the following:
25

1 (1) Name as Additional Insured the City and County of San Francisco, its
2 Officers, Agents, and Employees.

3 (2) That such policies are primary insurance to any other insurance available
4 to the Additional Insureds, with respect to any claims arising out of this Franchise, and that
5 insurance applies separately to each insured against whom claim is made or suit is brought.

6 **(d)** All policies shall provide thirty (30) days' advance written notice to City of
7 cancellation mailed to the following address:

8 Department of Telecommunications and Information Services

9 875 Stevenson St., 5th Floor

10 San Francisco, CA 94103-0948

11 Attn: Franchise Administrator

12 **(e)** Should any of the required insurance be provided under a claims-made form,
13 Grantee shall maintain such coverage continuously throughout the term of this Franchise and,
14 without lapse, for a period of three years beyond the expiration of this Franchise, to the effect
15 that, should occurrences during the Franchise term give rise to claims made after expiration of
16 the Franchise, such claims shall be covered by such claims-made policies.

17 **(f)** Should any of the required insurance be provided under a form of coverage that
18 includes a general annual aggregate limit or provides that claims investigation or legal
19 defense costs be included in such general annual aggregate limit, such general annual
20 aggregate limit shall be double the occurrence or claims limits specified above.

21 **(g)** Should any required insurance lapse during the term of this Franchise, the City
22 may, at its sole option, revoke this Franchise effective on the date of such lapse of insurance.

23 **(h)** Ten (10) City days prior to commencing any operations under this Franchise,
24 Grantee must furnish to City certificates of insurance, in form and with insurers satisfactory to
25

1 City, evidencing all coverages set forth above, and shall furnish complete copies of policies
2 promptly upon City request.

3 (i) Grantee's failure to maintain any insurance pursuant to this Section shall be a
4 Material Breach of this Franchise. Any approval of Grantee's insurance by the City shall not
5 relieve or decrease the liability of Grantee hereunder.

6 **Section 54. PERFORMANCE GUARANTEES.**

7 (a) **Security Interest.** Within ten (10) City business days of the Effective Date of
8 this Franchise, Grantee shall provide to DTIS, and maintain during the entire term of this
9 Franchise, except as provided in (4)(i) below, a performance bond or other security interest
10 approved by the City's Risk manager in favor of the City in the amount of two million dollars
11 (\$2,000,000) to guarantee Grantee's faithful performance of the terms and conditions of this
12 Franchise, the San Francisco Administrative Code, and other Applicable Law ("Security
13 Interest"). The Security Interest shall meet the following conditions:

14 (1) **Security Interest Shall Protect City From Losses.** There shall be
15 recoverable by the City, from the principal and any surety, any and all fines, fees, and
16 penalties due to the City and any and all damages, losses, costs, and expenses (together
17 "Losses") suffered or incurred by the City resulting from the failure of Grantee after notice and
18 opportunity to cure, to faithfully comply with: (i) the material provisions of this Agreement, the
19 San Francisco Administrative Code, and other Applicable Law; (ii) all orders, permits and
20 directives of the City, or other body having jurisdiction over Grantee's acts or defaults; (iii)
21 payment of fees due to the City; or (iv) payment of any claims or liens due the City. Such
22 Losses shall include, without limitation, reasonable Attorney's Fees and Costs, consultant
23 fees, administrative fees, and other associated expenses.

1 (2) **Events Triggering Forfeiture Of The Security Interest.** The City may
2 immediately collect or draw upon the entire collateral evidenced by the Security Interest in the
3 event:

4 (i) Grantee abandons the System at any time during the term of this
5 Franchise; or

6 (ii) Grantee effects a Transfer without the express written consent of
7 the City as provided herein; or

8 (iii) The City incurs any other Loss(es) which cannot reasonably be
9 recouped from Grantee's Deposits provided pursuant to subsection (b) below and Grantee
10 fails to pay to the City such Losses within ten City business days.

11 (3) **Use Of The Security Interest Funds.** The City shall apply any funds
12 received under the Security Interest to defray any Losses incurred by the City, including,
13 without limitation, Losses attributable to or arising from the abandonment of the System or
14 Grantee's unauthorized Transfer. Upon final resolution of all claims and payment of all
15 Losses following Termination of this Franchise, the City shall release its interest in the
16 Security Interest.

17 (4) **Form Of Security Interest.** If the Security Interest is a performance
18 bond, the performance bond shall be issued by a surety qualified to do business in California
19 and with an A+9 or better rating for financial condition and financial performance in Best's Key
20 Rating Guide, Property/Casualty Edition; shall be in a form approved by the City Attorney and
21 City Risk Manager; and shall contain the following rider:

22 "This bond may not be canceled, or allowed to lapse, until ninety (90) days after
23 receipt by the City, by certified mail, return receipt requested, of a written notice
24 from the issuer of the bond of intent to cancel or not to renew."

25 Any other Security Interest shall meet similar criteria.

1 (i) **Reduction of Security Interest.** Grantee may reduce the amount
2 of the Security Interest required by subsection (a) above to five hundred thousand dollars
3 (\$500,000), adjusted by (5) below, upon the City's Acceptance of the Final System pursuant
4 to Section 8(c) above.

5 (5) **Indexing.** Grantee shall adjust the amount of the Security Interest by the
6 CPI-U every three (3) years on the anniversary of the Effective Date of this Franchise.

7 (b) **Deposits.** In addition to the Security Interest set forth above, within ten (10)
8 City business days of the Effective Date of this Franchise, Grantee shall provide to DTIS two
9 cash deposits: (1) a two hundred thousand dollar (\$200,000) cash deposit to guarantee
10 Grantee's faithful performance of the terms and conditions of this Franchise, the
11 San Francisco Administrative Code, and other Applicable Law ("City Deposit"); and (2) a
12 twenty five thousand dollar (\$25,000) cash deposit to guarantee Grantee's faithful
13 performance of the obligations it owes to Subscribers pursuant to this Franchise ("Subscriber
14 Deposit"). Grantee shall maintain the City and Subscriber Deposits (together "Deposits") at
15 the level required herein, adjusted by the CPI-U every three (3) years on the anniversary of
16 the Effective Date of this Franchise, throughout the term of the Franchise. The Deposits shall
17 be held by the City's Controller. Pursuant to the procedures set forth in San Francisco
18 Administrative Code Sections 10.27-1 through 10.27-7, the Controller may offset from the
19 Deposits all monies due the City or Subscribers by Grantee pursuant to the Franchise, the
20 San Francisco Administrative Code, or other Applicable Law, including, without limitation,
21 taxes, fees, liquidated damages, penalties, and any Losses which would otherwise be offset
22 by the Security Interest described in subsection (a) above. Grantee shall redeposit monies
23 within ten (10) City business days of such an offset to return the Deposits to the levels
24 required herein.

1 **(c) Material Breach.** Grantee's failure to provide or maintain the Security Interest
2 or any Deposit as required by this Section shall constitute a Material breach of this Franchise
3 and may result in forfeiture of the Deposits and/or Security Interest as damages due the City.

4 **(d) Segregation of Funds; No Limitation on Liability.** The City's obligations with
5 respect to the Deposits and the Security Interest are solely that of debtor and not trustee. The
6 City shall not be required to keep the Deposits separate from its general funds, and Grantee
7 shall not be entitled to any interest on the Deposits. The provisions of this Section shall not
8 be deemed to limit Grantee's liability under the Franchise in any way.

9 **Section 55. INDEMNIFICATION.**

10 **(a)** Grantee shall Indemnify the City and the Indemnified Parties from, and, if
11 requested, shall defend them against any and all Losses resulting directly or indirectly from
12 Grantee's acts or omissions relating to this Franchise including, but not limited to, Losses
13 associated with the use of the Public Rights-of-Way or Grantee's Facilities, regardless of the
14 negligence of, and regardless of whether liability without fault is imposed or sought to be
15 imposed on City, except to the extent that such indemnity is void or otherwise unenforceable
16 under Applicable Law and except to the extent that such Losses are the result of the active
17 negligence or willful misconduct of City and are not contributed to by any act of, or by any
18 omission to perform some duty imposed by Applicable Law or agreement on Grantee or its'
19 Agents.

20 **(b)** In addition to Grantee's obligation to Indemnify City, Grantee specifically
21 acknowledges and agrees that it has an immediate and independent obligation to defend City
22 from any claim which actually or potentially falls within this indemnification provision, even if
23 the allegations are or may be groundless, false or fraudulent, which obligation arises at the
24 time such claim is tendered to Grantee by City and continues at all times thereafter.

1 (c) Grantee shall Indemnify the City and the Indemnified Parties from all Losses
2 relating to any infringement of the patent rights, copyright, trade secret or any other
3 proprietary right or trademark and all other intellectual property claims of any Person resulting
4 from or relating to the acceptance by City, or any of its Agents, of articles or Services to be
5 supplied in the performance of this Franchise.

6 (d) Grantee shall Indemnify the City and the Indemnified Parties from all Losses
7 incurred by the City to defend the award of this Franchise to Grantee.

8 (e) Grantee's failure to Indemnify the City and the Indemnified Parties in
9 accordance with this Section shall be deemed a Material Breach of this Franchise.

10 **Section 56. INCIDENTAL AND CONSEQUENTIAL DAMAGES.** Grantee shall be
11 responsible for incidental and consequential damages resulting in whole or in part from
12 Grantee's acts or omissions relative to this Franchise. Nothing in this Franchise shall
13 constitute a waiver or limitation of any rights which City may have under Applicable Law.

14 **Section 57. WORK PERFORMED BY CONTRACTORS AND SUBCONTRACTORS.** Any
15 contractor or subcontractor used for work or construction, installation, operation, maintenance,
16 or repair of the System must be properly licensed pursuant to Applicable Law. Each such
17 contractor or subcontractor shall have the same obligations with respect to its work as
18 Grantee would have if the work were performed by Grantee. Grantee shall ensure that all
19 contractors, subcontractors and all employees who perform work for it are trained and
20 experienced. Grantee shall be responsible for ensuring that the work of contractors and
21 subcontractors is performed consistent with this Franchise and other Applicable Law, shall be
22 responsible for acts or omissions of contractors or subcontractors under this Franchise to the
23 same degree it is responsible for the acts of its employees, shall be responsible for promptly
24 correcting acts or omissions by any contractor or subcontractor, and shall implement a quality
25 control program to ensure that the work contemplated by this Franchise is properly performed.

1 **Section 58. NO LIMITATION ON LIABILITY.** None of the provisions of this Part or any
2 insurance policy required herein, or any damages recovered by the City hereunder shall be
3 construed to excuse the faithful performance by or limit the liability of Grantee under this
4 Franchise for damages either to the limits of such policies or otherwise.

5 **PART 12 - VIOLATIONS OF THIS FRANCHISE**

6 **Section 59. REMEDIES.**

7 **(a) Remedies Available at law or in Equity.** In the event of any breach of this
8 Franchise, the City shall have all rights and remedies available at law and in equity. Without
9 limiting the foregoing, the City shall be entitled to equitable relief, including not limited to
10 injunctive relief, relative to any violation of any term, covenant, condition or provision of this
11 Franchise. No termination or revocation of this Franchise pursuant to the terms hereof or by
12 operation of law or otherwise shall in any instance relieve Grantee of its liabilities and
13 obligations hereunder arising on or before termination or revocation of this Franchise.

14 **(b) No Accord or Satisfaction.** No submission by Grantee or acceptance by City
15 of full or partial payment of any sum hereunder during the continuance of any failure by
16 Grantee to perform any obligations hereunder shall waive any of City's rights or remedies or
17 constitute any accord or satisfaction, whether or not City had knowledge of any such failure.
18 No endorsement or statement on any check or remittance by or for Grantee or in any
19 communication accompanying or relating to such payment shall operate as a compromise or
20 accord or satisfaction unless the same is approved as such in writing by City. City may
21 accept such check, remittance or payment and retain the proceeds thereof, without prejudice
22 to its rights to recover the balance of any amounts due from Grantee and to pursue any right
23 or remedy provided for or permitted under this Franchise or in law or at equity.

24 **(c) Material Breaches.** In the event Grantee's commits a Material Breach as
25 defined in Section 1(ttt) above, the City may seek Revocation of the Franchise pursuant to

1 Section 11.16 of Chapter 11, provided that Grantee shall have the notice, cure, and other
2 rights set forth in Section 11.16 of Chapter 11. Grantee acknowledges and agrees that
3 violation of the following sections shall constitute a Material Breach of this Franchise: Section
4 2(b)(Services Authorized), Section 4 (Transfers – City Approval Required), Section 8
5 (Construction Schedule), Section 9(d) (Construction Sequence – No Discrimination), Section
6 12(Payment of Franchise Fee), Section 43(i)(Emergency Alert System), Section 45 (Fiber
7 Optic Infrastructure For City Use), Section 46 (Free Service to City-Designated Buildings),
8 Section 47 (City Conduit), Section 48 (PEG Contributions), Section 49 (PEG Channels),
9 Section 51 (Mid-Term Technical Review), Section 53 (Insurance), Section 54 (Performance
10 Guarantees), Section 55 (Indemnification), Section 65 (Nondiscrimination), and Section 70
11 (EIC Forms). Notwithstanding the foregoing list, Grantee understands and acknowledges that
12 a breach of any Section of this Franchise may be, or may become, a Material Breach as that
13 term is defined herein.

14 **(d) Cure Periods for Non-Material Breaches.** The notice and cure periods of this
15 subsection shall apply to all alleged breaches of this Franchise other than alleged Material
16 Breaches, which are governed by (c) above. In the event that Grantee fails to pay any sum
17 due and owing to the City hereunder, Grantee shall have a period of ten (10) City business
18 days from the date of written notice of such failure from the City in which to cure the
19 nonpayment; provided, the City shall not be required to provide such notice regarding
20 Grantee's failure to make any given payment when due more than twice during any calendar
21 year, and such nonpayment after Grantee has received two such notices in any calendar year
22 shall be deemed a breach without requirement on the part of the City to give to Grantee
23 additional notice. In the event that Grantee fails to perform or comply with any other term,
24 covenant, condition or representation made in this Franchise, Grantee shall have a period of
25 thirty (30) days following the date of written notice of such failure from the City in which to cure

1 the failure; provided, if such failure cannot reasonably be cured within said thirty (30) day
2 period, Grantee shall not be deemed to be in breach if Grantee commences such cure within
3 said thirty (30) day period and thereafter diligently prosecutes the same to completion;
4 provided, the City shall not be required to provide such notice regarding Grantee's failure to
5 perform any given obligation more than twice during any calendar year, and such
6 nonperformance after Grantee has received two such notices in any calendar year shall be
7 deemed a breach without requirement on the part of the City to give to Grantee additional
8 notice. Notwithstanding anything to the contrary set forth above, the cure periods set forth in
9 this subsection (d) shall apply only to those provisions in this Franchise which, by their
10 express terms or by incorporation of Chapter 11, do not have specified cure periods. If a
11 notice or cure period is required by the express terms of a provision of this Franchise or by
12 Chapter 11, then this subsection (d) shall not require the giving of a second notice or the grant
13 of a second cure period.

14 **Section 60. LIQUIDATED DAMAGES.** Without limiting Section 59 above, the City shall
15 be entitled to liquidated damages for specified breaches as set forth in this Section. Nothing
16 in this Section shall limit or impair the City's power to: (i) Revoke this Franchise as a result of
17 any Material Breach of its provisions; or (ii) impose penalties and costs as set forth in
18 Chapter 11; provided, however, the City cannot simultaneously impose, with respect to a
19 specific breach, both liquidated damages under this Section and penalties and costs under
20 Chapter 11.

21 **(a) Liquidated Damages Set Forth Herein Are Not Penalties.** By executing this
22 Franchise, Grantee agrees that in the event it fails to comply with certain provisions of this
23 Franchise, the City will suffer actual damages that will be impractical or extremely difficult to
24 determine. Grantee further agrees that the amounts set forth in this Section that will be owed
25 to the City as a result of its failure to comply are not penalties, but reasonable estimates of the

1 damages that the City will incur as a result of Grantee's failure to comply, based on the facts
2 known to Grantee and the City and established in light of the circumstances existing at the
3 Effective Date of this Franchise.

4 **(b) Notice And Withdrawal.** In the event of a default triggering liquidated damages
5 pursuant to this Section, the City shall notify Grantee of the default in writing and Grantee
6 shall have ten (10) City business days from the date of the City's issuance of the notice to
7 cure the default or, in the event the default cannot reasonably be cured within ten (10) City
8 business days, to begin to take steps to cure the default and notify the City of its plan to cure
9 within a certain time. In the event the default is not timely cured, Grantee shall be liable to the
10 City for liquidated damages in the amounts set forth in this Section and liquidated damages
11 shall continue to accrue for so long as the default continues, up to the full amount of Grantee's
12 Security Interest and the applicable Deposits. The City may, in its discretion, withdraw
13 liquidated damages owed to it from an applicable Deposit pursuant to Section 54(b) above, or
14 Grantee's Security Interest pursuant to Section 54(a) above in the event Grantee fails to pay
15 the liquidated damages within the time provided.

16 **(c) Events of Default Triggering Liquidated Damages.** Grantee shall be liable to
17 the City for liquidated damages in the following amounts (adjusted by the CPI-U on each
18 anniversary date of the Effective Date) whenever the following defaults of this Franchise have
19 occurred:

20 **(1) Failure To Complete System Construction On Schedule.** Grantee
21 shall pay the City liquidated damages of one thousand five hundred dollars (\$1,500) per day
22 from the City Deposit or Security Interest for failure to meet the System construction schedule
23 set forth in Section 8 above.

24 **(2) Failure To Submit Required Reports, Information, and Plans.**
25 Grantee shall pay the City liquidated damages of five hundred dollars (\$500) per City

1 business day from the City Deposit or Security Interest for failure to provide, within five (5)
2 days following City's written notice of such failure, any report, test result, or plan required
3 pursuant to Parts 5 and 6 of this Franchise.

4 (3) **Failure To Provide Fiber Optic Infrastructure.** Upon activation of the
5 Hub Ring and any Node Area where the City has requested a Fiber Drop pursuant to Section
6 45(f) above, Grantee shall pay the City liquidated damages of three hundred dollars (\$300)
7 per day from the City Deposit or Security Interest for failure to provide the City's Fiber Optic
8 Infrastructure pursuant to Section 45 above.

9 (4) **Failure to Maintain City's Fiber Optic Infrastructure.** Upon activation
10 of the Hub Ring and any Node Area where the City has requested a Fiber Drop pursuant to
11 Section 45(f) above, Grantee shall pay the City liquidated damages of three hundred dollars
12 (\$300) per day from the City Deposit or Security Interest for failure to maintain the City's Fiber
13 Optic Infrastructure pursuant to Section 45 above.

14 (5) **Failure To Timely Provide Fiber Drops.** Upon activation of the Hub
15 Ring and any Node Area where the City has requested a Fiber Drop pursuant to Section 45(f)
16 above, Grantee shall pay the City liquidated damages of fifty dollars (\$50) per City business
17 day from the City Deposit or Security Interest for failure to timely provide the City with a Fiber
18 Drop or access to its Hub Ring pursuant to Section 45 above.

19 (6) **Failure To Provide PEG Channels Or Transmission.** Grantee shall
20 pay the City liquidated damages of two hundred and fifty dollars (\$250) per day, per Channel,
21 from the City Deposit or Security Interest for failure to provide any PEG Channel, any PEG
22 Digital Channel Equivalent, or meet any Video Feed requirement pursuant to Section 49
23 above.

24 (7) **Customer Service Requirements Of Administrative Code.** Grantee
25 shall pay the City liquidated damages of fifty dollars (\$50) per day, per incident, from the

1 Subscriber Deposit or Security Interest for failure to comply with the customer service
2 requirements of Section 11.46 of Chapter 11, including, without limitation, the restrictions on
3 exclusive contracts, the requirement to provide inside wiring, and the obligation to promptly
4 disconnect a Subscriber upon the Subscriber's request.

5 (8) **Failure to Meet Customer Service Standards.**

6 (i) Grantee shall pay the City liquidated damages of two hundred
7 dollars (\$200) per day from the Subscriber Deposit for each violation of any of the following
8 requirements:

- 9 • Failure to have its City office open for Subscribers during Normal Business
10 Hours;
- 11 • Failure to have trained company representatives available to respond to
12 telephone inquiries during Normal Business Hours pursuant to 47 C.F.R.
13 76.309(c)(1)(i)(A);
- 14 • Failure to maintain a local or toll free telephone number twenty four (24) hours
15 a day, seven (7) days a week pursuant to 47 C.F.R. 76.309(c)(1)(i); and
- 16 • Failure to respond to Subscriber inquiries by the next business day pursuant
17 to 47 C.F.R. 76.309(c)(1)(i)(B).

18 (ii) Beginning on the first (1st) anniversary of the Effective Date,
19 Grantee shall pay the City liquidated damages of twenty-five cents (\$0.25) per Subscriber per
20 quarter from the Subscriber Deposit for violation of any of the following, which shall be
21 measured on a quarterly basis at the time Grantee is required to submit its franchise fee
22 payments:

- 23 • Failure to answer its business telephone lines within the time limits prescribed
24 by 47 C.F.R. 76.309(c)(1)(ii) for three (3) quarters in a row, or for two (2)
25 quarters in a row, if the difference between the performance standard and the

1 actual performance is not reduced by at least twenty percent (20%) between
2 quarters; and

- 3 • Failure to meet the requirements of 47 C.F.R. 76.309(c)(2) regarding
4 installations, outages and service calls.

5 **Section 61. FORCE MAJEURE.** Grantee shall not be deemed in default of a provision of
6 this Franchise where performance was rendered impossible or delayed by causes beyond
7 Grantee's reasonable control, including, but not limited to wars or riots, labor strikes or civil
8 disturbances, floods, earthquakes, fire, explosions, or epidemics, or other acts of God, and
9 this Franchise shall not be Revoked or Grantee penalized for such noncompliance, provided
10 that Grantee takes immediate and diligent steps to bring itself back into compliance with this
11 Franchise and to comply as soon as possible under the circumstances without unduly
12 endangering the health, safety, and integrity of the Grantee's employees or property, or the
13 health, safety, and integrity of the public, Public Rights-of-Way, public property, or private
14 property. Acts beyond Grantee's reasonable control shall include extraordinary and
15 unforeseeable delays in obtaining necessary City permits and utility pole attachment rights
16 following Grantee's timely and complete submittal of all required application materials and the
17 diligent pursuit thereof so long as Grantee has not sought a waiver or exception of any
18 standard requirement. It is expressly agreed and understood that Grantee shall account for,
19 and include in Grantee's scheduling, ordinary delays and obstacles in obtaining permits and
20 pole attachment rights, and Grantee shall commence its permitting and approval processes
21 with sufficient advance time to allow for such delays without impacting Grantee's construction
22 schedule. Acts beyond Grantee's reasonable control shall not include (i) failure to obtain
23 financing or have adequate funds, or (ii) work shortages when qualified workers are available.
24 The provisions of this Section shall have no application unless a party seeking an extension of
25 time for performance under this Franchise shall have first notified the other party in writing of

1 the cause or causes thereof within thirty (30) days after its reasonable determination that an
2 event may constitute a force majeure delay under this Section..

3 **PART 13 - MISCELLANEOUS PROVISIONS**

4 **Section 62. NOTICES.** Unless otherwise expressly provided herein, all written
5 communications sent by the City or Grantee may be by United States mail, and shall be
6 addressed as follows:

7 To City: Department of Telecommunications and Information Services
8 875 Stevenson Street, 5th Floor
9 San Francisco, CA 94103
10 Attn: Cable Franchise Administrator

11 and

12 San Francisco City Attorney's Office
13 City Hall, Room 234
14 San Francisco, CA 94102
15 Attn: Telecommunications Team Leader

16
17 To Grantee: RCN Telecom Services of California, Inc.
18 1400 Fashion Island Boulevard, Suite 100
19 San Mateo, CA 94404
20 Attn: V.P. for Regulatory and Government Affairs

21 **Section 63. TAXES.**

22 (a) Grantee shall be responsible for payment of any taxes, including possessory
23 interest taxes and California sales and use taxes, levied upon or as a result of this Franchise,
24 Grantee's use of the Public Rights-of-Way, or the Services delivered pursuant hereto.

1 **(b)** Grantee shall collect and remit to City the utility users tax pursuant to Article 10
2 of Part III of the San Francisco Municipal Code, as amended, if the System is used to provide
3 services that are subject to the tax, as well as the emergency response fee pursuant to Article
4 10A of Part III of the San Francisco Municipal Code, as amended, if the System is used to
5 provide services subject to the fee. Grantee shall provide such records to City as City may
6 require to confirm compliance with this requirement.

7 **(c)** Grantee recognizes and understands that this Franchise may create a
8 “possessory interest” for property tax purposes. If such a possessory interest is created, then
9 the following shall apply:

10 (1) Grantee, on behalf of itself and any permitted successors and assigns,
11 recognizes and understands that Grantee and any permitted successors and assigns may be
12 subject to real property tax assessments on the possessory interest;

13 (2) Grantee, on behalf of itself and any permitted successors and assigns,
14 recognizes and understands that the creation, extension, renewal, or assignment of this
15 Franchise may result in a “change in ownership” for purposes of real property taxes, and
16 therefore may result in a revaluation of any possessory interest created by this Franchise.
17 Grantee accordingly agrees on behalf of itself and its permitted successors and assigns to
18 report on behalf of the City to the County Assessor the information required by Revenue and
19 Taxation Code sections 480.5 and 480.6, as amended from time to time, and any successor
20 provision.

21 (3) Grantee, on behalf of itself and any permitted successors and assigns,
22 recognizes and understands that other events (see, e.g., Rev. & Tax. Code section 64, as
23 amended from time to time) also may cause a change of ownership of the possessory interest
24 and result in the revaluation of the possessory interest. Grantee accordingly agrees, on
25 behalf of itself and its permitted successors and assigns, to report, as required by Applicable

1 Law, any information related to a possible change in ownership to the County Assessor, the
2 State Board of Equalization or other public agency.

3 (4) Grantee further agrees to provide such other information as may be
4 requested by the City to enable the City to comply with any reporting requirements for
5 possessory interests that are imposed by Applicable Law.

6 **Section 64. CONFLICT OF INTEREST.** Through its execution of this Franchise, Grantee
7 acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's
8 Charter and §87100 et seq. of the California Government Code, and certifies that it does not
9 know of any facts which constitute a violation of said provisions.

10 **Section 65. NON-DISCRIMINATION.**

11 (a) **Grantee Shall Not Discriminate.** In the performance of this Franchise,
12 Grantee agrees not to discriminate on the basis of the fact or perception of a person's race,
13 color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation,
14 gender identity, domestic partner status, marital status, disability or Acquired Immune
15 Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City
16 employee working with, or applicant for employment with Grantee, in any of Grantee's
17 operations in San Francisco or in connection with this Franchise elsewhere within the United
18 States, or against any person seeking accommodations, advantages, facilities, privileges,
19 services, or membership in all business, social, or other establishments or organizations
20 operated by Grantee.

21 (b) **Subcontracts.** Grantee shall incorporate by reference in all subcontracts the
22 provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative
23 Code (copies of which are available from Purchasing) and shall require all subcontractors to
24 comply with such provisions. Grantee's failure to comply with the obligations in this
25 subsection shall constitute a Material Breach of this Franchise.

1 **(c) Non-Discrimination in Benefits.** Grantee does not as of the date of this
2 Franchise and will not during the term of this Franchise, in any of its operations in San
3 Francisco or where the work is being performed for the City or elsewhere within the United
4 States, discriminate in the provision of bereavement leave, family medical leave, health
5 benefits, membership or membership discounts, moving expenses, pension and retirement
6 benefits or travel benefits, as well as any benefits other than the benefits specified above,
7 between employees with domestic partners and employees with spouses, and/or between the
8 domestic partners and spouses of such employees, where the domestic partnership has been
9 registered with a governmental entity pursuant to state or local law authorizing such
10 registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco
11 Administrative Code.

12 **(d) Condition to Franchise.** As a condition to this Franchise, Grantee shall
13 execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form
14 (Form HRC-12B-101) with supporting documentation and secure the approval of the form by
15 the San Francisco Human Rights Commission.

16 **(e) Incorporation of Administrative Code Provisions by Reference.** The
17 provisions of Chapters 12B and 12C of the San Francisco Administrative Code are
18 incorporated in this Section by reference and made a part of this Franchise as though fully set
19 forth herein. Grantee shall comply fully with and be bound by all of the provisions that apply
20 to this Franchise under such Chapters of the Administrative Code, including but not limited to
21 the remedies provided in such Chapters. Without limiting the foregoing, Grantee understands
22 that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50
23 for each person for each day during which such person was discriminated against in violation
24 of the provisions of this Franchise may be assessed against Grantee and/or deducted from
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1 any payments due Grantee, including the City Deposit held by the Controller pursuant to
2 Section 54(b) above.

3 **Section 66. CONTRACTING WITH MINORITY/WOMEN AND LOCALLY-OWNED**
4 **BUSINESS ENTERPRISES.**

5 (a) Grantee agrees to utilize Minority-Owned Business Enterprises (MBE) and
6 Women-Owned Business Enterprises (WBE) for contracts and purchases of all services,
7 materials or equipment for the construction, operation and maintenance of the System. In
8 order to demonstrate its commitment to this objective Grantee agrees to contracting goals for
9 MBEs and WBEs. The combined MBE/WBE contracting goal for this Franchise is fifteen
10 percent (15%) of the total third-party contracting cost for which Grantee lets out contracts
11 relating to the purchasing of equipment or materials and the construction, operation and
12 maintenance of the System. Grantee agrees that Chapter 12D.A of the City's Administrative
13 Code shall apply to this Franchise and Grantee shall comply with all terms thereof with
14 respect to the foregoing goal; subject, however, to (i) any modifications that may be agreed
15 upon between the City's Human Rights Commission ("HRC"), DTIS and Grantee in writing,
16 and (ii) any modifications to reflect the fact that the City is not making payments to Grantee for
17 work performed by Grantee under this Franchise. The terms MBE and WBE are defined in
18 Chapter 12D.A. of the San Francisco Administrative Code. The MBEs and WBEs must be
19 certified by HRC. Grantee recognizes that additional effort and coordination will be required
20 to develop a detailed plan to facilitate implementation of this Section. Grantee agrees to work
21 in good faith with DTIS and HRC to develop such an implementation plan, consistent with the
22 terms of this Section; provided, the failure to develop such a plan shall not limit Grantee's
23 obligations or the City's rights under this Section. The implementation plan shall include an
24 increase in the contracting goal set forth above as the percentages of available MBE/WBE
25 contractors increase during the Term of this Franchise.

1 **(b)** If Grantee or the City receives a written complaint alleging that Grantee has
2 discriminated on the basis of race or gender in the awarding of any contract under this
3 Franchise, the party that received such complaint shall promptly forward it to the other party.
4 Within fifteen (15) City business days from its receipt of the complaint, Grantee shall provide
5 to the City a written statement of the facts relative to the complaint and any evidence showing
6 that Grantee or its contractor did not discriminate in the awarding of the contract.

7 **(c)** With each Quarterly Report, Grantee shall submit to DTIS, on behalf of itself and
8 its contractors, the following information, in a form reasonably acceptable to DTIS and HRC:
9 (i) the dollar amount of each contract awarded by Grantee and the scope of work to be
10 performed under each such contract; (ii) the name of the contractor and whether that
11 contractor is a MBE or a WBE; (iii) the total payments to be made to the contractor through
12 the end of the relevant reporting period; and (iv) such additional information as DTIS or HRC
13 may reasonably request to verify compliance with this Section. Grantee shall designate an
14 internal compliance officer who will be responsible for ensuring Grantee's compliance with this
15 Section, interacting with HRC and DTIS on any compliance issues, and providing the above
16 information.

17 **(d)** If the HRC Director believes, after notice and an opportunity for Grantee to
18 present evidence to the contrary, that Grantee is in violation of the terms of this Section with
19 respect to one or more contracts, the HRC Director will refer the matter to HRC's
20 Commissioners. If the HRC Commissioners determine, after a public hearing, that Grantee is
21 in violation of this Section with respect to one or more contracts, then the HRC
22 Commissioners may assess liquidated damages against Grantee in an amount not to exceed
23 \$25,000 or 5% of the contract amount, whichever is greater, for each such violation.

24 **Section 67. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN.** Pursuant to San
25 Francisco Administrative Code Section 12I.5(b), the City urges Grantee not to import,

1 purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood
2 product, virgin redwood or virgin redwood wood product.

3 **Section 68. MACBRIDE PRINCIPLES.** Pursuant to San Francisco Administrative Code
4 Section 12.F.5, the City urges companies doing business in Northern Ireland to move towards
5 resolving employment inequities, and encourages such companies to abide by the MacBride
6 Principles. The City urges San Francisco companies to do business with corporations that
7 abide by the MacBride Principles.

8 **Section 69. PROHIBITION ON TOBACCO PRODUCTS ADVERTISING.** Pursuant to
9 Section 4.20 of the San Francisco Administrative Code, Grantee acknowledges and agrees
10 that no advertising of cigarettes or tobacco products is allowed on any real property owned by
11 or under the control of the City. This prohibition includes the placement of the name of a
12 company producing, selling or distributing cigarettes or tobacco products or the name of any
13 cigarette or tobacco product in any promotion of any event or product. This prohibition does
14 not apply to any advertisement sponsored by a state, local or nonprofit entity designed to
15 communicate the health hazards of cigarettes and tobacco products or to encourage people
16 not to smoke or to stop smoking.

17 **Section 70. EARNED INCOME CREDIT (EIC) FORMS.**

18 (a) Grantee shall provide EIC Forms to each Eligible Employee at each of the
19 following times: (i) within thirty (30) days following the Effective Date (unless Grantee has
20 already provided such EIC Forms at least once during the calendar year in which such
21 Effective Date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii)
22 annually between January 1 and January 31 of each calendar year during the term of this
23 Franchise.

24 (b) Failure to comply with any requirement contained in subparagraph (a) of this
25 Section shall constitute a Material Breach by Grantee of the terms of this Franchise. If, within

1 thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure
2 such breach or, if such breach cannot reasonably be cured within such period of thirty (30)
3 days, Grantee fails to commence efforts to cure within such period or thereafter fails to
4 diligently pursue such cure to completion, the City may pursue any rights or remedies
5 available under this Franchise or other Applicable Law.

6 (c) Any subcontract entered into by Grantee shall require the subcontractor to
7 comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

8 (d) Capitalized terms used in this Section and not defined in this Franchise shall
9 have the meanings assigned to such terms in Chapter 12O of the San Francisco
10 Administrative Code.

11 **Section 71. POLICE AND REGULATORY POWERS RESERVED.** In executing this
12 Franchise, Grantee acknowledges that its rights are subject to the powers of the City to adopt
13 and enforce general ordinances necessary to the safety and welfare of the public. Grantee
14 shall comply with all Applicable Laws, including but not limited to those enacted by the City
15 pursuant to any such power. Any conflict between the terms of this Franchise and any
16 present or future lawful exercise of the City's police and regulatory powers shall be resolved in
17 favor of the latter.

18 **Section 72. REMEDIES CUMULATIVE.** All remedies under this Franchise are cumulative
19 unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of
20 another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties
21 relieve Grantee of its obligations to comply with its Franchise or other Applicable Law.
22 Remedies may be used singly or in combination. In addition, either party may exercise any
23 rights it has at law or in equity.

24 **Section 73. RIGHT OF CONDEMNATION RESERVED.** Nothing in this Franchise shall
25 limit any right the City may have to acquire by eminent domain or otherwise any property of

1 Grantee; provided, however, that Grantee shall be compensated for any such acquisition
2 pursuant to Applicable Law.

3 **Section 74. COMPLIANCE WITH LAWS.** Grantee shall comply with all Applicable Laws
4 relating to its activities under this Franchise and its conduct of business within the City as they
5 exist or may be amended hereafter. Grantee shall also keep itself fully informed of all
6 Applicable Laws that in any manner affect Grantee's performance under this Franchise,
7 including, without limitation, the City's Charter, codes, ordinances and regulations. The parties
8 acknowledge and agree that Grantee's obligation to comply with all present or future
9 Applicable Laws as provided herein is a material part of the bargained-for consideration under
10 this Franchise. Grantee shall promptly upon request provide City with evidence of its
11 compliance with any Applicable Law.

12 **Section 75. TIME IS OF THE ESSENCE.** Time is of the essence with respect to each
13 provision of this Franchise, including, but not limited to, the provisions relating to the
14 Extension Term and to the payment of franchise fees and other sums due hereunder, subject
15 to the provisions of Section 61 above.

16 **Section 76. NO WAIVER.** The failure of the City on one or more occasion to exercise a
17 right, to require Grantee's compliance or performance with an obligation under this Franchise,
18 the Administrative Code or any other Applicable Law, or the City's failure to pursue a breach
19 thereof shall not be deemed to constitute a waiver of such right, obligation or breach. Grantee
20 shall not be excused from such right, obligation, or breach unless such right, obligation or
21 breach has been specifically waived in writing by the City. No express written waiver of any
22 default or the performance of any provision hereof shall affect any other default or
23 performance, or cover any other period of time, other than the default, performance or period
24 of time specified in such express waiver. One or more written waivers of a default or the
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1 performance of any provision hereof shall not be deemed to be a waiver of a subsequent
2 default or performance of the same or any other provision.

3 **Section 77. NO RECOURSE FOR GRANTEE'S DAMAGES.** Grantee shall have no
4 recourse against the City for any loss, cost, expense, or damage arising out of the
5 enforcement or lack of enforcement of any provision or requirement of this Franchise, or other
6 Applicable Law. Notwithstanding the foregoing, nothing herein precludes Grantee from
7 seeking and obtaining any injunctive relief against the City.

8 **Section 78. MODIFICATION.** This Franchise may not be modified, nor may compliance
9 with any of its terms be waived, except by written instrument executed and approved in
10 accordance with the requirements of Chapter 11 and the City's Charter.

11 **Section 79. VENUE.** The formation, interpretation, and performance of this Franchise
12 shall be governed by the laws of the State of California. Venue for all litigation relative to the
13 formation, interpretation and performance of this Franchise shall be in San Francisco.

14 **Section 80. CONSTRUCTION OF FRANCHISE.** The provisions of this Franchise shall be
15 liberally construed to effectuate its objectives consistent with Chapter 11 and other Applicable
16 Law and the public interest. Paragraph captions shall be for reference only and shall not be
17 considered in construing this Franchise.

18 **Section 81. ENTIRE DOCUMENT.** This document and its attachments, appendices, and
19 exhibits, including all documents and instruments incorporated by reference, sets forth the
20 entire agreement between the City and Grantee and supersedes all other oral or written
21 provisions. This document may only be modified as provided in Section 78 above.

22 **Section 82. ORDER OF PRECEDENCE.** Except as precluded by Applicable Law, to the
23 extent the provisions of this Franchise, Chapter 11, or other Applicable Law are in conflict, the
24 provisions which impose the higher or greater legal duty or obligation upon Grantee shall take
25 precedence, unless a different order of precedence is expressly set forth herein.

1 **Section 83. SEVERABILITY.** If any non-material provision of this Franchise, or the
2 application thereof to any Person or circumstance, is held invalid, by a court of competent
3 jurisdiction (following the exhaustion of any permitted appeals), the remainder of this
4 Franchise, including the application of such part or provision to other Persons or
5 circumstances, shall not be affected thereby and shall continue in full force and effect. To this
6 end, the non-material provisions of this Franchise are severable. For purposes of this
7 Section, a non-material provision shall be deemed a provision that, upon deletion, (i) does not
8 undermine the balance of the bargain agreed to by the parties as reflected by this Franchise,
9 and (ii) does not cause the continued enforcement of the remainder of this Franchise to be
10 inequitable under all of the circumstances. In addition, any provision, the breach of which is
11 defined as a Material Breach hereunder, shall be deemed a material provision for purposes of
12 this Section. In the event any material provision of this Franchise is held invalid by a court of
13 competent jurisdiction (following the exhaustion of any permitted appeals), the procedures
14 and remedies set forth in Section 52 above shall govern.

15 **Section 84. HAZARDOUS MATERIALS.** Grantee and its Agents shall comply with all
16 Hazardous Materials Laws. Without limiting the generality of the foregoing, Grantee, on
17 behalf of itself and its Agents, covenants and agrees that it will not use, generate, transport,
18 store, emit, discharge or dispose of Hazardous Materials on, under or about the Public Rights-
19 of-Way, nor will it transport or permit the transport of Hazardous Materials to or from the
20 Public Rights-of-Way, except for (A) standard building materials and equipment that do not
21 contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs),
22 (B) gasoline and other fuel products used to transport and operate vehicles and equipment,
23 and (C) any Hazardous Materials which do not require a permit or license from, or that need
24 not be reported to, a governmental agency, which Hazardous Materials are used in the
25 construction of the Facilities in the ordinary course of Grantee's business, and which are

1 reported to, and approved by, City prior to any such use and, in any case, are used in strict
2 compliance with all Applicable Laws.

3 **Section 85. NO JOINT VENTURE.**

4 (a) Nothing contained in this Franchise shall be deemed or construed as creating a
5 partnership or joint venture between City and Grantee or between City and any other Person,
6 or cause City to be responsible in any way for the debts or obligations of Grantee. The City
7 shall not be liable for any act of Grantee and Grantee shall not be liable for any act of the City,
8 and nothing herein contained shall be construed as creating the relationship of employer and
9 employee between the City and Grantee or any of their respective Agents. Grantee is not a
10 state or governmental actor with respect to any activity conducted by Grantee hereunder. The
11 subject of this Agreement is a Franchise with neither party acting as the agent of the other
12 party in any respect.

13 (b) Nothing contained in this Franchise shall create or justify any claim against the
14 City by any third person with whom Grantee may have contracted or may contract relative to
15 this Franchise or by any other Person.

16 **Section 86. PREVAILING WAGES.** Grantee agrees that any person performing labor in
17 the construction of the Facilities shall be paid not less than the highest prevailing rate of
18 wages and that Grantee shall include, in any contract for construction of such improvements,
19 a requirement that all persons performing labor under such contract shall be paid not less
20 than the highest prevailing rate of wages for the labor so performed. Grantee further agrees
21 that, as to the construction of such improvements under this Franchise, Grantee shall comply
22 with all the provisions of Section 6.22(E) of the San Francisco Administrative Code that
23 relates to payment of prevailing wages. Grantee shall require any contractor to provide, upon
24 request, certified payroll reports with respect to all persons performing labor in the
25 construction of any Facilities.

1 **Section 87. GRANTEE'S REPRESENTATIONS AND WARRANTIES.** Grantee
2 represents, warrants and covenants to City as follows, as of the Effective Date:

3 (a) **Valid Existence; Good Standing.** Grantee is a corporation duly organized and
4 validly existing under the laws of the State of California. Grantee has all requisite power and
5 authority to own its property and conduct its business as presently conducted. Grantee has
6 made all required corporate filings and is a corporation in good standing in the State of
7 California.

8 (b) **Authority.** Grantee has all requisite power and authority to execute and deliver
9 this Franchise and to carry out and perform all of the terms and covenants of this Franchise.
10 The execution and delivery of this Franchise by Grantee has been duly and validly authorized
11 by all necessary action.

12 (c) **No Limitation on Ability to Perform.** Neither Grantee's articles of
13 incorporation or operating agreement, nor the organizational documents of any of Grantee's
14 members or partners, nor any rule, policy, constitution, by-law , agreement or Law, in any way
15 prohibits, limits or otherwise affects the right or power of Grantee to enter into and perform all
16 of the terms and covenants of this Agreement. Neither Grantee nor any of its members or
17 partners are party to or bound by any contract, agreement, indenture, trust agreement, note,
18 obligation or other instrument which could prohibit, limit or otherwise affect the same. There
19 are no pending or threatened suits or proceedings affecting Grantee or any of its members or
20 partners before any court, governmental agency, or arbitrator which might materially
21 adversely affect the Grantee's ability to install and operate the System or perform its
22 obligations under this Franchise.

23 (d) **Truth and Accuracy.** No document furnished by Grantee to the City in
24 connection with this Franchise contains any untrue statement of material fact or omits or will
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1 omit a material fact necessary to make the statements contained therein not misleading,
2 under the circumstances under which any such statement shall have been made.

3 **(e) Suspension or Disbarment.** Grantee has not been suspended or disbarred by
4 the U.S. General Services Administration, nor has Grantee been suspended, disciplined, or
5 prohibited from contracting with any federal, state or local governmental agency. Grantee
6 covenants that it shall not, in connection with this Franchise, hire any contractor that has been
7 suspended or disbarred by the City.

8 **Section 88. SUNSHINE ORDINANCE.** Grantee understands and agrees that the City's
9 Sunshine Ordinance (SF Administrative Code, Chapter 67) and the State Public Records Law
10 (Gov't Code section 6250 et seq.), apply to this Franchise and, subject to SF Administrative
11 Code Section 11.20 [Confidentiality of Propriety Information], any and all records, information,
12 and materials submitted to the City hereunder are public records subject to public disclosure.

13 **Section 89. FALSE CLAIMS.** Article 5 of San Francisco Administrative Code Chapter 6,
14 relating to the submission of false claims, shall apply to this Franchise. Accordingly, if
15 Grantee submits a false claim, it shall be liable to the City for three times the amount of
16 damages which the City sustains because of the false claim. Grantee shall also be liable to
17 the City for the cost, including Attorney's Fees and Costs, of a civil action brought to recover
18 any of those penalties or damages and may be liable to the City for a civil penalty of up to
19 \$10,000 for each false claim. Grantee will be deemed to have submitted a false claim to the
20 City if Grantee: (a) knowingly presents or causes to be presented to the City a false statement
21 of Gross Revenues; (b) knowingly makes, uses or causes to be made or used a false record
22 or statement to get a false claim paid to or approved by the City; (c) conspires to defraud the
23 City by getting a false claim allowed or paid to or approved by the City; (d) knowingly makes,
24 uses or causes to be made or used a false record or statement to conceal, avoid or decrease
25 an obligation to pay or transmit money or property to the City; (e) is beneficiary of an

1 inadvertent submission of a false claim to the City, subsequently discovers the falsity of the
2 claim, and fails to disclose the false claim to the City within a reasonable time after discovery
3 of then false claim.

4 **Section 90. PESTICIDE PROHIBITION.** Grantee shall comply with the provisions of
5 Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance"), which
6 prohibit the use of certain pesticides on City property. Nothing herein shall prevent Grantee,
7 through the DTIS, from seeking a determination from the Commission on the Environment
8 that it is exempt from complying with certain portions of the Pesticide Ordinance as provided
9 in Section 39.8 thereof. In the event Grantee obtains permission from the Commission on the
10 Environment to use any biocide, defoliant, chemical fertilizer or other pesticide or
11 agrochemical, Grantee shall use such substance in strict compliance with the Commission's
12 conditions, any and all applicable laws and regulations, and the manufacturer's instructions for
13 use.

14 **Section 91. FIRST SOURCE HIRING.**

15 (a) Grantee shall comply with the hiring requirements imposed by the City's First
16 Source Hiring Ordinance (SF Administrative Code Chapter 83), which are incorporated herein
17 by this reference. Any undefined term used in this Section shall have the meaning given to
18 such term in SF Administrative Code Chapter 83. Grantee shall notify the City's Workforce
19 Development System (the "WDS") of all projected Entry Level Positions and the approximate
20 date such positions will be available. It shall also notify the WDS of all vacancies or new
21 positions for work related to the Work Program, and shall offer the WDS the first opportunity to
22 provide qualified Economically Disadvantaged Individuals for employment in these positions.
23 Grantee shall not publicize or otherwise post such vacancies until the WDS refers Qualified
24 Economically Disadvantaged Individuals for employment in these positions or notifies Grantee
25 that no Qualified Economically Disadvantaged Individuals are available for the particular

1 vacancies. The WDS shall respond to Grantee within ten (10) business days. Grantee shall
2 comply with the First Source Hiring Agreement attached hereto as Appendix 4 (the "First
3 Source Hiring Agreement"), the terms of which are incorporated herein by this reference.
4 Upon request by the City, Grantee agrees to separately execute the attached First Source
5 Hiring Agreement, although the lack of such a separate execution shall not affect the
6 requirements of the First Source Hiring Agreement as incorporated herein.

7 (b) Grantee shall keep, and provide to the City upon request, accurate records
8 demonstrating its compliance with the First Source Hiring Ordinance. A failure to abide by the
9 provisions of this Section may result in the imposition of liquidated damages in the amount of
10 \$2,070 for every new hire for each Entry Level Position improperly withheld from the First
11 Source Hiring process. Additionally, Grantee shall include these provisions in any contracts it
12 enters into, and any subcontracts, relating to the Franchise. Grantee shall be responsible for
13 ensuring compliance by all such contractors and subcontractors.

14 **Section 92. LOCAL HIRING.**

15 (a) Grantee agrees, with respect to the hiring of any new employee to perform work
16 under this Franchise, to make a good-faith effort, with the assistance of community
17 organizations designated by the City or local labor union hiring halls, to hire qualified
18 individuals who are residents of the City and County of San Francisco to comprise no less
19 than 50% of such new hires, measured in labor work hours, and Grantee promises to give
20 special preference to minorities, women and economically disadvantaged individuals.

21 (b) Grantee shall keep, and provide to the City, an accurate record showing the
22 name, place of residence, hours employed and per diem pay of each person employed by the
23 Grantee, including full-time, part-time, permanent and temporary employees. Grantee shall
24 keep, and provide to the City, an accurate record describing in detail Grantee's good faith
25 efforts to secure employment of residents of the City and County of San Francisco. A failure

1 to abide by the provisions of this Section may result in the imposition of sanctions and
2 penalties, including those provided for in San Francisco Administrative Code Sections 6.80.

3 **Section 93. ATTORNEY'S FEES.** If either party hereto fails to perform any of its respective
4 obligations under this Agreement or if any dispute arises between the parties hereto
5 concerning the meaning or interpretation of any provision of this Agreement, then the
6 defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any
7 and all costs and expenses incurred by the other party on account of such default and/or in
8 enforcing or establishing its rights hereunder, including, without limitation, reasonable
9 Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either party in
10 enforcing a judgment in its favor under this Agreement shall be recoverable separately from
11 and in addition to any other amount included in such judgment. For purposes of this
12 Agreement, if either party uses its own attorney employees, the reasonable fees of such
13 attorneys shall be based on the fees regularly charged by private attorneys with the equivalent
14 number of years of experience in the subject matter area of the law for which the services
15 were rendered who practice in the City of San Francisco. Nothing in this Section shall alter
16 the payment of costs and fees in connection with any arbitration as specified in Section 51(i)
17 above.

18 **Section 94. GUARANTY.** On or before the execution of this Franchise by Grantee, RCN
19 Corporation, a Delaware corporation, shall execute and deliver to the City a Guaranty
20 Agreement in the form attached hereto as Appendix 2 (the "Guaranty Agreement"). This
21 Franchise shall not become effective unless and until the City's receives the duly executed
22 Guaranty Agreement.

23 **Section 95. MITIGATION MEASURES.** The Mitigation Measures as set forth in the
24 Negative Declaration and as attached hereto as Appendix 3 are incorporated into this
25 Franchise by this reference. Grantee shall perform all the Mitigation Measures as they relate

1 to any activities under this Franchise. Without limiting the City's rights and remedies under
2 this Franchise for the failure to perform any Mitigation Measure, DPW and DTIS will monitor
3 and enforce implementation of the Mitigation Measures through the permitting process.
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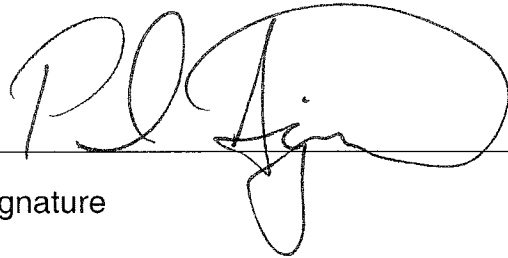
1 **ACKNOWLEDGED AND AGREED TO BY THE PARTIES:**

2
3 **CITY & COUNTY OF SAN FRANCISCO:**

**RCN TELECOM SERVICES OF
4 CALIFORNIA, INC.:**

5 Approved By:

6
7
8
9 LIZA LOWERY, Director, Department of
10 Telecommunications and Information
11 Services



12 Signature

13 Date: _____

14 Name: Paul Sigmund

15 Approved as to form:

16 Title: Executive Vice President

17 LOUISE H. RENNE, City Attorney

18 Address: 1400 Fashion Island Blvd. Ste. 100



19 San Mateo, CA 94404

20
21 Deputy City Attorney

22 Date: 08/01/00

23 Date: 8/2/00

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APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

RCN TELECOM SERVICES OF
CALIFORNIA, INC.:

By: _____
Deputy City Attorney

David Hankin
Signature

Name: DAVID HANKIN

Title: Vice President, Regulatory & Government Affairs

Address: 1400 FASHION ISLAND BLVD., SUITE 100
SAN MATEO, CA 94404

Date: 8/1/00

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Appendix 1

SAN FRANCISCO ZONES

See attached map: "San Francisco RCN Build Areas".

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Appendix 2

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "Guaranty") dated as of _____, 2000, is made by RCN CORPORATION, a New Jersey corporation (the "Guarantor"), to and for the benefit of THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"). Unless otherwise defined in this Guaranty, all initially capitalized terms used in this Guaranty shall have the meanings given them in the Franchise (as defined in Recital Paragraph A below).

THIS GUARANTY is made with reference to the following facts and circumstances:

A. The City has granted to RCN Telecom Services of California, Inc., a California corporation ("Grantee"), a franchise (the "Franchise") as set forth in Ordinance No. _____, approved by the City's Board of Supervisors on _____.

B. Guarantor will derive material financial benefit from the Franchise. As an essential inducement for the City to enter into the Franchise, the Guarantor is entering into this Guaranty, whereby Guarantor agrees to guaranty payment and performance of the obligations of the Grantee under the Franchise.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Guarantor agrees as follows:

1. Guaranty

1.1 Guaranty of Obligations. Guarantor unconditionally and irrevocably guarantees to the City the due and punctual payment (and not merely the collectibility) and performance of the Guaranteed Obligations (as defined in Section 1.2 below), as and when such Guaranteed Obligations shall become due and/or payable, on the terms provided in this Guaranty. In addition, Guarantor shall pay, and upon request of City shall promptly reimburse City for, all costs and expenses (including, without limitation, collection charges and Attorneys' Fees and Costs, as defined in Section 8.8 below) incurred by the City (collectively, the "Reimbursement Amount") in connection with the enforcement of the City's rights, powers, or remedies under this Guaranty, whether or not suit is brought. Any delinquent payment for the Guaranteed Obligations and the Reimbursement Amount shall be accompanied by interest on such amounts at the lesser of ten percent (10%) per annum or the maximum amount permitted by law, from the date due through and including the date of payment of such amounts (calculated on the basis of a 365-day year for the actual number of days elapsed). Guarantor's guaranty of payment of the Guaranteed Obligations shall be discharged and satisfied only as provided in Section 6 below relating to termination of this Guaranty.

1 1.2 Definition of Guaranteed Obligations. For purposes of this Guaranty,
2 "Guaranteed Obligations" shall mean the obligation of the Grantee (the "Obligor") to make any
3 payments and timely perform any obligations set forth in the Franchise, including, without
4 limitation, the payment of franchise fees and the completion of the System as set forth in the
5 Franchise.

6 1.3 Acknowledgments by Guarantor. Guarantor acknowledges, confirms, and
7 agrees that: (a) it has received fair and adequate consideration for its execution of this
8 Guaranty; (b) it will derive material financial benefit from the City's execution of the Franchise;
9 (c) the City's agreement to enter into the Franchise and take the actions required in
10 connection therewith is in consideration of, and in reliance upon, the Guarantor's execution
11 and delivery of this Guaranty; and (d) there are no conditions to the full effectiveness of this
12 Guaranty other than those expressly set forth in this Guaranty.

13 1.4 Independent Obligations; Continuing Guaranty. Subject to the provisions of this
14 Guaranty, this Guaranty is a primary and original obligation of Guarantor and is an absolute,
15 unconditional, continuing and irrevocable guaranty of payment and performance.

16 2. Indemnity

17 2.1 Indemnity. Guarantor agrees to indemnify, defend and hold harmless the
18 Indemnified Parties from and against any and all liabilities, obligations, losses, damages,
19 penalties, actions, causes of action, judgments, suits, claims, costs, expenses and
20 disbursements of any kind or nature whatsoever (including, without limitation, Attorneys' Fees
21 and Costs as hereinafter defined) arising in connection with any investigative, administrative
22 or judicial proceeding, that may be imposed on, incurred by or asserted against such
23 Indemnified Party, in any manner relating to or arising out of or in connection with the
24 payment or enforcement of this Guaranty (collectively, the "Indemnified Liabilities").
25 Notwithstanding the foregoing, Indemnified Liabilities shall not include liabilities, obligations,
losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs,
expenses and disbursements to the extent caused by or resulting from the willful misconduct
or negligence of such Indemnified Party. Guarantor agrees to defend the Indemnified Parties
against any claims that are actually or potentially within the scope of the indemnity provisions
of this instrument, even if such claims may be groundless, fraudulent or false.

 2.2 Notice. The Indemnified Parties agree to give prompt notice to Guarantor with
respect to any suit or claim initiated or threatened against the Indemnified Parties, at the
address for notices of Guarantor set forth in this Guaranty, which the Indemnified Party has
reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is
not given to Guarantor, then Guarantor's liability hereunder shall terminate as to the matter for
which such notice is not given, provided that failure to notify the Guarantor shall not prejudice
the rights of the Indemnified Party hereunder unless the Guarantor is prejudiced by such
failure, and then only to the extent of such prejudice. The Guarantor shall, at its option but

1 subject to the reasonable consent and approval of the Indemnified Party, be entitled to control
2 the defense, compromise or settlement of any such matter through counsel of the Guarantor's
3 own choice; provided, however, that in all cases the Indemnified Party shall be entitled to
4 participate in such defense, compromise, or settlement at its own expense. If the Guarantor
5 shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time
6 following notice from the Indemnified Party alleging such failure, to take reasonable and
appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party
shall have the right promptly to hire counsel at the Guarantor's sole expense to carry out such
defense, compromise or settlement, which expense shall be immediately due and payable to
the Indemnified Party upon receipt by the Guarantor of a reasonably detailed invoice therefor.

7 3. Waivers by Guarantor

8 3.1 Waivers. Guarantor waives: notice of acceptance of this Guaranty; notice of the
9 amount of the Guaranteed Obligations; notice of any other fact that might increase the
10 Guarantor's risk; and notice of presentment for payment, demand, protest and notice of
11 protest, notice of dishonor, diligence in collection and notice of nonpayment as to any
12 instrument. Guarantor also waives any and all rights, by statute or otherwise, to require the
City to institute suit against the Obligor or to exhaust any of the City's rights, powers or
remedies against such Obligor.

13 3.2 Waiver of Subrogation. Upon satisfaction in full of all of the Guaranteed
14 Obligations, Guarantor shall be subrogated to the rights of the City against the Obligor with
15 respect to the Guaranteed Obligations, and the City agrees to take such steps as Guarantor
16 may reasonably request to implement such subrogation (provided that Guarantor shall pay
any and all of City's costs and expenses in connection therewith, including, without limitation
City's Attorneys' Fees and Costs and provided further that the City shall not incur any liabilities
in taking any such steps).

17 4. Consents by Guarantor

18 4.1 Consents; No Discharge of Obligations. Without releasing, discharging,
19 impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the
20 validity or enforceability of this Guaranty, the City may, by action or inaction, in its sole,
21 absolute and unlimited discretion and without notice to Guarantor: compromise, settle, extend
22 the time for payment or performance of all or any part of the Guaranteed Obligations; refuse
23 or fail to enforce all or any portion of the City's rights, powers or remedies under the
Franchise; and deal in all respects with Grantee as if this Guaranty were not in effect;
24 provided, however, the City shall not have the right by agreement with Grantee otherwise to
increase the Guaranteed Obligations without the Guarantor's prior written consent. It is the
25 intent of the parties that Guarantor shall remain liable for the payment and performance of the
Guaranteed Obligations and all other obligations guaranteed hereby, notwithstanding any act

1 or thing that might otherwise operate as a legal or equitable discharge of a surety, except as
2 specified in the proviso at the end of the preceding sentence.

3 4.2 Payments to Other Persons. The City shall be under no obligation to marshal
4 any assets in favor of Guarantor or against, or in payment or performance of, any or all of the
5 Guaranteed Obligations. If all or any part of any payment to or for the benefit of the City in
6 respect of the Guaranteed Obligations shall be invalidated, declared to be fraudulent or
7 preferential, set aside, or required for any reason to be repaid or paid over to a trustee,
8 receiver or other person (a "trustee") under any insolvency law or any other law or rule of
9 equity (collectively, "set aside"), to the extent of that payment or repayment, the Guaranteed
10 Obligations (or the part thereof) intended to have been satisfied shall be revived and
11 continued in full force and effect as if that payment had not been made, and Guarantor shall
12 be primarily and jointly and severally liable for that obligation, provided that nothing hereunder
13 shall preclude the Guarantor from obtaining a refund from a trustee.

14 4.3 Additional Rights. This Guaranty is in addition to, and not in substitution for or in
15 reduction of, any other guaranty by Guarantor or any obligation of Guarantor under any other
16 agreement or applicable Law that may now or hereafter exist in favor of the City. The liability
17 of Guarantor under this Guaranty shall not be contingent upon the enforcement of any lien or
18 realization upon the security, if any, the City may at any time possess with respect to the
19 Guaranteed Obligations.

20 4.4 Recourse. The City shall have the right to seek recourse against Guarantor to
21 the full extent provided for in this Guaranty, which right shall be absolute and shall not in any
22 way be impaired, deferred, or otherwise diminished by reason of any inability of the City to
23 claim any amount of such Guaranteed Obligation from Guarantor as a result of bankruptcy or
24 otherwise, including, but not limited to, any limitation on the City's claim from Guarantor under
25 section 502(b)(6) of the United States Bankruptcy Code, as amended (11 U.S.C. §502(b)(6)).
No election to proceed in one form of action or proceeding, or against any person, or on any
obligation, shall constitute a waiver of the City's right to proceed in any form of action or
proceeding or against other persons unless City has expressly waived that right in writing.

5. Representations and Warranties of Guarantor

5.1 Representations and Warranties. Guarantor represents, warrants and
covenants as follows:

(a) Valid Existence; Good Standing. Guarantor is a corporation duly
organized and validly existing under the laws of the State of California. Guarantor has all
requisite power and authority to own its property and conduct its business as presently
conducted. Guarantor has made all filings and is in good standing in the State of California.

1 (b) Authority. Guarantor has all requisite power and authority to execute and
2 deliver this Guaranty and the agreements contemplated by this Guaranty and to carry out and
3 perform all of the terms and covenants of this Guaranty and the agreements contemplated by
4 this Guaranty.

5 (c) No Limitation on Ability to Perform. Neither the Guarantor's articles of
6 organization or operating agreement, nor the organization documents of any of the
7 Guarantor's members, nor any other agreement or Law in any way prohibits, limits or
8 otherwise affects the right or power of the Guarantor to enter into and perform all of the terms
9 and covenants of this Guaranty. Neither the Guarantor nor any of its members are party to or
10 bound by any contract, agreement, indenture, trust agreement, note, obligation or other
11 instrument which could prohibit, limit or otherwise affect the same. No consent, authorization
12 or approval of, or other action by, and no notice to or filing with, any governmental authority,
13 regulatory body or any other Person is required for the due execution, delivery and
14 performance by the Guarantor of this Guaranty or any of the terms and covenants contained
15 in this Guaranty. There are no pending or threatened suits or proceedings or undischarged
16 judgments affecting the Guarantor or any of its members before any court, governmental
17 agency, or arbitrator which might materially adversely affect the enforceability of this Guaranty
18 or the business, operations, assets or condition of the Guarantor or any of its members.

19 (d) Valid Execution. The execution and delivery of this Guaranty and the
20 agreements contemplated hereby by the Guarantor has been duly and validly authorized by
21 all necessary action. This Guaranty will be a legal, valid and binding obligation of the
22 Guarantor, enforceable against the Guarantor in accordance with its terms. The Guarantor
23 has provided to the City a written resolution of the Guarantor authorizing the execution of this
24 Guaranty and the agreements contemplated by this Guaranty.

25 (e) Defaults. The execution, delivery and performance of this Guaranty (i) do
not and will not violate or result in a violation of, contravene or conflict with, or constitute a
default under (A) any agreement, document or instrument to which the Guarantor or any
member is a party or by which the Guarantor's or any member's assets may be bound or
affected, (B) any law, statute, ordinance, regulation, or (C) the articles of organization or the
operating agreement of the Guarantor, and (ii) do not and will not result in the creation or
imposition of any lien or other encumbrance upon the assets of the Guarantor or its members.

(f) Meeting Financial Obligations. The Guarantor is meeting its current
liabilities as they mature; no federal or state tax liens have been filed against it; and the
Guarantor is not in default or claimed default under any agreement for borrowed money.

5.2 Independent Investigation. Guarantor has performed its own independent
investigation as to the matters covered by this Guaranty.

The representations and warranties in this Section shall survive any termination of this
Guaranty.

6. Termination of Guaranty

Guarantor's liability under this Guaranty shall be discharged and satisfied, and Guarantor shall be relieved of any and all further obligations under this Guaranty, upon the later of (a) termination of the Franchise and (b) payment and performance in full of the Guaranteed Obligations together with any and all other amounts payable by Guarantor under this Guaranty (including any Reimbursement Amounts); provided, however, no such event shall result in termination of this Guaranty unless and until the expiration of any further period within which a trustee or other similar official in an action under any insolvency law may avoid, rescind, or set aside any payment of any of the Guaranteed Obligations. Upon Guarantor's request the City will confirm in writing the fact of termination of this Guaranty if this Guaranty has terminated.

7. Notices

A notice or communication under this Guaranty by either party to the other shall be sufficiently given or delivered if dispatched by hand or by certified mail, postage prepaid, addressed as follows:

(a) In the case of a notice or communication to the City:

Department of Telecommunications and Information Services
875 Stevenson Street, 5th Floor
San Francisco, CA 94103
Attn: Cable Franchise Administrator

with a copy to:

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102
Attn: Telecommunications Team Leader

(b) And in the case of a notice or communication sent to Guarantor:

RCN Corporation
1400 Fashion Island Blvd., Suite 100
San Mateo, CA 94404
Attn.: Frank Cirone

with a copy to:

John Javes
105 Carnegie Center
Princeton, N.J. 08540

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2 For the convenience of the parties, copies of notice may also be given by telefacsimile.
3 Every notice given to a party hereto, pursuant to the terms of this Guaranty, must state
(or must be accompanied by a cover letter that states) substantially the following:

4 (a) the Section of this Guaranty pursuant to which the notice is given
and the action or response required, if any;

5 (b) if applicable, the period of time within which the recipient of the
notice must respond thereto;

6 (c) if a notice of a disapproval or an objection which requires
reasonableness, shall specify with particularity the reasons therefor.

7 Any mailing address or telefacsimile number may be changed at any time by giving
8 written notice of such change in the manner provided above at least ten (10) days prior to the
9 effective date of the change. All notices under this Guaranty shall be deemed given, received,
10 made or communicated on the date personal receipt actually occurs or, if mailed, on the
11 delivery date or attempted delivery date shown on the return receipt. A party may not give
official or binding notice by telefacsimile. The effective time of a notice shall not be affected
12 by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

12 8. General Provisions

13 8.1 Successors and Assigns. This Guaranty is binding upon and will inure to the
14 benefit of the successors and assigns of the City and the Guarantor, subject to the limitations
set forth in Section 8.11 below. Where the term "Guarantor," or "City" is used in this
15 Agreement, it means and includes their respective successors and assigns.

16 8.2 Amendments. Except as otherwise provided herein, this Guaranty may be
amended or modified only by a written instrument executed by the City and Guarantor.

17 8.3 Waivers. No action taken pursuant to this Guaranty by the City shall be deemed
18 to be a waiver by that party of the Guarantor's compliance with any of the provisions hereof.
19 No waiver by the City of any breach of any provision of this Guaranty shall be construed as a
20 waiver of any subsequent or different breach. No forbearance by the City to seek a remedy
for noncompliance hereunder or breach by the Guarantor shall be construed as a waiver of
any right or remedy with respect to such noncompliance or breach.

21 8.4 Continuation and Survival of Covenants. Subject to Section 6 above, all
22 covenants by Guarantor contained herein shall be deemed to be material and shall survive
any termination of the Franchise or portion thereof if the obligations thereunder have arisen
23 and are not satisfied before such date.

24 8.5 Governing Law; Selection of Forum. This Guaranty shall be governed by and
25 construed in accordance with the laws of the State of California. As part of the consideration

1 for the Franchise, the Guarantor agrees that all actions or proceedings arising directly or
2 indirectly under this Guaranty may, at the sole option of City, be litigated in courts located
3 within the State of California, and the Guarantor expressly consents to the jurisdiction of any
4 such local, state or federal court, and consents that any service of process in such action or
5 proceeding may be made by personal service upon the Guarantor wherever the Guarantor
6 may then be located, or by certified or registered mail directed to the Guarantor at the address
7 set forth in this Guaranty for the delivery of notices.

8 **8.6 Merger of Prior Agreements.** The parties intend that this Guaranty (including all
9 of the attached exhibits and schedules, which are incorporated into this Guaranty by
10 reference) and the Franchise shall be the final expression of their agreement with respect to
11 the subject matter hereof and may not be contradicted by evidence of any prior or
12 contemporaneous oral or written agreements or understandings. The parties further intend
13 that this Guaranty shall constitute the complete and exclusive statement of its terms and that
14 no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes
15 therefrom) may be introduced in any judicial, administrative or other legal proceeding involving
16 this Guaranty.

17 **8.7 Interpretation of Guaranty.** The section and other headings of this Guaranty and
18 the table of contents are for convenience of reference only and shall not affect the meaning or
19 interpretation of any provision contained herein. Whenever the context so requires, the use of
20 the singular shall be deemed to include the plural and vice versa, and each gender reference
21 shall be deemed to include the other and the neuter. To the extent the recitals contained
22 herein are inconsistent with the operative provisions of this Guaranty, the operative provisions
23 shall control. This Guaranty has been negotiated at arm's length and between persons
24 sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has
25 been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of
law (including California Civil Code Section 1654) or legal decision that would require
interpretation of any ambiguities in this Guaranty against the party that has drafted it is not
applicable and is waived. The provisions of this Guaranty shall be interpreted in a reasonable
manner to effect the purposes of the parties and this Guaranty.

8.8 Attorneys' Fees and Costs. Should any party institute any action or proceeding
in court to enforce any provision hereof or for damages by reason of an alleged breach of any
provision of this Guaranty, the prevailing party shall be entitled to receive from the losing party
court costs or expenses incurred by the prevailing party including, without limitation, expert
witness fees and costs, travel time and associated costs; transcript preparation fees and
costs; document copying expenses; exhibit preparation costs; carrier expenses and postage
and communications expenses; such amount as a court or other decision maker may adjudge
to be reasonable attorneys' fees for the services rendered to the prevailing party in such
action or proceeding; fees and costs associated with execution upon any judgment or order;
and costs on appeal and any collection efforts (collectively, "Attorneys Fees and Costs"). For
purposes of this Guaranty, the reasonable fees of attorneys of the City 's office of the City

1 Attorney shall be based on the fees regularly charged by private attorneys with the equivalent
2 number of years of professional experience in the subject matter area of the law for which the
3 City Attorney's services were rendered who practice in the City of San Francisco in law firms
4 with approximately the same number of attorneys as employed by the City Attorney's Office.

5 8.9 Severability. Invalidation of any provision of this Guaranty, or of its application
6 to any Person, by judgment or court order, shall not affect any other provision of this Guaranty
7 or its application to any other Person or circumstance, and the remaining portions of this
8 Guaranty shall continue in full force and effect, unless enforcement of this Guaranty as
9 invalidated would be unreasonable or grossly inequitable under all the circumstances or would
10 frustrate the purposes of this Guaranty.

11 8.10 Joint and Several Liability. In the event that Guarantor is comprised of more
12 than one Person, the obligations of Guarantor hereunder are joint and several.

13 8.11 Assignment. Guarantor may not assign its rights or obligations under this
14 Guaranty.

15 8.12 Counterparts. This Guaranty may be executed in two or more counterparts,
16 each of which shall be deemed an original, but all of which taken together shall constitute one
17 and the same instrument.

18 IN WITNESS WHEREOF, Guarantor, being duly authorized, has executed and
19 delivered this Guaranty as of the date first written above.

20 GUARANTOR

21 Delaware

22 RCN CORPORATION, a New Jersey corporation

23 By 

24 Print Name John J. Jones

25 Its Executive Vice President, General Counsel and
Corporate Secretary

By 

Print Name Timothy J. Stoklosa

Its Executive Vice President and Chief Financial Officer

SUPERVISORS KATZ AND YAKI
BOARD OF SUPERVISORS

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ACCEPTED AND AGREED:

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Deputy City Attorney

1 **Appendix 3**

2 **MITIGATION MEASURES**

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4 Grantee shall comply with all mitigation measures, with respect to all activities of
5 Grantee and its Agents under this Franchise, that are now or hereafter contained in (i) the
6 CPCN, (ii) the Negative Declaration, (iii) any permit or approval issued by the City to Grantee
relative to its use of the Public Rights-of-Way, and (iv) any Applicable Law (collectively, the
"Mitigation Measures").

7 Without limiting the foregoing, Grantee recognizes and agrees that the following
8 mitigation measures (as set forth in the Negative Declaration and summarized below) apply to
9 this Franchise:

10 **A. All Environmental Factors.** The Negative Declaration requires a re-assessment of
11 environmental impacts if Grantee constructs facilities beyond existing utility rights of way into
12 undisturbed areas or other rights of way.

13 **B. General Cumulative Impacts.** The Negative Declaration requires Grantee to consult
14 with the DTIS and DPW and to abide by the standards established by local agencies.
15 Grantee is also required to file a quarterly summary of construction activities and mitigation
compliance, so that DTIS and DPW may coordinate multiple projects if necessary, and may
monitor compliance with required mitigation.

16 **C. Geological Resources.** The Negative Declaration requires compliance with all local
17 design, construction and safety standards by obtaining all applicable permits from local
18 agencies, including the development and approval of erosion control plans for areas identified
as particularly unstable or susceptible to erosion. No such areas have been identified to date,
but could be delineated by DTIS or DPW during subsequent permit application review.

19 **D. Water Resources.** The Negative Declaration requires consultation with appropriate
20 local, state, and federal water agencies for projects in close proximity to water resources
21 (underground or surface), and requires compliance with applicable water resource
22 regulations, including development of site-specific measures to address water quality,
23 drainage, direction, flow or quantity if/as necessary. No water resources in close proximity
have been identified to date, but could be delineated by DTIS or DPW during subsequent
permit application review.

24 **E. Air Quality.** The Negative Declaration requires compliance with applicable air quality
25 standards established by the Bay Area Air Quality Management District (BAAQMD), and also

1 requires development and implementation of dust control measures as recommended by the
2 BAAQMD. Basic control measures recommended by BAAQMD include the following: water
3 all active construction areas at least twice daily; cover all trucks hauling soil, sand, and other
4 loose materials or require all trucks to maintain at least two feet of freeboard; pave or apply
5 water three times daily to unpaved areas; sweep daily with water sweepers all paved areas at
6 construction sites, and adjacent streets if soil materials are visible.

7 **F. Transportation and Circulation and Public Services.** The Negative Declaration
8 requires Grantee to consult with DPW, MUNI, and DPT in order to allow coordination with
9 other projects affecting public rights of way, and requires Grantee to abide by locally
10 applicable standards related to construction maintenance and safety by acquiring all
11 necessary permits (e.g. excavation, encroachment, and building permits). The Negative
12 Declaration further requires appropriate construction start and end times, and dates if
13 appropriate, to avoid peak traffic periods if construction encroaches upon transportation rights
14 of way. These times/dates would be specified by DPW as a condition of street use permits
15 affecting busy thoroughfares. Grantee would also be required to provide notice to property
16 owners and occupants in affected areas at least two weeks in advance of construction, and to
17 consult with DTIS and DPW on appropriate restoration of public service facilities that are
18 damaged by construction, and to be responsible for such restoration.

19 **G. Hazards.** Similar to item F, above, the Negative Declaration requires consultation with
20 the Fire Department and the City's Office of Emergency Services if the project interferes with
21 routes used for emergencies or evacuations, so that emergency or evacuation plans are not
22 hindered.

23 **H. Noise.** The Negative Declaration requires Grantee to abide by San Francisco's Noise
24 Ordinance, and requires notification (same as item F above) of the days when most
25 construction noise would occur.

I. Aesthetics. The Negative Declaration requires that Grantee consult the Planning
Department regarding placement of above-ground structures such as supply units, to ensure
that such units are placed so as to mitigate any visual impacts (e.g. placed in areas where
utility cabinets, etc. already occur). Grantee would also be required to abide by any policy
concerning the placement of telecommunications facilities in the PROW developed by the
Telecommunications Commission in conjunction with DPW. Grantee would also be required
to restore any landscaping affected by the project.

J. Cultural Resources. While the Negative Declaration requires Grantee to conduct
appropriate research into known cultural resources, and to avoid such resources, Grantee's
project would affect previously-disturbed rights of way, and research does not appear
warranted. Grantee would be required, however, to halt construction activities if previously
unknown cultural resources are encountered during excavation, to retain the services of an

1 archaeologist to evaluate the resources, and to adopt mitigation strategies such as avoidance,
2 data collection and documentation, or other recommendations of the archaeologist.

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1 **Appendix 4**

2 **First Source Hiring Agreement**

3 This First Source Hiring Agreement (this "Agreement"), is made and entered by and
4 between the City and County of San Francisco, State of California, by and through its First
5 Source Hiring Administration, hereinafter called "FSHA", and RCN Telecom Services of
6 California, hereinafter called "Grantee".

- 7 1. For purposes of this Agreement, initially capitalized terms shall be defined as follows:
- 8 a. Economically Disadvantaged Individual: An individual who is either (a) eligible
9 for services under the Job Training Partnership Act, 29 U.S.C. section 1503, as
10 determined by the San Francisco Private Industry Council; or (b) designated as
11 "economically disadvantaged" by the FSHA as an individual who is at risk of
12 relying upon, or returning to, public assistance.
 - 13 b. Employer: Grantee, Subcontractor, partner, agent, or employee of Grantee, or a
14 combination thereof, engaged in commercial activities of the Franchise, who is
15 subject to the requirements of Chapter 83 of the San Francisco Administrative
16 Code.
 - 17 c. Entry Level Position: A non-managerial position that requires no education
18 above a high school diploma or certified equivalency, and less than 2 years
19 training or specific preparation, and shall include temporary and permanent jobs,
20 and construction jobs related to the development of a commercial activity.
 - 21 d. First Opportunity: Consideration by Employer of the System referrals for filling
22 Entry Level Positions prior to recruitment and hiring of non-System job
23 applicants.
 - 24 e. FSHA: First Source Hiring Administration, the body designated to administer and
25 monitor the San Francisco Workforce Development System as set forth in
section 83.6 of the San Francisco Administrative Code.
 - f. Interviewing Requirement: Completion of notification to the System of available
Entry Level Positions, receipt of System referrals, and fair consideration of
referrals for a specified time prior to non-System applicant recruitment and
hiring.

- 1 g. Job Classification: Categorization of employment opportunity or position by craft,
2 occupational title, skills, and experience required, if any.
3
4 h. Publicize: Advertise or post, including participation in job fairs or other forums, in
5 which employment information is available.
6
7 i. Qualified: An Economically Disadvantaged Individual who meets the minimum
8 bona fida occupational qualifications provided by Employer to the San Francisco
9 Work Force Development System in the job availability notices required by
10 Chapter 83 of the San Francisco Administrative Code.
11
12 j. Retention: When used in this Agreement, Retention shall be construed to apply
13 to the Entry Level Positions, not to any particular individual.
14
15 k. System: The San Francisco Workforce Development System established by the
16 City and County of San Francisco, and managed by the FSHA, for maintaining
17 (1) a pool of Qualified individuals, and (2) the mechanism by which such
18 individuals are certified and referred to prospective Employers covered by the
19 First Source Hiring requirements under Chapter 83 of the San Francisco
20 Administrative Code.
21
22 l. Subcontractor: A person or entity who has a direct Subcontract with Grantee to
23 perform a portion of the work under this Franchise.
24
25

2. SAFE HARBOR PROVISION

Employer will make good faith efforts to: 1) fill its first available Entry Level Position for work in connection with the Franchise with a job applicant referred through the First Source Program; and, 2) 50% of its subsequent available Entry Level Positions for work in connection with the Franchise with job applicants referred through the First Source Program.

Fulfillment of this target establishes Employer's good faith efforts. However, failure to meet this target does not impute "bad faith." Failure to meet this target triggers a review of the referral process and the Employer's efforts.

Good Faith Efforts

a. The Employer must provide a clear, accurate job description, including expectations, standard of appearance, any special requirements, e.g., language skills, drug testing, driver's license. Job descriptions must be in accord with skills, knowledge, and abilities that are standard for that industry.

- 1 b. The Employer must promptly list available Entry Level Position(s) with the
2 Workforce Development System referral network and refrain from seeking applicants
3 from other sources during the specified time.
- 4 c. Employers subject to collective bargaining agreement(s) requiring compliance
5 with a pre-established applicant referral process as set forth in such agreement(s) for
6 available Entry Level Positions must:
- 7 i. Notify the appropriate union(s) of the Employer's First Source obligation
8 and request assistance from the union(s) in referring Qualified Economically
9 Disadvantaged applicants for the available Entry Level Position(s), to the extent
10 such referral can conform to the requirements of the collective bargaining
11 agreement(s).
- 12 ii. Use "name call" privileges, in accordance with the terms of the applicable
13 collective bargaining agreement(s), to seek Qualified Economically
14 Disadvantaged applicants for the available Entry Level Position(s).
- 15 iii. Sponsor Qualified Economically Disadvantaged apprenticeship
16 applicants, referred through the Workforce Development System, for applicable
17 union membership.
- 18 d. The Employer must give due consideration to all referrals made by the System,
19 resumes must be reviewed, and interviews conducted in accordance with the non-
20 discrimination provisions of this Franchise.
- 21 e. The Employer must provide constructive feedback on all applicants referred by
22 the System.
- 23 i. Employers who meet the safe harbor provision must only respond orally
24 to follow-up questions asked by the 1st Source account executive.
- 25 ii. Employers who are unable to meet the safe harbor provision will be
required to provide written comments on all referrals.
- iii. Job applicants will also be required to provide brief feedback on the
process.
- f. The Employer must provide timely notification as soon as the job is filled, and
identify by whom.
- g. The Employer must list all Entry Level Positions as they become available
during the term of the Franchise, lease or permit condition.
3. In the event that Grantee subcontracts a portion of the work under this Franchise,
Grantee shall determine how many, if any, of the Entry Level Positions are to be
employed by its Subcontractor(s), provided, however, that Grantee shall retain the
primary responsibility for meeting the requirements imposed under this Agreement.
Grantee shall ensure that this Agreement is incorporated into and made applicable to
such Subcontract.
4. Grantee agrees to offer the System the First Opportunity to provide Qualified
Economically Disadvantaged Individuals for employment consideration in Entry Level
Positions, subject to any enforceable collective bargaining agreements. Employers

1 shall consider all applications of Qualified Economically Disadvantaged Individuals
2 referred by the System for employment. Provided Employer utilizes nondiscriminatory
3 screening criteria, Employer shall have the sole discretion to interview and hire
4 individuals referred or certified by the System as being Qualified Economically
5 Disadvantaged Individuals.

6 5. The duration of the First Source Program Interviewing Requirement shall be 10 days.
7 During this period, Employer may only Publicize the availability of Entry Level Positions
8 by calling the System referral number: (415) 749-7500.

9 6. Grantee shall provide the System with all the following information:

- 10 a. Projected employment needs for work performed under this Franchise.
11 Describe such needs by Job Classification, weekly hours required, wages paid,
12 and duration of employment.
- 13 b. Timely notification of Entry Level Positions as they become available.
- 14 c. Identification of specific job qualifications, if any (e.g. driver's license).
- 15 d. Identification of English language proficiency requirements or absence thereof.
- 16 e. Notification of projected hiring schedule and procedures for each job
17 classification, including the time and place of hiring for each Entry Level
18 Position.

19 7. Nothing in this Agreement precludes Grantee from using temporary or reassigned
20 existing employees to perform essential functions of its operation; provided, however,
21 the obligations of this Agreement to make Good Faith Efforts to fill such vacancies
22 permanently with System referrals remains in effect. For these purposes, "essential
23 functions" means those functions absolutely necessary to remain open for business.

24 8. The City is entitled to the remedies set forth in section 83.10 of the San Francisco
25 Administrative Code if Grantee fails to comply with this Agreement.

9. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing
workforce training agreements or to interfere with consent decrees, collective
bargaining agreements, or existing employment contracts. In the case of collective
bargaining agreements, the FSHA will take the primary responsibility for integrating the
requirements of this First Source Program with any such collective bargaining
agreements.

10. Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and
retention goals, first source hiring and interviewing requirements, notice and job
availability requirements, monitoring, record keeping, and enforcement requirements
and procedures which exceed the requirements of this Agreement.

11. Under this Agreement, the System shall:

- a. Receive Grantee/Employer job notification and job orders, and immediately initiate recruitment and pre-screening activities.
- b. Recruit Qualified Economically Disadvantaged Individuals to create a pool of applicants for jobs who match Employer job specifications and to the extent appropriate train applicants for jobs that will become available through the First Source Program.
- c. Screen and refer applicants according to qualifications and specific selection criteria submitted by employers.
- d. Provide funding for City-sponsored pre-employment, employment training, and support services programs,
- e. Follow up with Employers on outcomes of applicants referred for employment and initiate corrective action as necessary to maintain an effective employment /training delivery system.
- f. Provide Employer with reporting forms for monitoring the requirements of this Agreement.
- g. Monitor the performance of the Agreement by examination of Employer records as submitted in accordance with the requirements of this Agreement.

12. The obligations of Grantee under this Agreement are as follows:

- a. Maintain accurate records demonstrating Grantee's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:
 - (1) Applicants
 - (2) Job offers
 - (3) Hires
 - (4) Rejections
- b. Submit completed reporting forms based on Grantee's records to the System quarterly, unless more frequent submittals are required by FSHA. In this regard, Grantee agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, the FSHA may require daily, weekly, or monthly reports containing all or some of the above information.
- c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Grantee's good faith effort, Grantee shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith in its First Source Hiring under this Agreement.



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 991521

Date Passed:

Ordinance granting a fifteen year franchise, with a five year extension option, to RCN Telecom Services of California, Inc. for use of the public rights of way within the City and County of San Francisco to provide cable services, cable Internet services and other services upon payment of five percent of gross revenues to the City and County of San Francisco.

May 15, 2000 Board of Supervisors — SUBSTITUTED

July 10, 2000 Board of Supervisors — SUBSTITUTED

August 7, 2000 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Ammiano, Becerril, Bierman, Katz, Kaufman, Leno, Newsom, Teng,
Yaki, Yee

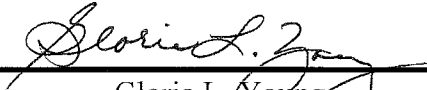
Absent: 1 - Brown

August 21, 2000 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom,
Teng, Yaki, Yee

File No. 991521

I hereby certify that the foregoing Ordinance
was FINALLY PASSED on August 21, 2000
by the Board of Supervisors of the City and
County of San Francisco.



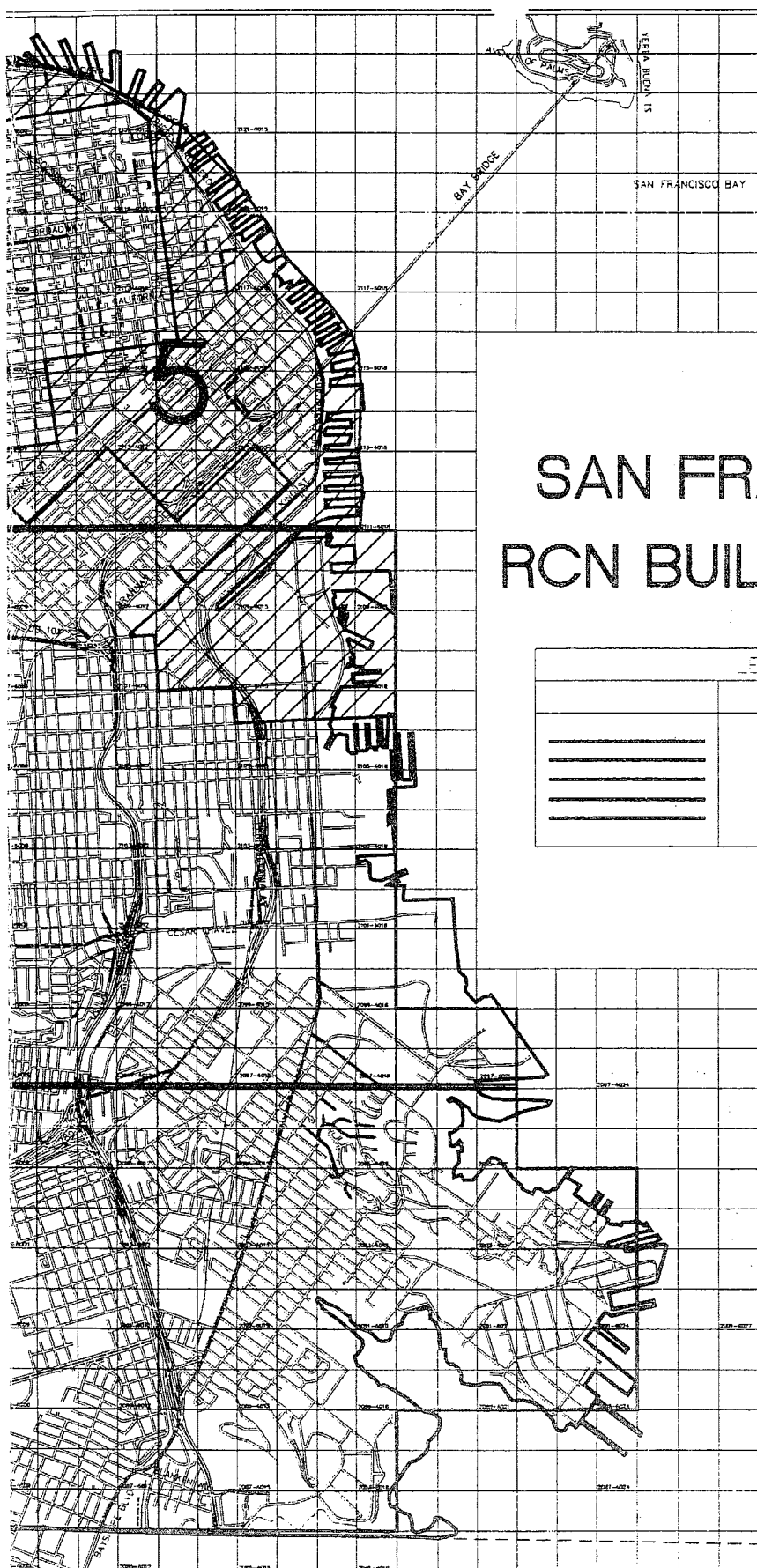
Gloria L. Young
Clerk of the Board

AUG 28 2000

Date Approved




Mayor Willie L. Brown Jr.



SAN FRANCISCO RCN BUILD AREAS

LEGEND	
	AREA
=====	AREA 1
=====	AREA 2
=====	AREA 3
=====	AREA 4
=====	AREA 5

 <small>RCN TELECOM SERVICE, INC. 1425 TAPSCOTT ROAD, SUITE #100 SAN MATEO, CA. 94404</small> <small>PROPRIETARY AND CONFIDENTIAL INFORMATION</small>	SCALE	FILE NAME
	N.T.S.	27.006.DWG
LOCATION		
SAN FRANCISCO CALIFORNIA		RCN BUILD AREAS
DRAWN BY	DATE: 5/19/00	
APPROVED:	T.S.P.	

