

1 [RCN Proposed OVS Franchise]

2 **Ordinance granting a four year franchise to RCN Telecom Services, Inc. with an**  
3 **opportunity for two extensions of three years each, for use of the public rights-of-way**  
4 **within the City and County of San Francisco to provide open video system services**  
5 **and cable internet services upon compliance with the terms of this franchise.**

6 Note: This entire section is new.

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

8 RECITALS.

9 This Franchise is granted by the City and County of San Francisco, a municipal corporation  
10 (“City”), to RCN Telecom Services, Inc., a California Corporation (“Grantee”), pursuant to  
11 Chapter 11 of the San Francisco Administrative Code.

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

- 13 1. On July 30, 1999, Grantee submitted a written application for a cable system franchise to  
14 the Board of Supervisors (“Board”) and on September 7, 1999 submitted the initial  
15 estimated application processing fee.
- 16 1. On July 25, 2000, the Board awarded Grantee a cable franchise (“cable franchise”) by  
17 Ordinance No. 204-00.
- 18 2. Grantee is currently constructing, installing, and maintaining facilities in the Public Rights-  
19 of-Way to provide Telecommunications Service, Video Service, and Cable Internet  
20 Service within the City under the cable franchise.
- 21 3. On November 1, 2002, Grantee applied to the City to terminate its cable franchise and  
22 replace it with an Open Video System (“OVS”) Franchise.

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- 1 4. On November 25, 2002, the Federal Communications Commission), pursuant to 47
- 2 U.S.C. Section 573, approved Grantee’s certification to operate an OVS in the City and
- 3 County of San Francisco.
- 4 5. The City has authority pursuant to Article XI, Sections 7 and 9 of the California
- 5 Constitution, and Section 16.111 of its Charter, to grant a franchise to Grantee to install
- 6 facilities in the Public Rights-~~of~~Wayof-Way and to provide OVS services using such
- 7 facilities.
- 8 6. Grantee will comply with all of the terms of this Franchise and will not challenge the City's
- 9 authority to enforce any term of the Franchise. In addition, Grantee will not allege that
- 10 any provision herein is inapplicable or unenforceable because Grantee is an OVS
- 11 operator rather than a cable operator.
- 12 7. This Franchise will permit Grantee to provide Video Service and Cable Internet Service
- 13 within the geographic area of the City and County of San Francisco.
- 14 8. This Franchise replaces, supercedes, and extinguishes all of Grantee’s rights and
- 15 obligations pursuant to the cable franchise, and Grantee’s rights and obligations to the
- 16 City shall henceforth be as set forth in this OVS Franchise.
- 17 ~~10.—~~
- 18 9. ~~11.~~ 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
- 20 solicitation of applications on May 15, 2003 for the grant of an OVS franchise, on terms
- 21 and conditions similar to those set forth herein. The City published notice of the
- 22 solicitation of applications in the San Francisco Independent and the City’s website.
- 23 DTIS also informed cable overbuilders and OVS providers operating in California.
- 24 10. ~~12.~~ No proposals were received in response to the request for proposals prior to the June
- 25 3, 2003 deadline.

1 11. ~~13.~~ In accordance with Section 11.13(f) of Chapter 11 of the San Francisco  
2 Administrative Code, DTIS has submitted a final report to the Board of Supervisors  
3 recommending granting Grantee this OVS Franchise, subject to certain obligations and  
4 restrictions on Grantee. DTIS has determined that, in light of Grantee's current financial  
5 circumstances, current market conditions, and Grantee's potential to continue to provide  
6 Video Service and Cable Internet Service in competition with the incumbent cable  
7 operator, it is in the best interest of the City to terminate the cable franchise granted by  
8 Ordinance 204-00 and grant an OVS Franchise to Grantee for a term of four years,  
9 subject to certain obligations and restrictions.

10 12. ~~14.~~ On January 27, 2003, the Telecommunications Commission recommended, as a  
11 policy recommendation only, that the Board approve Grantee's proposal subject to  
12 considerations raised by DTIS in its final report.

13 13. ~~15.~~ The Land Use Committee of the Board of Supervisors held a public hearing on  
14 \_\_\_\_\_, ~~2003~~2004 to consider the proposed OVS Franchise and its procedural and  
15 substantive impacts on the City. The Committee has determined that, in light of  
16 Grantee's current financial circumstances, current market conditions, and Grantee's  
17 potential to continue to provide Video Service and Cable Internet Service in competition  
18 with the incumbent cable operator, it is in the best interest of the City to terminate the  
19 cable franchise granted by Ordinance 204-00 and grant an OVS Franchise to Grantee for  
20 a term of four years, subject to the obligations and restrictions set forth herein.

21 14. ~~16.~~ The Board finds that granting Grantee an OVS Franchise within the geographic area  
22 of the City will enable continued competition in the provision of Video Service and Cable  
23 Internet Service.

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- 1 15. ~~17.~~ The Board finds that competition in the provision of Video Service and Cable Internet  
2 Service may result in lower prices, innovative service offerings and greater choice of  
3 services for consumers, and improvements in customer service.
- 4 16. ~~18.~~ The Board finds that terminating the cable franchise and replacing it with the OVS  
5 Franchise as set forth herein will increase the likelihood of continued competition for  
6 Video Service and Cable Internet Service in the City.
- 7 17. ~~19.~~ The Board finds that terminating the cable franchise and replacing it with the OVS  
8 Franchise as set forth herein is appropriate in light of the particular market position and  
9 characteristics of the Grantee. Grantee has been providing Video Service and other  
10 services in the City for more than three years. Grantee currently has approximately  
11 ~~2,600~~3,150 subscribers in the City and ~~400,000~~430,000 subscribers nationwide. Grantee  
12 has been building its System in the City in the face of competition from the incumbent  
13 cable operator.
- 14 18. ~~20.~~ The Board finds that Grantee is facing serious financial hardship and that it might  
15 exit the market in the City altogether if the City does not replace the cable franchise with  
16 an OVS Franchise as set forth herein. The Grantee's financial condition weighs against  
17 the City granting an OVS Franchise. However, the Grantee offers the prospect of  
18 providing significant competition to the incumbent cable operator in the future if it  
19 overcomes its current financial difficulties. If it does, consumers may benefit from lower  
20 prices and improved service. , Grantee already has ~~built its~~built its System in some parts  
21 of the City and is already providing Video Service and Cable Internet Service in the City  
22 in competition with the incumbent cable operator. In addition, current conditions in the  
23 telecommunications market make it unlikely that, within the next few years, another  
24 facilities-based service provider is likely to seek to enter the market and compete against  
25 the incumbent cable operator. The Board therefore finds that, because (i) the Grantee is

1 likely to exit the market in the City if the City does not replace the cable franchise with  
2 the OVS Franchise as set forth herein, and (ii) within the next few years no other  
3 facilities-based provider is likely to enter the market and compete with the incumbent  
4 cable operator to provide Video Service and Cable Internet Service in the City,  
5 consumers will be best served by granting Grantee an OVS Franchise as set forth  
6 herein.

7 19. ~~21.~~ Grantee acknowledges and agrees that the renewal provisions in 47 U.S.C. § 546 do  
8 not apply to this OVS Franchise and do not create any rights for Grantee.

9 20. ~~22.~~ The Board finds that granting an OVS Franchise for a period of four years provides  
10 Grantee a reasonable period of time for it to improve its financial condition and  
11 demonstrate that it is capable of providing service to a substantial number of San  
12 Francisco households. At the same time, the Board recognizes that granting Grantee  
13 this OVS Franchise may create a disincentive for other facilities-based providers to enter  
14 the market and provide Video Service and Cable Internet Service in competition with the  
15 incumbent cable operator. The City finds that granting an OVS Franchise for a period of  
16 four years, without any right to or presumption of renewal, would minimize any such risk.

17 21. ~~23.~~ This Franchise relieves Grantee of the System construction requirements that were  
18 contained in the cable franchise granted by Ordinance No. 204-00. The Board finds that  
19 such relief is necessary to increase the likelihood that Grantee will remain in the market  
20 and continue to compete with the incumbent cable operator.

21 ~~24.~~ Grantee will continue to provide channel capacity, facilities, and support for public,  
22 education, and government (“PEG”) access cable television programming. Grantee will  
23 provide 7 PEG access channels. Grantee has also agreed to a procedure for converting  
24 those channels into digital equivalents at an equitable ratio for the City. Grantee will  
25 provide 17 video feeds for PEG channels and PEG financial support, on a per subscriber

1 basis, ~~equivalent to~~ greater than the support currently provided by the incumbent cable  
2 provider. ~~[Under Review, Subject to Change.]~~

3 22. ~~25.~~ Grantee will pay to the City a five percent (5%) fee on Gross Revenues derived from  
4 operation of the System to provide Services to compensate the City for the benefits  
5 derived from use of the Public Rights-of-Way. Grantee will also pay all of the fees and  
6 taxes required by applicable law, including the Street Damage Restoration Fee set forth  
7 in Section 2.4.44 of the San Francisco Public Works Code.

8 ~~26.~~ Grantee will provide to the City, for City use, Fiber Optic Infrastructure, Video Service or  
9 Cable Internet Service and City Conduit for installing Fiber Optic Infrastructure.

10 ~~27.~~ Grantee will offer Service to all of the locations within the City that Grantee currently  
11 passes with its System. Those locations are set forth in Appendix 4 hereto.

12 23. ~~28.~~ Grantee has agreed to criteria for any future expansion of its System that will  
13 preclude discrimination on the basis of the income level or minority status of the residents  
14 of a neighborhood and has agreed to specific provisions that explicitly prohibit  
15 discrimination.

16 24. ~~29.~~ Grantee will provide eligible low income subscribers a discounted rate on Video  
17 Service that should make Video Service more affordable and may increase  
18 subscribership among low income consumers.

19 25. ~~30.~~ Pursuant to the terms of a letter agreement dated July 10, 2000, and adopted by  
20 Resolution of the Board No. 730-00, Grantee will also provide, at no cost to the City,  
21 cable drops, cable modems, and Cable Internet Services for use in a City administered  
22 pilot project designed to address and bridge the digital divide.

23 26. ~~31.~~ Grantee has demonstrated that it has the technical qualifications and ability to  
24 provide Video Service and Cable Internet Service as authorized in this Franchise.  
25 Grantee is currently providing such services to consumers in San Francisco and

1 Peninsula communities, such as, South San Francisco, Daly City, San Mateo, Redwood  
2 City, Burlingame in addition to serving in the New York, Boston, Chicago, and  
3 Washington D.C. metropolitan areas.

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

7 ~~33.~~ All portions of Grantee's System shall be constructed in a manner that complies with all  
8 existing and future federal, state, and local construction requirements, including but not  
9 limited to the City's Public Works Code and the California Public Utilities Commission  
10 General Orders 95 and 128.

11 27. ~~34.~~ The Board finds that this Franchise will not cause unreasonable disruption or  
12 inconvenience to existing users of utility poles, public easements, or Public Rights-of-  
13 Way. Under this Franchise, Grantee will arrange for any necessary relocation of facilities  
14 on poles, public easements, and Public Rights-of-Way at its own cost.

15 28. ~~35.~~ Grantee's use of poles, public easements, and Public Rights-of-Way is unlikely to  
16 have any significant impact on future use by existing occupants. However, to the extent  
17 that Grantee occupies space on utility poles, public easements, and Public Rights-of-Way  
18 there may be less space for subsequent entrants.

19 ~~36.~~ Grantee has agreed to be subject to all governing applicable law as it is now and as it may  
20 be adopted, including all policies and procedures that the City adopts governing  
21 customer service and governing the placement of facilities in the Public Rights-of-Way.  
22 Those policies and procedures may mitigate any aesthetic impact due to additional  
23 cables, nodes, and power supplies attached to utility poles or additional utility boxes  
24 placed in the Public Rights-of-Way by Grantee pursuant to its authorization under this  
25 Franchise.

- 1 29. ~~37.~~ The Director of the City's Planning Department has found that the grant of this  
2 Franchise is in conformity with the City's General Plan and consistent with the Eight  
3 Priority Policies of City Planning Code Section 101.1.
- 4 30. ~~38.~~ The Environmental Review Officer of the City's Planning Department, by letter dated  
5 May 20, 2003 confirmed the conclusion of its May 26, 2000 letter (the "Environmental  
6 Review Letter"), a copy of both letters are on file with the Clerk of the Board of  
7 Supervisors, that the City may act as a responsible agency in the grant of the RCN OVS  
8 Franchise, pursuant to CEQA Guidelines Section 15381. The Environmental Review  
9 Letter analyzed the potential impacts from the grant of the RCN OVS Franchise, in  
10 accordance with CEQA Guidelines Section 15164.
- 11 31. ~~39.~~ The Board has reviewed and relied upon the negative declaration and the  
12 Environmental Review Letter prepared at the time that RCN obtained its Cable  
13 Franchise. The Board finds on the basis of the whole record before it that the negative  
14 declaration is adequate and complete for the Board to act on this Franchise. In  
15 exercising its independent judgment, the Board concurs with and adopts the findings and  
16 conclusions made in the negative declaration and the Environmental Review Letter, and  
17 incorporates said findings and conclusions as though fully set forth herein. The Board  
18 also finds, on the basis of the Planning Department's May 20, 2003 letter, that there have  
19 been no changes to the proposed activities, no changes to the circumstances  
20 surrounding the proposed activities have occurred, and no new information has become  
21 available since adoption of the negative declaration that would alter the findings set forth  
22 therein even though the negative declaration was adopted for RCN's Cable Franchise.
- 23 32. ~~40.~~ The Board finds that, while the proposed construction activities associated with this  
24 Franchise may be potentially disruptive at each location that is under construction for the  
25 duration of that construction, the activities would not result in impacts that exceed those



1 generally accepted in an urban environment where construction work is a fact of life.  
2 With implementation of the mitigation measures set forth in the negative declaration, the  
3 Environmental Review Letter and this Franchise, site specific impacts will be mitigated to  
4 a less than significant level, and the project overall will not have a significant adverse  
5 effect on the environment.

6 33. ~~41.~~ The mitigation measures included in the negative declaration and Environmental  
7 Review Letter are adopted as conditions of approval to this Franchise and will be  
8 implemented as set forth in the negative declaration and the Environmental Review  
9 Letter. The City’s Department of Public Works and DTIS will enforce and monitor  
10 implementation of the Mitigation Measures through the permitting process.

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

14 Preamble: The above recitals are incorporated into this Franchise. Each party  
15 represents that the recitals are true and correct as they relate to that party’s acts.

16 PART 1 – DEFINITIONS

17 **Section 1.** DEFINITIONS. For purposes of this Franchise, the following terms, phrases,  
18 words, abbreviations and their derivations, when capitalized, shall have the meanings given  
19 herein. When not inconsistent with the context, words used in the present tense include the  
20 future tense; words in the plural number include the singular number; and words in the  
21 singular number include the plural number. The words “shall” and “will” are mandatory. “May”  
22 is permissive. The use of the term “including,” “such as” or words of similar import when  
23 following any general term, statement or matter shall not be construed to limit such term,  
24 statement or matter to the specific items or matters, whether or not language of non-limitation  
25 is used with reference thereto. Rather, such terms shall be deemed to refer to all other items

1 or matters that could reasonably fall within the scope of such statement, term or matter.  
2 Unless expressly stated otherwise, words not defined herein shall be given the meaning given  
3 them in Chapter 11, and if not defined therein, their common and ordinary meaning. To the  
4 extent there is any difference between a definition set forth in this Franchise and a definition  
5 set forth in Chapter 11, the definition used in this Franchise shall govern. References to  
6 governmental individuals or entities refer to those individuals, entities, or their successors in  
7 authority. Unless expressly stated otherwise, if specific provisions of law referred to herein  
8 are renumbered or amended, then the reference shall be read to refer to the renumbered or  
9 amended provision.

10 (a) "Affected Service" shall have the meaning set forth in Section 60(b) below.

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

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

18 (d) "Analog Channel" means a six (6) Megahertz (MHz) frequency band.

19 (e) "Analog PEG Channel" shall have the meaning set forth in Section 48(a)  
20 below.

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

24 (g) "Attorneys' Fees and Costs" means any and all attorneys' fees, costs,  
25 expenses and disbursements, including, but not limited to, expert witness fees and costs,

1 travel time and associated costs, transcript preparation fees and costs, document copying,  
2 exhibit preparation, courier, postage, facsimile, long-distance and communications expenses,  
3 court costs and the costs and fees associated with any other legal, administrative or  
4 alternative dispute resolution proceeding, fees and costs associated with execution upon any  
5 judgment or order, and costs on appeal.

6           **(h)**       “Bandwidth” means the extent of the range of frequencies between minimum  
7 and maximum endpoints measured in megahertz (MHz).

8           **(i)**       “Board” means the City's Board of Supervisors.

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

14           **(k)**       “Bona Fide Institutional Lender” means any one or more of the following: (1) a  
15 savings bank, a savings and loan association, a commercial bank or trust company, an  
16 insurance company, a real estate investment trust, or any other Person which, at the time a  
17 pledge in trust or mortgage is recorded in favor of such Person, has assets of at least  
18 \$500 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged  
19 in the financial services business; or (2) any special account, managed fund, department,  
20 agency or Affiliate of any of the foregoing; or (3) any Person acting in a fiduciary capacity for  
21 any of the foregoing. For purposes hereof: (1) acting in a "fiduciary capacity" shall be deemed  
22 to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan  
23 agreement, indenture or other loan document; and (2) a lender, even if not a Bona Fide  
24 Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if, no more than  
25 thirty (30) City business days after such loan is consummated, the note(s) or other evidence

1 of indebtedness or the collateral securing the same are assigned to a Person then qualifying  
2 as a Bona Fide Institutional Lender.

3 (l) "Cable Drop" shall have the meaning set forth in Section 45 below.

4 (m) "Cable Internet Service" means "Online Computer Services" and "Internet  
5 Access," as those terms are defined in Section 65003 of the California Revenue and Taxation  
6 Code as of the Effective Date, that are offered using any of Grantee's Facilities in the City.

7 (n) "Cable Service" means the one way transmission to Subscribers of video  
8 programming or other programming service and Subscriber interaction, if any, required to  
9 select or use such video programming or other programming service.

10 (o) "Capacity" means the maximum transmission capability of the System. The  
11 Capacity for the System can be expressed in terms of bandwidth measured in hertz (cycles  
12 per second) between minimum and maximum endpoints.

13 (p) "Channel" means both Analog Channels and Digital Channel Equivalent.

14 (q) "Chapter 11" means Chapter 11 of the San Francisco Administrative Code, as  
15 it may be amended from time to time.

16 (r) "City" means the City and County of San Francisco, a municipal corporation of  
17 the State of California.

18 (s) "City business day" means each Monday through Friday, excluding any day  
19 recognized as an official holiday by the City.

20 (t) "City Conduit" shall have the meaning set forth in Section 46(a) below.

21 (u) "City Deposit" shall have the meaning set forth in Section 52(b) below.

22 (v) "C/N" shall have the meaning set forth in Section 48(g)(3) below.

23 (w) "Comcast" means Comcast of California II, Inc., the grantee under the cable  
24 television franchise granted by the City pursuant to Ordinance No 105-64, or any successor.

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1           **(x)**       “Communications Project Grant” shall have the meaning set forth in Section  
2 44(e) below.

3           **(y)**       “Complete Outage” means loss of picture and sound on all Channels to one or  
4 more Subscribers.

5           **(z)**       “Construction Sequence Plans” shall have the meaning set forth in Section  
6 16(a) below.

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

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

22           **(cc)**      “CPUC” means the California Public Utilities Commission.

23           **(dd)**      “CULCOP” shall have the meaning set forth in Section 6(c) below.

24           **(ee)**      “Demarcation Point” means the point within a building or otherwise designated  
25 by the City where Grantee’s fiber terminates.

- 1           **(ff)**     “Deposits” shall have the meaning set forth in Section 52(b) below.
- 2           **(gg)**     “Digital Channel Equivalent” means the portion of the Capacity of the System  
3 required to deliver a digital video Signal, with accompanying audio, meeting or exceeding  
4 National Television System Committee (“NTSC”) quality standards.
- 5           **(hh)**     “DTIS” means the City’s Department of Telecommunications and Information  
6 Services.
- 7           **(ii)**     “DTIS Director” means the Director of DTIS, or his or her designee.
- 8           **(jj)**     “DPW” means the City’s Department of Public Works.
- 9           **(kk)**     “EAS” shall have the meaning set forth in Section 42(h) below.
- 10          **(ll)**     “Effective Date” means \_\_\_\_\_, ~~2003~~2004.
- 11          **(mm)**    “Eligible Employee” shall have the meaning set forth in Chapter 12-O of the  
12 San Francisco Administrative Code.
- 13          **(nn)**     “Excavator” means “Utility Excavator” as defined in Section 2.4.4(s) of the  
14 City’s Public Works Code.
- 15          **(oo)**     “Facilities” means any physical element of the System used in connection with,  
16 or designed to be used in connection with, the provision of Services or Telecommunication  
17 Services, whether or not located in the Public Rights-of-Way, including, without limitation,  
18 Hubs, Nodes, the Headend, pedestals, cabinets, ducts and conduits (whether empty or  
19 occupied), transformers, equipment, drains, handholds, lines, manholes, poles, power  
20 supplies and generators, splice boxes, surface location markers, vaults, tunnels, amplifiers,  
21 power guards, coaxial cables, and fiber strands (whether active or dark).
- 22          **(pp)**     “FCC” means the Federal Communications Commission.
- 23          **(qq)**     “Fiber Backbone” means Grantee’s inter-Hub trunking, and shall not include  
24 fiber optic or coaxial cable running from Hubs to Nodes or Nodes to buildings.
- 25          **(rr)**     “Fiber Drop” shall have the meaning set forth in Section 44(b) below

1           **(ss)**     “Fiber Optic Infrastructure” or “FOI” means the Fiber Strands and Fiber Drops  
2 provided by Grantee to the City pursuant to Section 44 below.

3           **(tt)**     “Fiber Route” shall have the meaning set forth in Section 8(b) below.

4           **(a)**      “Fiber Strands” shall have the meaning set forth in Section 44(a) below.

5           **(uu)**     “First Source Hiring Agreement” shall have the meaning set forth in Section  
6 89(a) below.

7           **(vv)**     “Franchise” means this Ordinance No. [\_\_\_\_\_] of the City’s Board of  
8 Supervisors, as it may be amended from time to time, and all the terms and conditions  
9 thereof. “Franchise” shall not mean or include any license or permit required for the privilege  
10 of transacting and carrying on a business within the City as required by other ordinances or  
11 laws of the City, including, without limitation: (1) any permit, agreement or authorization  
12 required in connection with operations on public streets or property such as permits and  
13 agreements for placing devices on or in poles, conduits or other structures, whether owned by  
14 the City or a private entity, or for excavating or performing other work in or along Public  
15 Rights-of-Way; and (2) express or implicit authorization to provide Service to, or install  
16 Facilities on, private property without owner consent.

17           **(ww)**     “Grantee” means RCN Telecom Services, Inc., and any lawful permitted  
18 successor or assign.

19           **(xx)**     “Gross Revenues” means any and all income, receipts, consideration and  
20 other revenue of any kind or nature, including but not limited to the value of goods or services  
21 received in-kind or in a barter arrangement, derived by Grantee or any Affiliate from the  
22 operation or use of the System to provide Service within the City. The use of the phrase  
23 “within the City” does not limit Gross Revenues to those generated solely from operations  
24 within the City. Rather, Gross Revenues include any revenues derived in any part through or  
25 in connection with the operation of the System, including, but not limited to, such portion as is

1 attributable to the City, in accordance with general accounting principles, of advertising or  
2 other revenues generated on a regional or national basis from Grantee's operations both  
3 within and outside the City. Gross Revenues include, by way of illustration and not limitation:  
4 any amounts or fees collected from Subscribers, regardless of how they are enumerated on  
5 the bill, including subscriber fees, capacity fees, usage-based fees, installation fees,  
6 disconnection fees, reconnection fees, change-in-service fees, late fees, and administrative  
7 fees; revenues derived from other Persons using the System, including without limitation,  
8 Lessees, except to the extent such Persons pay a franchise fee to the City for the use of the  
9 System; revenues received from programmers for carriage of programming on the System;  
10 revenues from rentals or sales of Service-related equipment; advertising revenues; revenues  
11 from program guides; revenues from home shopping channels; and any other revenues  
12 derived from Grantee's operations in the City. This provision shall be read broadly to prevent  
13 the avoidance of franchise fees by Grantee through special billing techniques or bundling of  
14 Services, or arrangements with Affiliates. Gross Revenues shall not include: (i) any taxes on  
15 Services that are imposed directly on any Subscriber or user by the State, City, or other  
16 governmental unit and which are collected by Grantee on behalf of said governmental unit; (ii)  
17 actual bad debt write offs to the extent consistent with generally accepted accounting  
18 principles consistently applied, provided however, that any part of such bad debt that is written  
19 off but subsequently collected shall be included in Gross Revenues; or (iii) amounts paid by a  
20 Subscriber but subsequently refunded to the Subscriber. The franchise fee required pursuant  
21 to Section 10 below is not such a tax, and Grantee shall not exclude from Gross Revenues  
22 amounts collected from Subscribers that are attributable to Grantee's payments of franchise  
23 fees to the City or that are designated on Subscriber bills as franchise fees. Gross Revenues  
24 shall not be reduced by the amount of any costs or expenses incurred by the Grantee,  
25 including but not limited to amounts attributable to the franchise fee.



1           **(yy)**     “Hazardous Material” means any material that, because of its quantity,  
 2 concentration or physical or chemical characteristics, is deemed by any federal, state or local  
 3 governmental authority to pose a present or potential hazard to human health or safety or to  
 4 the environment. Hazardous Material includes, without limitation, any material or substance  
 5 defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the  
 6 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as  
 7 amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California  
 8 Health & Safety Code; any “hazardous waste” as defined in Section 25117 or listed pursuant  
 9 to Section 25140 of the California Health & Safety Code; any asbestos and asbestos  
 10 containing materials whether or not such materials are part of any Facilities to be constructed  
 11 on the Public Rights-of-Way by or on behalf of Grantee, or are naturally occurring substances  
 12 on, in or about the Public Rights-of-Way, and petroleum, including crude oil or any fraction  
 13 thereof, and natural gas or natural gas liquids.

14           **(zz)**     “Headend” means the point in the System where all Signals are collected and  
 15 formatted for transmission on the System.

16           **(aaa)**    “Hub” means the equipment in the distribution system that receives Signals  
 17 from the Headend for transmission to a number of Nodes.

18           **(bbb)**    “Hub Area” shall have the meaning set forth in Section 8(a) below.

19           **(ccc)**    “Incremental Labor and Materials Costs” means the actual, out-of-pocket  
 20 additional labor and materials cost incurred by the Grantee for a specific activity performed for  
 21 the benefit of the City that Grantee would not have incurred but for the City's request.  
 22 Incremental Labor and Materials Costs must be supported by appropriate invoices, which may  
 23 include a certified bill of labor, payroll and/or bill of materials.

24  
 25

1           **(ddd)** “Indemnified Parties” means City, including, but not limited to, all of its boards,  
2 commissions, departments, agencies and other subdivisions; all of the Agents of the City, and  
3 all of their respective heirs, legal representatives, successors and assigns, and each of them.

4           **(eee)** “Indemnify” means indemnify, protect, defend, reimburse and hold harmless  
5 forever.

6           **(fff)** “Local Channel” shall have the meaning set forth in Section 49 below.

7           **(ggg)** “Local Origination Programming” means Programming produced in  
8 San Francisco or containing San Francisco-related content.

9           **(hhh)** “Loss” or “Losses” when used with reference to any Indemnity means any and  
10 all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable  
11 consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and  
12 other proceedings, judgments and awards and costs and expenses, (including, without  
13 limitation, reasonable Attorneys’ Fees and Costs and consultants’ fees and costs).

14           **(iii)** “Material Breach” means a breach of this Franchise that has a substantial  
15 and significant effect on the rights or benefits either party to the Franchise has secured  
16 pursuant to the Franchise. Material Breach shall include, but not be limited to, those breaches  
17 designated as such in this Franchise and in Chapter 11. Additionally, any breach not  
18 identified as a Material Breach in this Franchise may become a Material Breach if it occurs  
19 frequently or remains uncured for such a length of time that it has a substantial and significant  
20 effect of the rights or benefits of either party to this Franchise.

21           **(jjj)** “Mitigation Measures” shall have the meaning set forth in Appendix 2 below.

22           **(kkk)** “Node” means the equipment that receives Signals from a Hub and  
23 redistributes the Signals to individual Subscribers.

24           **(lll)** “Node Area” shall have the meaning set forth in Section 8(a) below.  
25

1           **(mmm)** “Normal Business Hours” means a total of sixty (60) hours per week and  
2 shall include the hours between 9:00 a.m. and 6:00 p.m. Monday through Friday and 10:00  
3 a.m. and 6:00 p.m. on Saturday. The remaining seven (7) hours shall include some hours  
4 after 6:00 p.m. during the week.

5           **(nnn)** “NTSC” shall have the meaning set forth in (gg) above.

6           **(ooo)** “One Year Construction Plan” shall have the meaning set forth in Section  
7 16(a)(1) below.

8           **(ppp)** “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 48 below.

11           **(b)** “PEG Digital Channel Equivalents” shall have the meaning set forth in  
12 Section 48(b) below.

13           **(qqq)** “PEG Operating Contributions” shall have the meaning set forth in Section  
14 47(a) below.

15           **(rrr)** “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           **(sss)** “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           **(ttt)** “Pesticide Ordinance” shall have the meaning set forth in Section 88 below.

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

23           **(vvv)** “Proposal” shall have the meaning set forth in Chapter 11.

24           **(www)** “Public Rights-of-Way” shall have the meaning set forth in Chapter 11.

25           **(xxx)** “Quarterly Meeting” shall have the meaning set forth in Section 17 below.

1           **(yyy)**     “Quarterly Reports” shall have the meaning set forth in Section 16.

2           **(zzz)**     ”Residential Unit” means a residence, whether located in a single family  
3 residence, lodging house, apartment building, condominium, cooperative building, or  
4 dormitory, or any other type of residential dwelling unit.

5           **(aaa)**     “Revocation” means the City’s affirmative act of Terminating this Franchise.

6           **(bbb)**     “SAP” shall have the meaning set forth in Section 48(g)(4) below.

7           **(ccc)**     “Scheduled Appointment” means a scheduled time with a Subscriber for  
8 service, installation or disconnection, specified by date, not to exceed a four (4) hour window  
9 in which a service representative shall arrive.

10          **(ddd)**     “Security Interest” shall have the meaning set forth in Section 52(a) below.

11          **(eee)**     “Service” means all of the Services Grantee is permitted to provide under this  
12 Franchise pursuant to Section 2(b) below. “Service” shall not include Telecommunications  
13 Service unless and until Applicable Law permits local governments to require telephone  
14 corporations in California to obtain a local Franchise or pay fair and reasonable compensation  
15 for the use of the Public Rights-of-Way in connection with the provision of  
16 Telecommunications Service.

17          **(fff)**     “Service Interruption” means loss of picture or sound on one or more  
18 Channels to one or more Subscribers.

19          **(ggg)**     “Signal” means any electromagnetic or optical energy transmitted over the  
20 FOI or over the System from one location to another.

21          **(hhh)**     “Street Furniture Policy” shall have the meaning set forth in Section 7(b)  
22 below.

23          **(iii)**     “Subscriber” means the City, except where expressly stated otherwise, and  
24 any Person who legally receives any Service from Grantee. “Subscriber” shall include  
25 residential, commercial, industrial, public and institutional customers.

1           **(jjjj)**       “Subscriber Deposit” shall have the meaning set forth in Section 52(b) below.

2           **(kkkk)**       "System" means the totality of Grantee’s Facilities owned, constructed,  
3 installed, or operated to provide Services or Telecommunication Services in the City.

4           **(llll)**       “System Tests” shall have the meaning set forth in Section 35(a) below.

5           **(mmmm)** “Telecommunications Service” means any service regulated by the CPUC or  
6 the FCC as a telecommunications service and provided to customers by Grantee in its  
7 capacity as a telephone corporation regulated by the CPUC.

8           **(nnnn)**       “Term” shall have the meaning set forth in Section 2(g) below.

9           **(oooo)**       “Termination” means the conclusion of a Franchise by any means, including,  
10 but not limited to, by expiration of its Term, abandonment, or Revocation.

11          **(pppp)**       “Termination Date” shall have the meaning set forth in Section 60(b)(1)  
12 below.

13          **(qqqq)**       “Transfer” means any transaction in which: (1) all or a portion of any  
14 Facilities or any rights to use or operate Facilities located in the Public Rights-of-Way are sold,  
15 conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole  
16 or in part, directly or indirectly, by one or more transactions to another Person, whether  
17 voluntarily or by operation of law or otherwise; or (2) there is any change, acquisition, or  
18 transfer in the identity of the Person in Control of Grantee, or any Person that controls  
19 Grantee, including, without limitation, forced or voluntary sale, merger, consolidation, or  
20 receivership; or (3) the rights or obligations under the Franchise are sold, conveyed,  
21 transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part,  
22 directly or indirectly, by one or more transactions to another Person, whether voluntarily or by  
23 operation of law or otherwise. It will be presumed, for purposes of clause (2) above, that any  
24 transfer or cumulative transfer of a voting interest by a Person or group of Persons acting in  
25 concert of twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or

1 any change in the managing general partners of a Grantee is a change of Control. "Transfer"  
 2 does not include: (1) a lease to a UVPP pursuant to 47 U.S.C. Section 573; (2) the  
 3 transmission of a commodity or electronic signal using Facilities on a common carrier basis;  
 4 (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224,  
 5 California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in  
 6 trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a  
 7 Bona Fide Institutional Lender in connection with a loan or other financing required to secure  
 8 the construction, operation, or repair of the Facilities ("Loan") provided that such Loan is  
 9 subject to the rights and powers of the City pursuant to the Franchise and Applicable Law,  
 10 including, without limitation, the right of the City to approve any Transfer upon foreclosure.  
 11 "Transferring" and "Transferee" shall have correlative meanings.

12 (rrrr) "Update" shall have the meaning set forth in Section 16(c)(3) below.

13 (ssss) "UVPP" means an unaffiliated video programming provider, which is any  
 14 Person who uses capacity on Grantee's Cable System to deliver Video Service or other  
 15 communications service to Subscribers and who is not an Affiliate of Grantee.

16 (tttt) "Video Feeds" shall have the meaning set forth in Section 48(g)(2) below.

17 (uuuu) "Video Service" means Cable Service provided over an OVS.

18 (vvvv) "WDS" shall have the meaning set forth in Section 89(a) below.

19 PART 2 – FRANCHISE GRANT

20 **Section 2. FRANCHISE GRANT**

21 (a) Board Authorization. Pursuant and subject to Charter Section 16.111, Chapter  
 22 11, and the terms and conditions agreed to herein, the City hereby authorizes Grantee to  
 23 occupy and use the Public Rights-of-Way to construct, install, repair, maintain and to operate  
 24 its System within the City to provide the Services specified in subsection (b) below during the  
 25 Term. This Franchise does not confer any rights other than those expressly provided herein

1 and does not authorize Grantee to occupy and use the Public Rights-of-Way for any purposes  
2 other than to construct, install, repair, maintain and operate its System to provide the Services  
3 specified in subsection (b) below.

4       **(b) Services Authorized.** Subject to the acknowledgment and agreement in (c)  
5 below, this Franchise authorizes Grantee to use the Public Rights-of-Way to provide Video  
6 Service and Cable Internet Service, leasing or offering the use of the System through any  
7 other arrangement to any Person otherwise authorized to use the Public Rights-of-Way  
8 pursuant to Sections 11.3 or 11.4 of Chapter 11 or to a UVPP. Grantee shall have no  
9 obligation under this subsection (b) to notify the City before providing Telecommunications  
10 Service. Grantee's failure to obtain City approval prior to providing any service not authorized  
11 pursuant to this Franchise shall be a Material Breach of this Franchise.

12       **(c) Telecommunications Services.** Subject to the conditions set forth in subparts (a)  
13 through (d) of this subsection, the City hereby acknowledges and agrees (i) that Grantee may  
14 operate and use its Facilities to provide Telecommunications Services and shall not be liable  
15 for payment of franchise fees on Gross Revenues from the operation of the System to provide  
16 Telecommunications Services pursuant to Part 4 below, and (ii) that Grantee shall not be  
17 required to obtain another Utility Conditions Permit pursuant to Section 11.9 of Chapter 11.  
18 The City's acknowledgment and agreement is subject to the following conditions: (a) There is  
19 no change in §7901 of the California Public Utilities Code or its interpretation, which, as of the  
20 Effective Date, is interpreted to prohibit local governments from requiring telephone  
21 corporations in California to obtain a local Franchise or pay fair and reasonable compensation  
22 for use of the Public-Rights-of-Way in connection with the provision of Telecommunications  
23 Services; (b) Grantee maintains a current Certificate of Public Convenience and Necessity  
24 ("CPCN") from the California Public Utilities Commission ("CPUC") authorizing Grantee to  
25 provide Telecommunications Services, or other successor authorization presented to the City

1 pursuant to subpart (d) below and accepted by the City, and (c) Grantee is in compliance with  
 2 all the provisions of its CPCN or other successor authorization; and (d) Grantee provides the  
 3 City written notice within ten (10) City business days of any material modification to its CPCN.  
 4 Grantee shall promptly provide to the City a copy of any modification to its CPCN. If, at any  
 5 time, any of the aforementioned conditions are not satisfied, DTIS may deem the  
 6 acknowledgment and agreement set forth in this subsection to be null and void upon 20  
 7 (twenty) City business days written notice to Grantee, may require Grantee to apply for a UCP  
 8 pursuant to Section 11.9 of Chapter 11, or may require Grantee to obtain any other lawful  
 9 authorization that it may deem appropriate in its sole discretion. With the exception of the  
 10 franchise fee requirements of Part 4 below, notwithstanding their use to provide  
 11 Telecommunications Services, Grantee's Facilities and the operation and use of its Facilities  
 12 and System shall be subject to all the terms and conditions of this Franchise.

13 (d) Cable Internet Services. (1) The FCC has declared Cable Internet Service to be  
 14 an interstate information service, FCC 02-77, rel. March 15, 2002. That decision was affirmed  
 15 in part and reversed in part by the United States Court of Appeals for the Ninth Circuit in  
 16 *Brand X Internet Services v. F.C.C.*, 345 F.3d 1120 (9<sup>th</sup> Cir. 2003), in which the court held that  
 17 Cable Internet Service is in part an information service and in part ~~a Telecommunications~~  
 18 Telecommunications Service. That decision is subject to further review by ~~either the Ninth~~  
 19 ~~Circuit sitting en banc or by~~ the United States Supreme Court. ~~To the extent not prohibited by~~  
 20 ~~Applicable Law, Grantee shall pay franchise fees on revenues derived from Cable Internet~~  
 21 ~~Service. In addition, unless and until there is a final, unappealable determination by the FCC~~  
 22 ~~or a court of competent jurisdiction that the City may not regulate Cable Internet Service,~~  
 23 ~~Grantee,~~ in the event the Court accepts the case on certiorari. (2) In view of the foregoing,  
 24 the City agrees that as of the Effective Date of this Franchise, the terms and conditions of this  
 25 Franchise as they pertain to Cable Internet Service shall be tolled and City shall not enforce



1 such terms and conditions against Grantee, nor shall Grantee have any obligation to comply  
2 therewith during such tolling; provided, however, the City may terminate this tolling at any time  
3 at its sole discretion, by resolution by the City's Board of Supervisors, so long as and to the  
4 extent City is permitted to enforce such provisions against Grantee under Applicable Law. If  
5 City terminates the tolling, it shall do so by ninety (90) days' prior written notification of such  
6 termination to Grantee. Upon termination of such tolling, Grantee shall comply with all of the  
7 applicable terms and provisions of this Franchise as they pertain to Cable Internet Services.  
8 Nothing in the foregoing tolling is an admission by the City of by Grantee of the current state  
9 of Applicable Law, and neither party has waived any rights by agreeing to this current tolling.  
10 The City acknowledges and agrees that Sections 3(c), 3(e), and 60(a) shall not apply with  
11 respect to any challenge by Grantee upon the City's notification to Grantee of any termination  
12 of the tolling relative to Cable Internet Service. In addition, with regard to Cable Internet  
13 Service, the procedures set forth in this Section shall be followed prior to application of  
14 Section 60(b) below. (3) Notwithstanding the decision of the Ninth Circuit, (a) in the event  
15 Grantee pays a fee to, or complies with customer service requirements or agrees to any  
16 enforcement mechanisms in connection therewith for the benefit of, any municipality in the  
17 State of California in connection with the provision of Cable Internet Services, Grantee shall  
18 promptly notify the City of same and shall pay an equivalent fee to, and comply with  
19 equivalent customer service and enforceability requirements for the benefit of, the City under  
20 this Franchise, and (b) Grantee further agrees during the tolling period to comply with the  
21 customer service requirements in ~~Section~~Sections 26, ~~Section 27, Section 28, and Section 29~~  
22 ~~below. In addition, Grantee~~27, 28 and 29 of this Franchise, not subject, however, to the  
23 provisions of Section 59 and 60, in Grantee's provision of Cable Internet Service. Grantee  
24 further agrees to be bound by any lawful ordinance adopted by the City's Board of  
25 Supervisors that may: (i) require Grantee and other persons granted a franchise to provide

1 Video Service or Cable Internet Service within the City to provide Internet service providers  
2 with nondiscriminatory access to broadband transport services; and (ii) establish consumer  
3 protection standards for Cable Internet Service or requirements for access to information, data  
4 and programming generally available on the internet that may be accessed using Grantee’s  
5 Facilities.

6 (e) Type of Franchise. For purposes of distinguishing between a Cable System  
7 Franchise and an OVS Franchise under Chapter 11, this Franchise is granted for an OVS.

8 (f) Effective Date. Provided it has been accepted by Grantee pursuant to Section  
9 11.13 of Chapter 11, the Term of this Franchise shall commence (the “Effective Date”) on the  
10 effective date of the ordinance of the San Francisco Board of Supervisors enacting this  
11 Franchise.

12 (g) Term. The term of this Franchise shall be four (4) years, commencing upon the  
13 Effective Date (the “Initial Term”). The Initial Term may be extended as provided herein, and  
14 the Initial Term plus any extensions shall be referred to as the “Term.”

15 (h) As Is Condition of City Property. Grantee agrees that the use of the Public  
16 Rights-of-Way is being offered by the City and accepted by Grantee in its “AS IS WITH ALL  
17 FAULTS” condition. Grantee specifically acknowledges and agrees that neither the City nor its  
18 Agents has made, and there is hereby disclaimed the making of, any representation or  
19 warranty, express or implied, of any kind, with respect to the condition of the Public Rights-of-  
20 Way or appurtenances thereto, or the suitability of the Public Rights-of-Way for Grantee’s  
21 intended uses. In connection with Grantee’s use of the Public Rights-of-Way, Grantee hereby  
22 releases the City from any and all claims relating to the matters set forth in this Section.

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

25

1           **(a)**    Accepts and agrees to comply with each provision of: (1) this Franchise; (2)  
2 Chapter 11; (3) the Public Works Code; and (4) any lawful future amendments to Chapter 11  
3 or the Public Works Code.

4           **(b)**    Acknowledges and accepts the legal power of the City: (1) to require Grantee to  
5 obtain this Franchise; (2) to grant this Franchise; and (3) to enforce this Franchise and  
6 Applicable Law related to this Franchise;

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

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

16           **(e)**    Releases, waives and discharges forever, to the maximum extent permitted by  
17 Applicable Law, any and all claims, demands, rights, and causes of action against, and  
18 covenants not to sue, the City and its Agents, under any present laws, statutes, or regulations,  
19 arising out of any acts, omissions, or matters relating to this Franchise as of the Effective  
20 Date. In connection with the foregoing release, Grantee acknowledges that it is familiar with  
21 Section 1542 of the California Civil Code, which reads:

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

25

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

11 **Section 4.** TRANSFERS: City Approval Required. This Franchise is a privilege that is in  
12 the public trust and personal and specific to Grantee and is granted in consideration of the  
13 unique knowledge, skill and expertise possessed by Grantee. Consequently, the City and  
14 other Subscribers shall not be required to accept performance of this Franchise from a third  
15 party who has not submitted its qualifications for review and approval pursuant to Section  
16 11.14 of Chapter 11. Any Transfer shall be subject to all the terms and conditions of Section  
17 11.14 of Chapter 11. Any Transfer without the approval of the City as set forth in Chapter 11  
18 shall be considered to impair the City's assurance of due performance, and may, at the City's  
19 sole option, be voidable and/or constitute a Material Breach of this Franchise.

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

25



1 responsible for submitting permit applications or seeking other approvals in a manner that  
2 permits Grantee to meet its construction, installation, or relocation plans or obligations.

3       **(c)** CULCOP Participation. During any period in which Grantee is engaged in  
4 System construction, Grantee shall participate in DPW’s Pavement Management Program  
5 and the Committee for Utility Liaison on Construction and Other Projects (“CULCOP”)  
6 established by Section 5.63 of the San Francisco Administrative Code, or any successor  
7 organization established by the City, in the manner prescribed by the DPW Director. At a  
8 minimum, Grantee shall regularly attend CULCOP meetings and shall provide its construction  
9 plans to DPW pursuant to Public Works Code Section 2.4.11 so as to effectuate the  
10 excavation coordination goals of CULCOP and the Public Works Code. Additionally, Grantee  
11 shall take all reasonable precautions to protect all other facilities located in the Public Rights-  
12 of-Way.

13       **(d)** Underground Service Alert. In accordance with the provisions of Chapter 3.1 of  
14 Division 5 of Title I of the Government Code of the State of California (Section 4216 et seq.),  
15 Grantee as an operator of a subsurface installation shall obtain and maintain membership in a  
16 regional notification center (e.g., Underground Service Alert - Northern California), and shall  
17 otherwise comply with the provisions of the referenced chapter, division and title upon  
18 demand. Grantee shall furnish written proof of such membership to DPW within ten (10) days  
19 of the Effective Date. Repeal of any Law requiring such membership shall not negate  
20 Grantee's obligation to maintain such membership.

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

25

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

15     **Section 7.   INSTALLATION OF FACILITIES.**

16           **(a)**     Guiding Principles. Grantee shall construct, install, operate and maintain its  
17 Facilities in accordance with the maps and other documents submitted pursuant to Part 5  
18 herein. All Facilities shall be located, installed, constructed and maintained in a manner that  
19 minimizes: (1) interference with vehicular or pedestrian traffic in the Public Rights-of-Way; (2)  
20 visual blight; and (3) interference with the rights and convenience of property owners. The  
21 erection and location of all Facilities in the Public Rights-of-Way shall be fixed with the prior  
22 written approval and under the supervision of DPW.

23           **(b)**     New Policy Will Apply To Grantee. Without limiting Grantee's obligations under  
24 Section 73 below to comply with all Applicable Laws, Grantee understands and acknowledges  
25 that at the time of the Effective Date, DPW, in conjunction with the Telecommunications

1 Commission, may develop policies and procedures to address the placement of Facilities in  
2 the Public Rights-of-Way. These policies will likely address the placement of those Facilities  
3 that have the effect of interfering with the use of the Public Rights-of-Way or that create visual  
4 blight in the Public Rights-of-Way, including overhead Facilities that may be installed on utility  
5 poles ("Street Furniture Policy"). Grantee specifically understands and agrees that the City  
6 has not in this Franchise relinquished its authority to adopt and enforce a Street Furniture  
7 Policy and that Grantee will be subject to the Street Furniture Policy that DPW adopts. The  
8 adoption of the Street Furniture Policy shall not excuse Grantee from any of its obligations  
9 under this Franchise. DPW shall apply the Street Furniture Policy in a nondiscriminatory and  
10 competitively neutral manner to all similarly situated Persons seeking to place facilities in the  
11 Public Rights-of-Way.

12 (c) Grantee shall comply with a process for installing facilities to which Grantee,  
13 DPW, and the Department of Planning mutually agree.

14 (d) Installation Shall Be Permanent in Nature. All Facilities installed in the Public  
15 Rights-of-Way shall be of a permanent nature, using durable components, except where  
16 maintenance or emergency repairs require the installation of temporary Facilities. Temporary  
17 Facilities shall be replaced as soon as possible. Grantee shall notify DTIS in writing if  
18 replacement of temporary Facilities will not be achieved within sixty (60) days of their  
19 installation. Nothing in the foregoing shall be deemed to grant to Grantee a permanent right  
20 or interest in the Public Rights-of-Way, or to limit the City's relocations rights as set forth in  
21 any Applicable Law or permit.

22 (e) Joint Excavation. Grantee shall take advantage of every opportunity to  
23 participate in joint excavation in areas where: (i) underground facilities are required; (ii)  
24 Grantee anticipates installing Facilities, and; (iii) joint excavation is mandated by Section  
25 2.4.12 of the Public Works Code, provided that DPW determines that installation of dry utility



1 facilities is feasible. This provision shall not be read to expand any of Grantee’s obligations  
2 pursuant to Article 2.4 of the Public Works Code with respect to excavations solely to connect  
3 Facilities in the Public Rights of Way to an individual building.

4 Termination of Franchise. Upon Termination of the Franchise, Grantee shall transfer to  
5 City or remove all or any portion of the Facilities in accordance with San Francisco  
6 Administrative Code Sections 11.17 and 11.18. Grantee shall repair, at no cost to the City,  
7 any damage caused by Grantee's removal of the Facilities. ~~Upon Termination of the~~  
8 ~~Franchise for any reason, the City may at its option purchase all or a portion of Grantee's~~  
9 ~~Facilities at a cost not to exceed either (i) the book value or (ii) the fair market value less ten~~  
10 ~~percent, whichever is less.~~ Upon Termination of the Franchise for any reason, the City may at  
11 its option purchase all or a portion of Grantee’s Facilities at fair market value.

12

13 **Section 8. CONSTRUCTION SEQUENCE.**

14 **(a)** System Description. Grantee shall construct its System by building a Hub to  
15 provide Service in a particular geographic area (“Hub Area”) and then installing Fiber to  
16 connect the Nodes in the Hub Area to the Hub. Grantee represents and covenants that no  
17 more than six hundred and forty (640) Nodes will be served by a single Hub. Grantee  
18 warrants: (1) that each Node will be connected to its Hub via a fiber bundle consisting of an  
19 average of twelve (12) single-mode fibers; and (2) that each Node will serve approximately  
20 one hundred and fifty (150) Subscribers or potential Subscribers (“Node Area”).

21 **(b)** Location of Hubs. Grantee shall locate each Hub within a geographic area  
22 based upon the following criteria: geographic centrality to the Nodes designated for a Hub  
23 Area, and the cost to lease or purchase real estate in which to locate the Hub. Once a Hub  
24 location is established, Grantee shall identify the routes along which Fiber will be constructed  
25 to connect each Node in the Hub Area to the Hub (“Fiber Route”).

1           **(c)**     Sequence of Construction of Fiber Routes. Prior to constructing, Grantee will  
2 present to DTIS ~~a proposed~~Grantee's anticipated construction sequence, ~~and shall obtain~~  
3 ~~from DTIS approval of the construction sequence~~pursuant to Section 16(1).

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

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

19           **(f)**     Service Obligation. Grantee shall provide or offer to provide Services, which  
20 shall include, at a minimum Video Services and Cable Internet Services, at standard  
21 installation rates and without any charge for extension of plant and pursuant to the terms of  
22 (d) above, to (i) each Residential Unit in a building with an exterior wall within one hundred  
23 fifty feet of Grantee's Facilities in the Public Rights-of-Way or utility easement within the City,  
24 and (ii) each commercial, institutional, or public unit within one hundred fifty feet of Grantee's  
25 Facilities in the Public Rights-of-Way or utility easement within the City.

1 **Section 9.** UNDERGROUNDING. Grantee shall not install overhead Facilities in the Public  
 2 Rights-Of-Way within Legislated Underground Districts, pursuant to San Francisco Public  
 3 Works Code Section 911, or in areas where utility services are provided by rear yard feeds.  
 4 Upon receipt of a demand from City pursuant to Applicable Law, Grantee shall, at no cost to  
 5 the City, replace any of its overhead Facilities with underground Facilities in accordance with  
 6 all Applicable Laws. As soon as possible, but no less than forty five (45) City business days  
 7 prior to any planned undergrounding, Grantee shall notify DTIS so that DTIS may elect to  
 8 have City Conduit installed pursuant to Section 46 below.

9 **PART 4 - FRANCHISE FEE PAYMENTS**

10 **Section 10.** AMOUNT OF FRANCHISE FEE. While the City does not agree that franchise  
 11 fees in such an amount adequately reflect the full value of the use of the Public Rights-of-  
 12 Way, Grantee shall pay the City a franchise fee equal to five percent (5%) of Grantee's Gross  
 13 Revenues.

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

1 **Section 12.** GRANTEE RESPONSIBILITY FOR FEES OF THIRD PARTIES. Grantee shall  
2 fully cooperate with the City in collection of franchise fees owed to the City by any Person  
3 using Grantee’s Facilities.

4 **Section 13.** ACCEPTANCE OF PAYMENT NOT A RELEASE. No acceptance by the City of  
5 any franchise fee payment shall be construed as an accord that the amount paid is in fact the  
6 correct amount owed, nor shall such acceptance of such franchise fee payment be construed  
7 as a release or waiver of any claim the City may have for additional sums payable or any  
8 known or unknown breach of this Franchise.

9 PART 5 - REPORTING REQUIREMENTS

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

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

18 **Section 15.** FAILURE TO COMPLY. Grantee’s failure to provide reports as required by this  
19 Franchise and Article IV of Chapter 11 may be a Material Breach of this Franchise.

20 **Section 16.** INFORMATION DUE DURING SYSTEM CONSTRUCTION. Grantee shall  
21 provide the information described in this Section to DTIS three (3) months after the Effective  
22 Date and every three (3) months thereafter (“Quarterly Reports”). The Quarterly Reports shall  
23 be provided in a paper and electronic form acceptable to the DTIS Director and shall contain  
24 the following information:

25

1           (1) Construction Sequence Plans. Grantee shall provide DTIS with System  
2 construction plans, as described below, showing the anticipated sequence of Grantee’s  
3 construction (“Construction Sequence Plans”). The Construction Sequence Plans shall  
4 contain all information at a level of detail and in a form acceptable to the Director of DTIS. In  
5 addition, within three months of the Effective Date and each year thereafter, Grantee shall  
6 provide written summaries of its planned sequence of construction for the upcoming 12  
7 months (“One Year Construction Plan”). The One Year Construction Plan shall contain  
8 information sufficient for the City to determine whether the plans comply with the criteria set  
9 forth in Section 8 above. If the Grantee does not plan any construction for the next 12  
10 months, it will so inform the Director by letter.

11           **(a)** Certifications. Grantee shall include a written certification with the Construction  
12 Sequence Plans certifying that it has not planned, and will not execute, any construction  
13 sequence in a manner that would improperly discriminate against any Person in violation of  
14 Section 8(d) above.

15           **(b)** Technical Information. In the event that Grantee intends to construct its system  
16 beyond the areas already built as of the Effective Date, as set forth in Appendix 4, at least  
17 ~~180~~90 days prior to such planned construction Grantee shall provide the following technical  
18 information to DTIS, in a form approved by the DTIS Director:

19           (1) System Architecture Maps. System architecture maps, of industry-  
20 standard scale and using standard symbology, depicting all electronic and physical features of  
21 the System;

22           (2) System “Turn-Up” Maps. A System “Turn-Up” Map which tracks the  
23 Construction Sequence Plans provided to DTIS pursuant to subsection (a) above, stating  
24 when Grantee anticipates Service will be provided in each Node Area and indicates where  
25 Service is being offered; and

1                   (3)     Explanation of Deviation from Prior Construction Sequence Plans.  
 2     Grantee shall construct the System substantially in accordance with the Construction Plans  
 3     submitted to the City. Upon deviating from such plans, Grantee shall submit a written  
 4     explanation and any necessary maps to clearly demonstrate how Grantee’s actual System  
 5     construction has deviated from the representations made by Grantee in its System  
 6     Construction Plans submitted in its prior Quarterly Report to DTIS (“Update”).

7                   (4)     Location of Hubs. Hub locations, as they are designated, and a map  
 8     showing the anticipated Hub Areas.

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

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

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

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

25

1           **(a)** Plans showing the exact location of Grantee’s Headend, anticipated Hub  
2 locations, and anticipated Hub Areas;

3           **(b)** Plans showing the location of the City’s Fiber Drops, Cable Drops, and City  
4 Conduit and manholes and when they will be available for City use;

5           **(c)** An Update, as described in Section 16(c)(3) above;

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

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

15           **(f)** Documents setting forth Grantee’s engineering guidelines and construction  
16 practices in the geographic area of the City; and

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

19 **Section 19. CUSTOMER SERVICE REPORTS.**

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

23           **(b)** Subscriber Complaint Reports. Simultaneous with each Franchise Fee  
24 payment, Grantee shall provide to DTIS, in a form acceptable to DTIS, a quarterly report  
25 tracking each Subscriber complaint referred to Grantee by the City and each Subscriber

1 complaint escalated to the corporate office of Grantee or its Affiliates, how and when it was  
2 received, the nature of the complaint, how and when it was responded to, whether the  
3 complaint was referred to Grantee by the City, and the ultimate resolution of the issue. If a  
4 complaint is not resolved at the end of the quarter, any action related to the complaint shall be  
5 reported in the following quarterly report until it is resolved. The report shall quantify  
6 Grantee's response performance so that City and Grantee may easily determine whether  
7 Grantee is meeting the requirements of Section 29(f). To the extent that Grantee is able,  
8 Grantee shall provide the information required by this Section 19(b) for all calls from  
9 Subscribers under this Franchise, in addition to calls referred to Grantee by the City and  
10 Subscriber complaints escalated to the corporate office of Grantee or its Affiliates, and  
11 Grantee shall provide such information in its quarterly reports.

12 **Section 20.** CITY REVIEW DOES NOT CONSTITUTE WAIVER. The City's receipt and  
13 review of any of the information provided to it, including, without limitation, the information  
14 provided to it pursuant to this Part, shall not operate to excuse or waive any violation or non-  
15 performance under this Franchise or other Applicable Law.

16 **Section 21.** CONFIDENTIALITY OF PROPRIETARY INFORMATION. Grantee understands  
17 and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter  
18 67) and the State Public Records Law (Gov't Code section 6250 et seq.), apply to this  
19 Franchise. Pursuant to Section 11.20 of Chapter 11, Grantee shall have the opportunity to  
20 protect from disclosure to the public any information provided to the City pursuant to this  
21 Franchise that is proprietary, trade secret or is otherwise protected from disclosure under the  
22 California Public Records Act (Cal. Gov't Code Section 6254, et seq.), the City's Sunshine  
23 Ordinance and other Applicable Law.

24 PART 6 – RECORD REVIEW, RETENTION, AND ACCESS RIGHTS  
25



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

10 **Section 23.** ACCESS TO RECORDS. Grantee shall comply with all provisions of Article V of  
 11 Chapter 11, provided that any amount owed to the City pursuant to Section 11.41 of Chapter  
 12 11 shall be paid within ten (10) City business days following the City's written demand.  
 13 Grantee's failure to comply with the provisions of this Section may constitute a Material  
 14 Breach of this Franchise.

#### 15 PART 7– CUSTOMER SERVICE

16 **Section 24.** APPLICABILITY. The provisions of this Part shall apply to all Services provided  
 17 by Grantee pursuant to this Franchise. Additionally, notwithstanding the fact that Grantee is  
 18 an OVS operator, Grantee shall comply with all of the requirements set forth in Chapter 11,  
 19 Article VI, and Grantee shall provide all Services authorized pursuant to this Franchise in a  
 20 manner consistent with those provisions.

21 **Section 25.** CUSTOMER SERVICE REGULATIONS. Pursuant to Section 11.51 of Chapter  
 22 11, Grantee shall comply with all customer service standards and consumer protection laws  
 23 established by Applicable Law, including, without limitation, 47 C.F.R. 76.309, those set forth  
 24 herein, and those set forth in Chapter 11. The City reserves the right to adopt, ~~and Grantee~~  
 25 ~~agrees to comply with,~~ additional or more stringent customer service standards or consumer

1 protection laws and to impose them upon Grantee and other similarly situated Persons  
2 providing the same Services authorized by this Franchise, using Facilities installed in the  
3 Public Rights-of-Way, in a fair and non-discriminatory manner.

4 **Section 26. EMERGENCY MAINTENANCE.** Grantee shall respond to Service Interruptions  
5 and System malfunctions that may result in a Service Interruption by maintaining an  
6 emergency maintenance and repair staff capable of responding to and repairing, on a timely  
7 basis, System malfunctions, or Service Interruptions, on a twenty four (24) hour, seven (7)  
8 days a week basis.

9 **Section 27. LANGUAGES.** Grantee shall have employees able to respond to billing  
10 inquiries and Service requests in all languages in which Grantee markets Services. At a  
11 minimum, Grantee shall have employees able to respond to billing inquiries and Service  
12 requests in English and the 5 other languages DTIS determines to be spoken by the largest  
13 number of San Francisco residents.

14 **Section 28. CREDITS.** Grantee shall provide credits to Subscribers (or potential  
15 Subscribers) pursuant to the procedures set forth in 47 C.F.R. 76.309(c)(3)(iv) under the  
16 following circumstances:

17 (a) Failure to Maintain a Scheduled Appointment. In the event Grantee fails to  
18 make or timely cancel a Scheduled Appointment pursuant to 47 C.F.R. 76.309(2)(iii)-(v) and  
19 California Civil Code Section 1722, Grantee shall clearly and immediately, with no prompting  
20 from the Subscriber, notify the Subscriber in writing that he or she may choose among the  
21 following remedies: (i) waiver of the fee if the Scheduled Appointment was for a Service for  
22 which a fee was to be charged; (ii) one free month of either basic Video Service plus the other  
23 most widely subscribed to Video Service tier or Cable Internet Service based upon the service  
24 for which the Scheduled Appointment was made, or if the Scheduled Appointment was to  
25

1 have been provided free of charge; or (iii) an opportunity to pursue up to five hundred dollars  
2 (\$500) in damages pursuant to California Civil Code Section 1722, if applicable.

3       **(b)** Failure to Perform Timely Installation. In the event Grantee fails to perform a  
4 standard installation within seven (7) business days as required pursuant to 47 C.F.R.  
5 76.309(c)(2)(i) Grantee shall clearly and immediately, with no prompting from the Subscriber,  
6 notify the Subscriber in writing that he or she may choose between: (i) waiver of the  
7 installation fee if a fee was going to be charged; or (ii) one free month of either basic Video  
8 Service plus the other most widely subscribed to Video Service tier or Cable Internet Service  
9 based upon the service that Grantee failed to install, if the installation was to have been  
10 provided free of charge.

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

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

21 **Section 29. SUBSCRIBER COMPLAINTS.** Grantee shall establish written procedures for  
22 receiving, acting upon and resolving Subscriber complaints. These procedures shall require,  
23 at a minimum, that Grantee:

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

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

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

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

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

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

15 **Section 30. RATES AND CHARGES.**

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

19           **(b)** Low Income Rate. Any Person receiving federal, state, or local cash income  
20 maintenance benefits or food assistance ("Eligible Subscribers") shall be eligible to receive  
21 Video Services at reduced rates. For the Term of this Franchise, Grantee shall provide to  
22 Eligible Subscribers a reduced rate for the most widely subscribed to tier or combination of  
23 tiers, and any less expensive tiers, of Video Services offered by Grantee, excluding pay-per-  
24 view and premium add-on services for which Subscribers pay an additional fee or charge.  
25 The reduced rates for these Services shall reflect a discount equal to at least twenty percent

1 (20%) off the rates charged to Subscribers not receiving the discount. Grantee shall not  
 2 require Eligible Subscribers to receive additional or bundled Services (Cable Internet  
 3 Services, Telecommunications Services, or other Services) in order to receive the reduced  
 4 rate for Video Service. Grantee shall be under no obligation to provide a special tier of Video  
 5 Service distinct from the Video Service tiers offered to other Subscribers. Grantee shall  
 6 provide notice to all Subscribers and potential Subscribers about the availability of reduced  
 7 rates as set forth in this Section in accordance with reasonable rules agreed to by DTIS and  
 8 Grantee. All Grantee's marketing materials shall include notification of the low income rate,  
 9 and shall be subject to DTIS's prior review and approval for this purpose. Following any  
 10 change in the TSC franchise (Ordinance 105-64) currently held by Comcast or the grant of a  
 11 subsequent franchise to Comcast, Grantee's obligations under this section shall be  
 12 automatically adjusted to correspond to the low income requirements to be provided by  
 13 Comcast under its new franchise

14 **Section 31. FRANCHISE ADMINISTRATION ACCOUNT.** The first one hundred thousand  
 15 dollars (\$100,000) of franchise fees paid by Grantee annually pursuant to Part 4 herein shall  
 16 be allocated by the City to fund the City's administration and oversight of the City's cable and  
 17 OVS television franchises and related Applicable Law. This potential allocation is intended for  
 18 the benefit of the City only, and no other Person, including but not limited to Grantee, may rely  
 19 upon, or seek to enforce or benefit from, the proposed allocation or failure to allocate. The  
 20 terms of this Franchise shall be governed by and subject to the budgetary and fiscal  
 21 provisions of the City's Charter. Notwithstanding anything to the contrary contained herein,  
 22 there shall be no obligation for the allocation, payment or expenditure of money by the City  
 23 unless the City's Controller first certifies, pursuant to Section 3.105 of the Charter, that there is  
 24 a valid appropriation from which the expenditure may be made and that unencumbered funds  
 25 are available for the allocation or expenditure.



1           **(a)**    Initial acceptance tests on newly constructed or rebuilt Facilities. Successful  
2 completion of the first semi-annual FCC proof of performance test for the newly constructed or  
3 rebuilt Facilities shall constitute the initial acceptance test for that newly constructed or rebuilt  
4 portion.

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

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

9           **(d)**    Special tests at DTIS’s reasonable request, upon a showing of need.

10 **Section 35. SYSTEM TESTS.**

11           **(a)**    Tests Required. Within 36 months of the Effective Date, Grantee shall perform  
12 the following tests to establish that the System complies with this Franchise, FCC rules, and  
13 other Applicable Laws (“System Tests”). As applicable, System Tests shall be conducted at  
14 end-of-line locations served by five percent (5%) of all Nodes within the System:

- 15                   (1)    Visual carrier levels on each activated Channel;
- 16                   (2)    Aural carrier levels on each activated Channel;
- 17                   (3)    The calculated difference between the visual and aural carrier levels on  
18 each activated Channel;
- 19                   (4)    Adjacent Channel video difference on activated Channels;
- 20                   (5)    The difference between the highest video carrier level on any activated  
21 Channel and the lowest video carrier level on any activated Channel;
- 22                   (6)    Carrier-to-noise ratio on six (6) Channels selected by City;
- 23                   (7)    Hum and low frequency disturbances on six (6) Channels selected by  
24 City;
- 25                   (8)    Intermodulation distortions on six (6) Channels selected by City;

1                   (9)    Subjective expert rating of picture quality, if any, on all activated  
2 Channels;

3                   (10)   Industry standard performance measurements comparable to the  
4 performance measures set forth in 1 through 9, above to determine the quality of digital  
5 transmission; and

6                   (11)   Industry standard tests which demonstrate whether Grantee’s Cable  
7 Internet Service is performing at levels represented by Grantee to Subscribers and at levels  
8 required by Applicable Law.

9                   The System Tests will be complete when, after any necessary corrective action  
10 pursuant to Section 41 below, the DTIS Director determines that the System meet applicable  
11 requirements.

12           **(b)**    Measurements Prior to Tests. Prior to the System Tests, Grantee shall take the  
13 following measurements at its Headend, under the City’s supervision: (i) video carrier levels  
14 and picture quality on all Channels leaving the Headend; (ii) audio carrier levels on all  
15 Channels leaving the Headend; and (iii) FM radio carrier levels, if any. Additionally, prior to  
16 the tests, Grantee shall present the City with copies of current calibration certificates issued  
17 by an independent calibration laboratory for all frequency/voltage sensitive equipment that will  
18 be used in the tests.

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

23   **Section 36.** SUPERVISION OF TESTS. DTIS may supervise and specify the location of  
24 Facilities to be tested for the tests performed pursuant to Section 34(c), Section 34(d), and  
25 Section 35 above.



1 **Section 37.** REIMBURSEMENT OF CITY COSTS. Grantee shall reimburse the City's  
2 reasonable costs to supervise any tests requested by DTIS pursuant to this Part, not to  
3 exceed a total of thirty thousand dollars (\$30,000) during the term, provided that any  
4 unexpended portion of such reimbursement cap shall be increased by the CPI-U from the  
5 Effective Date to the time a test is performed.

6 **Section 38.** NOTICE OF TESTS. Grantee shall provide DTIS at least five (5) City business  
7 days' notice of, and opportunity to observe, any tests performed on the System pursuant to  
8 this Part.

9 **Section 39.** TEST RESULTS. Upon DTIS's written request, Grantee shall provide DTIS a  
10 written report of the results of any test and any other written materials in Grantee's control or  
11 possession relating to the test, no later than ten (10) City business days after the test unless  
12 otherwise instructed by DTIS. The complete results of all tests performed pursuant to this  
13 Part shall be retained by Grantee and shall be available for inspection or copying by DTIS for  
14 five (5) years after they are completed.

15 **Section 40.** CITY RIGHT TO INSPECT. The City reserves the right to inspect the System  
16 pursuant to Section 11.43 of Chapter 11. However, such inspection does not relieve Grantee  
17 of its obligation to construct the System in compliance with this Franchise and other  
18 Applicable Law.

19 **Section 41.** CORRECTIVE ACTION. If any test indicates that any portion of the System fails  
20 to meet applicable requirements, Grantee shall, without the requirement of additional notice or  
21 a request from DTIS, take corrective action, retest the locations and advise DTIS of the action  
22 taken and results achieved. Grantee shall continue corrective action and repeat tests until  
23 tests indicate that the System meets applicable requirements. Nothing herein shall constitute  
24 a waiver of the City's right to require compliance with any FCC standard or other Applicable  
25 Law.

1     **Section 42.** SYSTEM CHARACTERISTICS. The System shall, at all times during the  
2 Franchise Term, meet or exceed the following requirements:

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

7             **(b)** Continuous 24-Hour Operation. The System shall be capable of operating  
8 twenty four (24) hours a day without severe material degradation of Signal except during  
9 extremely inclement weather or immediately following extraordinary storms or other Force  
10 Majeure events that adversely affect utility services or damage major System components.

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

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

23            **(e)** No Deterioration of Access Signals. The System shall be constructed and  
24 operated so that there is no significant deterioration in the quality of PEG Signals resulting  
25 from the transmission of the PEG Signals, either upstream or downstream, as compared with

1 any other Channel on the System. Deterioration refers to any Signal transmission problem,  
2 including but not limited to ghost images and other interference and distortions

3 (f) Stand-By Power. Grantee shall provide standby power generating capacity for  
4 the Headend, Hubs, Nodes, and distribution Facilities comprising its System meeting the  
5 following specifications:

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

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

15 (3) Nodes and Distribution Plant. The power generators serving the Nodes  
16 and distribution plant to Subscribers shall be capable of maintaining all Services to those  
17 portions of the System for no less than six (6) hours, according to manufacturer specification,  
18 after loss of normal commercial power.

19 (g) Service for the Disabled. All closed-caption programming retransmitted on the  
20 System shall include the closed-caption signal. For hearing impaired Subscribers, Grantee  
21 shall provide information concerning the cost and availability of equipment to facilitate the  
22 reception of all Services for the hearing impaired. In addition, Grantee must have TDD/TTY  
23 (or equivalent) equipment available for use in its local office, and a publicly listed telephone  
24 number to access such equipment so that hearing impaired Subscribers may communicate  
25 with Grantee for all their service needs. When such equipment is commercially available,

1 Grantee shall offer, for purchase or lease, remote control devices to operate any Grantee-  
2 provided equipment for those Subscribers who are mobility-limited.

3       **(h)** Emergency Alert System. In conjunction with the construction of its System,  
4 Grantee shall install and thereafter maintain an emergency alert system capable of overriding  
5 audio and video on all channels to provide an emergency alert to all Subscribers (“EAS”). The  
6 EAS shall be designed and maintained so that City-designated officials can activate it  
7 remotely without Grantee’s assistance, using a telephone and secure password, or by such  
8 other technical means as the City may approve. The EAS shall also be designed and  
9 maintained so that City-designated officials, from a touch-tone telephone, can activate a pre-  
10 recorded text message, and, at their option, an accompanying live audio voice message  
11 lasting up to two (2) minutes. The City shall have the right to run test messages on the EAS  
12 at least four times each year and shall provide reasonable notice to Grantee prior to any such  
13 test. Grantee shall fully cooperate with the City in conducting any such test. The City and  
14 Grantee shall meet periodically to discuss operational procedures for use of the EAS. As part  
15 of those discussions, the City and Grantee may agree on alternative capabilities and  
16 activation procedures for the EAS. The EAS should be integrated, to the extent reasonably  
17 possible, with Grantee’s EASs in other communities. Grantee’s failure to install and maintain  
18 the EAS pursuant to this Section shall be deemed a Material Breach.

19 **Section 43. SYSTEM MAINTENANCE.**

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

22       **(b)** Maintenance Practices Subject to Regulation. Grantee shall perform System  
23 maintenance in accordance with FCC requirements and standards and other Applicable Law.  
24 The City may monitor Grantee’s maintenance practices and, to the extent permitted by  
25 Applicable Law, City may adopt regulations waiving maintenance requirements or, upon a

1 showing of need, adopting additional maintenance requirements to ensure the System  
2 remains capable of providing high-quality service and to protect the public health, safety, and  
3 welfare. Such requirements shall be applied to all similarly situated Persons providing the  
4 same Services as authorized by this Franchise using Facilities installed in the Public Rights-  
5 of-Way, in a fair and non-discriminatory manner.

6 PART 9 - CITY FACILITIES AND BENEFITS

7 **Section 44.** FIBER OPTIC INFRASTRUCTURE FOR CITY USE. Grantee shall provide the  
8 following Fiber Optic Infrastructure (“FOI”) for the City’s use and failure to provide such FOI as  
9 set forth below shall constitute a Material Breach of this Franchise:

10 (a) Fiber Strands Provided to City. Within thirty (30) City business days of a DTIS  
11 request made after Grantee has completed construction of its System or a Hub Area within  
12 the System, Grantee shall provide and maintain for the City’s use and at no cost to the City,  
13 up to four (4) dark fiber optic strands along its Fiber Backbone route(s) (“Fiber Strands”).

14 (b) Fiber Drops. Grantee shall, at no cost to the City, connect up to 350 City-  
15 designated locations to the Fiber Strands using two single-mode fiber strands from the Hub to  
16 each location (“Fiber Drops”). The City may designate some locations in which multiple Fiber  
17 Drops shall be installed, provided that Grantee shall have no obligation to provide a total of  
18 more than 350 Fiber Drops. The designation of a Fiber Drop will reduce the number of free  
19 Cable Drops available to the City under Section 45 below by 1.5 Cable Drops per Fiber Drop.  
20 Grantee shall make Fiber Drops available to the City pursuant to the procedure set forth in  
21 subsection (f) below.

22 (c) Access to Hubs and Equipment. The City shall have the right to install optical  
23 amplifiers and other equipment necessary for the City’s operation of the FOI in Grantee’s  
24 Hubs and to access the optical amplifiers and other equipment in the Hubs twenty four (24)  
25 hours a day, seven (7) days a week in a manner reasonably assuring security of the Hub.

1 Grantee shall provide equipment racks necessary for placement of the optical amplifiers and  
2 all other equipment in the Hubs as well as the back up power and shared environmental  
3 equipment necessary for the operation of the equipment.

4 (d) Monitoring and Maintenance of Fiber Strands. Grantee shall be responsible for  
5 providing continuity of the City’s Signal at useful signal levels from any Demarcation Point to  
6 another, but shall not be responsible for the maintenance of the City equipment on the City  
7 side of the Demarcation Point, or any termination equipment used by the City at the Fiber  
8 Drops, except as set forth in subsection (b) above. Grantee shall be responsible for  
9 maintaining and repairing, at no cost to the City, the Fiber Strands up to the Demarcation  
10 Point. Grantee shall use the same efforts to maintain and repair the City’s Fiber Strands and  
11 Fiber Drops as it uses to maintain and repair its own fiber strands. Grantee shall strive to  
12 ensure that outages are minimized by monitoring the Fiber Strands as part of its System, shall  
13 notify a DTIS-designated City employee as soon as possible in the event Grantee detects an  
14 outage or problem with the Fiber Strands, and shall test and remedy the outage or problem in  
15 as efficient a manner as possible. DTIS shall contact Grantee in the event that the City  
16 experiences service problems or an outage on the FOI and Grantee shall cooperate with DTIS  
17 and perform testing to determine the source and resolve the problem as soon as possible.  
18 Grantee shall notify a DTIS-designated City employee of scheduled System maintenance  
19 activities which may impact the City’s use of the Fiber Strands at least two (2) City business  
20 days prior to such scheduled maintenance.

21 ~~(e) — Communications Project Grant. On each anniversary of the Effective Date up to~~  
22 ~~and including the third (3rd) anniversary, Grantee shall pay to DTIS fifty thousand dollars~~  
23 ~~(\$50,000) for the City’s purchase of equipment and services related to City communications~~  
24 ~~projects and related uses as determined by the City in its sole discretion (“Communications~~  
25 ~~Project Grant”). The Communications Project Grant may be used, without limitation, to fund~~

1 ~~the City's use of the FOI, including, without limitation, consultants, equipment, and~~  
2 ~~administrative costs.~~

3 (e) ~~(f)~~ Designation of Fiber Drops. Grantee shall deploy the Fiber Strands and Fiber  
4 Drops in conjunction with the construction of its System. Connection to City-designated  
5 locations will be made in the course of construction when Grantee's System reaches within  
6 one hundred and twenty five feet (125') of the City-designated location. The City shall pay  
7 Incremental Labor and Materials Costs to Grantee for any installation required beyond the one  
8 hundred and twenty five foot (125') limit. DTIS shall designate the location of Fiber Drops to  
9 Grantee in writing at least six (6) months prior to the time at which Grantee's construction is  
10 anticipated to reach the Fiber Drop location, as set forth in its One Year Construction Plan  
11 provided to DTIS pursuant to Section 16(a)(1) above. Nothing herein prevents DTIS from  
12 designating a Fiber Drop location in advance of receiving any Construction Sequence Plan  
13 showing that the location will be passed. In the event DTIS fails to timely designate a Fiber  
14 Drop location, Grantee shall use its best efforts to accommodate an untimely request from  
15 DTIS to the extent such accommodation does not create Incremental Labor and Materials  
16 Costs for Grantee or the City is willing to pay any Incremental Labor and Materials Cost.  
17 Notwithstanding the foregoing, in no event will a DTIS failure to timely designate a Fiber Drop  
18 location be allowed to delay construction of Grantee's System; provided, however, that  
19 Grantee shall be responsible for providing any requested Fiber Drop in the event Grantee fails  
20 to provide DTIS at least nine (9) months notice through a One Year Construction Plan of its  
21 intent to pass DTIS's designated Fiber Drop location. Additionally, notwithstanding DTIS's six  
22 (6) month notice obligation, DTIS may designate its first round of Fiber Drop locations along  
23 any route shown on the first set of One Year Construction Reports provided to it within thirty  
24 (30) City business days of receipt and Grantee shall install Fiber Drops at those locations  
25 pursuant to the provisions of this Section. Grantee shall provide a Fiber Drop no later than

1 twenty (20) City business days after activating Service in the Node Area where the Fiber Drop  
2 is located.

3 (f) ~~(g)~~ Use of Fiber Strands. The City may use the FOI for any lawful municipal or  
4 public purpose acting in its governmental or proprietary capacity, including making the FOI  
5 available to third parties; provided, however, that the City shall not use or permit the use of the  
6 FOI for any commercial purpose. The FOI shall be available for the City's sole, continuous,  
7 and permanent use and shall not be used by any Person without written authorization by the  
8 DTIS Director. Grantee shall not exercise any control over the content of transmissions over  
9 the FOI, whether video, data, or voice.

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

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

20 (i) ~~(j)~~ Additional Fiber Locations. Grantee shall notify DTIS as soon as possible  
21 prior to the installation of any fiber optic capacity in locations not contemplated by the initial  
22 design of the System so that the City may elect to have two (2) additional Fiber Strands  
23 installed for it's own use at the Incremental Labor and Materials Cost of adding any such Fiber  
24 Strands. DTIS shall have forty (40) City business days after receipt of Grantee's notification

25



1 to notify Grantee regarding whether and where it would like to have additional Fiber Strands  
2 installed for the City’s use.

3 (j) ~~(k)~~ Upgrades to City’s Facilities. When performing modifications or upgrades to  
4 the System, Grantee shall perform such modifications or upgrades to the Facilities installed  
5 for the City’s use per this Part 9: (i) to the extent such modifications or upgrades do not result  
6 in Incremental Labor and Materials Costs, or (ii) upon City’s agreement to pay for any such  
7 Incremental Labor and Materials Costs.

8 (k) ~~(j)~~ Support for Incremental Labor and Materials Costs. With regard to any  
9 Incremental Labor and Material Cost that may be payable by the City in this Part 9, Grantee  
10 shall provide to the City, not less than ten (10) days in advance, a statement of the  
11 Incremental Labor and Material Cost (or, a good faith estimate thereof) so that City can decide  
12 whether to proceed and incur the Incremental Labor and Material Cost. If the City does not  
13 agree to pay such Incremental Labor and Material Cost in writing, Grantee shall have no  
14 obligation to perform the work relative to such Incremental Labor and Material Cost.

15 **Section 45. FREE SERVICE TO CITY-DESIGNATED BUILDINGS.** Grantee shall install one  
16 (1) drop, including reasonable interior wiring, to as many as 525 City-designated buildings  
17 with an exterior wall within 125 feet of Grantee’s System for underground wiring and 150 feet  
18 of Grantee’s System for above-ground wiring (“Cable Drop”); provided, if a City-designated  
19 building requires a Cable Drop in excess of the above-referenced length, Grantee shall  
20 provide the Cable Drop so long as the City agrees to pay the Incremental Labor and Materials  
21 Cost for the added length. In addition, the City shall elect one of the following, to be provided  
22 by Grantee at no cost to the City, with respect to each of the above City-designated buildings:  
23 (i) the most widely subscribed to tier or combination of tiers, and any less expensive tiers, of  
24 Video Services offered by Grantee, (but excluding pay per view and premium add-on services  
25 for which Subscribers pay an additional fee) or (ii) Cable Internet Service. The provision of

1 Cable Internet Service shall include the use of a cable modem and any other equipment  
 2 provided by Grantee to its residential Cable Internet Service Subscribers that is necessary to  
 3 receive the Cable Internet Service, but shall not include personal computers or work stations.  
 4 The designation of a Fiber Drop according to Section 44(b) above will reduce the number of  
 5 Cable Drops available to the City by 1.5 Cable Drops per Fiber Drop. The Cable Drop  
 6 locations shall be identified by the DTIS Director on an as-needed basis during the Franchise  
 7 Term and shall be installed by Grantee within the standard installation time provided to  
 8 Subscribers. The City shall also be entitled to additional Cable Drops in a number equal to the  
 9 number of buildings newly owned, leased or occupied after the Effective Date by the City, the  
 10 San Francisco Unified School District, the San Francisco Community College District, and  
 11 office of the San Francisco Housing Authority or the San Francisco Redevelopment Agency.  
 12 The City may use these additional Cable Drops to serve any City-designated building or may  
 13 exchange them for Fiber Drops as provided in this Section. Grantee’s failure to comply with  
 14 the terms of this Section shall constitute a Material Breach of this Franchise.

15 **Section 46. CITY CONDUIT.**

16 (a) Conduit for City’s Sole and Exclusive Use. During construction of its System  
 17 and whenever it places Facilities underground, Grantee, in conjunction with the installation of  
 18 its own conduit, shall install conduit for the sole and exclusive use of the City and without  
 19 charge to the City (“City Conduit”). The City shall have a right to a minimum of 539 linear  
 20 miles of one (1) two inch (2”) conduit or any combination of conduit of equivalent value.  
 21 Consequently, the City may elect to trade the right to one (1) linear mile of one (1) two inch  
 22 (2”) conduit for .54 (54/100) linear miles of (1) four inch (4”) conduit; or .22 (22/100) linear  
 23 miles of (2) four inch (4”) conduits. The City may also elect to have Grantee install additional  
 24 City Conduit upon payment to Grantee of Incremental Labor and Materials Costs. The DTIS  
 25 Director shall designate the placement of the City Conduit in the same manner as provided for

1 Fiber Drops in Section 44(f) above. Grantee's failure to provide City Conduit pursuant to this  
2 Section shall constitute a Material Breach of this Franchise.

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

11       **(c)** Access to City Conduit. The City shall have access to the City Conduit upon  
12 three (3) City business days' notice to Grantee for scheduled maintenance. In the event of an  
13 emergency, the City shall have access to the City Conduit immediately, upon oral or written  
14 notice to Grantee.

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

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

1 **Section 47. PEG CONTRIBUTIONS.**

2 (c) ~~Operating Contributions~~PEG Support Payments. Grantee shall pay ~~the sum of~~  
 3 ~~twenty one cents (\$0.21) per Subscriber per month to the City~~ to the City Quarterly two  
 4 percent (2%) of Gross Revenues, concurrent with its franchise fee payments, to fund: (1) the  
 5 City's purchase of equipment and services related to City communications projects and  
 6 related uses as determined by the City in its sole discretion ("Communications Project Grant");  
 7 (2) the purchase of equipment, the development of programming, and the operation and  
 8 maintenance of the PEG Channels ("PEG Operating Contributions"); and (3) the support of  
 9 equipment and production facilities for the PEG Channels ("Capital Contribution"). Gross  
 10 Revenues" shall not include revenues derived from the provision of Cable Internet Service for  
 11 so long as the tolling provisions set forth in Section 2(d) remain in force and unless and until  
 12 Comcast's PEG Support Payments also reflect its Cable Internet Service revenues. ~~(b)~~  
 13 ~~Automatic Adjustment of Quarterly Contributions. Grantee's PEG Operating~~  
 14 ~~Contributions shall be automatically adjusted on a prospective basis (without credit for prior~~  
 15 ~~contributions) to correspond to any payments provided to the City by Comcast that may be~~  
 16 ~~used to support the purchase of equipment, the development of programming or the operation~~  
 17 ~~and maintenance of the PEG Channels upon the effective date of an act of the Board~~  
 18 ~~renewing the franchise granted by Ordinance 105-64 to Comcast or otherwise granting a~~  
 19 ~~subsequent franchise to Comcast. The adjustment shall be made equitably and~~  
 20 ~~proportionally. Accordingly, if the PEG Operating Contributions are a lump sum contribution~~  
 21 ~~based upon the total number of Comcast subscribers, then Grantee's funding shall be a lump~~  
 22 ~~sum contribution prorated based upon the comparative number of Subscribers (Comcast~~  
 23 ~~grant amount divided by the number of Comcast subscribers and then multiplied by the~~  
 24 ~~number of Grantee's Subscribers) and paid in the same manner as Comcast's funding. If the~~  
 25 ~~Comcast PEG Operating Contributions are in cash, but are based upon a percentage of~~

1 Comcast's Gross Revenues or some other formula, then Grantee's contribution shall be in  
2 cash and based upon the same percentage or other formula. If the Comcast PEG Operating  
3 Contributions are in the form of a service or in the provision of certain goods or equipment,  
4 then the City shall have the option of either: (i) requiring the same service, goods or  
5 equipment from the Grantee, equitably prorated based upon the comparative number of  
6 Subscribers, to the extent Grantee can reasonably provide the service, goods or equipment;  
7 or (ii) requiring Grantee to pay to the City an equivalency in cash, determined on the basis of  
8 the cost to Comcast of providing the service, goods or equipment, equitably prorated based  
9 upon the comparative number of Subscribers.

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

- 13 • \$200,000, adjusted by the CPI-U, on or before the first (1st) anniversary of the Effective  
14 Date;
- 15 • \$675,000, adjusted by the CPI-U, on or before the third (3rd) anniversary of the  
16 Effective Date; and
- 17 • \$675,000, adjusted by the CPI-U, on or before the eighth (8th) anniversary of the  
18 Effective Date. [UNDER REVIEW]

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

21 **Section 48. PEG CHANNELS.**

22 (a) PEG Channels. Grantee shall provide seven Analog Channels for public,  
23 educational and/or governmental use ("Analog PEG Channels") no later than nine (9) months  
24 from the Effective Date. Grantee shall use its best efforts to give the City written notice ninety  
25 (90) days prior to any change in any PEG Channel location, and shall, in no event, provide

1 less than thirty (30) days' prior written notice. Grantee shall not locate any Analog PEG  
2 Channel in such a way as to make it unavailable to Subscribers who receive only the least  
3 expensive level of Video Services provided by Grantee. If at any time Grantee provides more  
4 than 806 MHz of downstream capacity on its System, Grantee shall, within sixty (60) City  
5 business days, provide ten percent (10%) of all capacity devoted to Video Service and Cable  
6 Internet Service in excess of 806 MHz to the City for public, educational and/or governmental  
7 use.

8           **(b)** Digital Capacity. The City may, at its sole option and at any time during the  
9 Term, obtain Digital Channel Equivalents as an alternative to any of the Analog PEG  
10 Channels provided pursuant to subsection (a) above ("PEG Digital Channel Equivalents").  
11 The City shall be entitled to as many Digital Channel Equivalents as can be provided at any  
12 given time using the average analog to digital compression ratio in use for Channels on the  
13 System that are not PEG Channels. For example, if Analog PEG Channels on the System  
14 are being compressed at an average ratio of 6 digital signals for every one analog signal, the  
15 City shall be entitled to substitute 42 Digital Channel Equivalents for the 7 Analog PEG  
16 Channels provided pursuant to Subsection (a) above and shall be entitled to 6 Digital Channel  
17 Equivalents for any one Analog PEG Channel. Grantee shall make Digital Channel  
18 Equivalents available to the City pursuant to this subsection within 30 City business days of  
19 City's written request.

20           **(c)** Automatic Adjustment of Analog PEG Channels and Digital Channels.  
21 Grantee's obligations pursuant to subsections (a) and (b) above shall be adjusted to  
22 correspond to any Analog PEG Channels or Digital Channel Equivalents required to be  
23 provided to the City by Comcast, or its successor, upon the effective date of an act of the  
24 Board renewing the franchise granted by Ordinance 105-64 to Comcast or otherwise granting  
25 a subsequent franchise to Comcast or its successor.

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

13           **(e)**     Editorial Control. Grantee shall not exercise any editorial control over any  
14 Analog PEG Channel or PEG Digital Channel Equivalent (together "PEG Channel"); provided,  
15 however, that Grantee shall have no obligation to indemnify, defend or hold harmless any  
16 Person, firm or entity, including the City, from claims, damages or losses arising out of or  
17 relating to any public, educational or governmental programming on any PEG Channel.

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

20           **(g)**     Interconnection and Transmission of PEG Channel Signals.

21           (1)     PEG Signal Transmission. Pursuant to Section 11.53 of Chapter 11, and  
22 notwithstanding the fact that Grantee is an OVS operator, the System shall be designed and  
23 constructed to permit interconnection with other systems. Upon the DTIS Director's request,  
24 Grantee shall promptly interconnect to other systems as may be necessary in order to  
25 transmit PEG programming to Subscribers.

1           (2)     Video Feeds. Grantee shall install for the City’s use and at no cost to the  
 2 City, up to seventeen (17) upstream video feeds from DTIS-designated locations to Grantee’s  
 3 Headend (“Video Feeds”) upon forty (40) City business days written notice. Grantee shall  
 4 also provide and install, for the City’s use and at no cost to the City, any equipment necessary  
 5 for the City to transmit signals via the Video Feed to Grantee’s Headend. Grantee’s obligation  
 6 to install such a Video Feed shall not take effect until completion of construction in the Node  
 7 Area in which the City requests the Video Feed and such Video Feed location shall be no  
 8 more than 300 feet from Grantee’s System.

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

16           (4)     Second Audio Program Signals. Grantee shall, at its sole cost and  
 17 expense, provide and maintain all equipment necessary to distribute Second Audio Program  
 18 (“SAP”) signals over all PEG Channels from all PEG Channel Origination Locations; provided,  
 19 however that Grantee shall have no responsibility for the creation of SAP audio programming.

20           **(h)**     Material Breach. Grantee’s failure to provide any PEG Analog Channels, PEG  
 21 Digital Channel Equivalent, or Video Feeds to the City, or to interconnect and transmit PEG  
 22 Programming as required pursuant to this Section shall constitute a Material Breach of this  
 23 Franchise.

24  
 25



1 **Section 49.** LOCAL ORIGINATION PROGRAMMING. At such time as Grantee is providing  
 2 Video Services to twenty-seven percent (27%) of the homes passed by the activated portion  
 3 of its System. Grantee shall provide an opportunity for public expression by providing at least  
 4 one Channel for the transmission of Local Origination Programming (“Local Channel”);  
 5 ~~provided that Grantee can acquire such programming from Comcast or its successor on fair,~~  
 6 ~~reasonable and nondiscriminatory terms.~~

PART 10 - EXTENSIONS

7  
 8  
 9 **Section 50.** Extensions. Grantee may apply for two extensions of three years each. One  
 10 year prior to the expiration of the Initial Term of this Franchise or of any previously granted  
 11 extensions thereof, Grantee may request in writing to DTIS a three-year extension of this  
 12 Franchise. Grantee shall include the following information with such request: Grantee’s  
 13 construction plans and budget for the City; a description of Grantee’s construction activities in  
 14 other cities during the past three years and planned for the next three years; the most recent  
 15 available information concerning Grantee’s financial condition nationally and in San Francisco;  
 16 and any other information that DTIS requests. In deciding whether to grant an extension, the  
 17 Board may consider, among other things, whether Grantee: (i) is in compliance with Franchise  
 18 and Applicable Law; (ii) has the financial resources to continue to operate the System; (iii) has  
 19 the financial resources to resume or to continue any previously started construction; (iv) has  
 20 constructed elsewhere in the past three (3) years or plans to construct elsewhere; and (v)  
 21 relevant market and economic conditions. The Board may, in its sole discretion, extend the  
 22 Franchise without any modification of the terms and conditions, determine that the extended  
 23 Franchise should be modified to include new and different terms and conditions (such as a  
 24 new System construction requirement), or refuse to extend the Franchise.  
 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  
14 and, without lapse, for a period of three years beyond the expiration of this Franchise, to the  
15 effect that, should occurrences during the Franchise Term give rise to claims made after  
16 expiration of 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 business days prior to commencing any operations under this  
24 Franchise, Grantee must furnish to City certificates of insurance, in form and with insurers  
25

1 satisfactory to City, evidencing all coverages set forth above, and shall furnish complete  
2 copies of policies 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 52. PERFORMANCE GUARANTEES.**

7 (a) Security Interest. Within ten (10) City business days of the Effective Date of this  
8 Franchise, Grantee shall provide to DTIS, and maintain during the entire Term of this  
9 Franchise, a performance bond or other security interest approved by the City's Risk manager  
10 in favor of the City in the amount of ~~{two million~~ five hundred thousand dollars ~~-\$2,000,000~~  
11 (\$500,000), 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 Attorneys' Fees and Costs, consultant  
23 fees, administrative fees, and other associated expenses.

24  
25

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;

8                           (iii)   Grantee declares bankruptcy or insolvency; or

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

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

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

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

1 Any other Security Interest shall meet similar criteria.

2 (5) Upon the City's approval, Grantee may reduce the amount of the Security  
3 Interest required by subsection (a).

4 (6) ~~(5)~~ Indexing. Grantee shall adjust the amount of the Security Interest by  
5 the CPI-U every three (3) years on the anniversary of the Effective Date of this Franchise.

6 **(b)** Deposits. In addition to the Security Interest set forth above, within ten (10) City  
7 business days of the Effective Date of this Franchise, Grantee shall provide to DTIS two cash  
8 deposits: (1) a ~~two~~one hundred thousand dollar (~~\$200,000~~100,000) cash deposit to guarantee  
9 Grantee's faithful performance of the terms and conditions of this Franchise, the  
10 San Francisco Administrative Code, and other Applicable Law ("City Deposit"); and (2) a  
11 twenty five thousand dollar (\$25,000) cash deposit to guarantee Grantee's faithful  
12 performance of the obligations it owes to Subscribers pursuant to this Franchise ("Subscriber  
13 Deposit"). Grantee shall maintain the City and Subscriber Deposits (together "Deposits") at  
14 the level required herein, adjusted by the CPI-U every three (3) years on the anniversary of  
15 the Effective Date of this Franchise, throughout the Term of the Franchise. The Deposits shall  
16 be held by the City's Controller. Pursuant to the procedures set forth in San Francisco  
17 Administrative Code Sections 10.27-1 through 10.27-7, the Controller may offset from the  
18 Deposits all monies due the City or Subscribers by Grantee pursuant to the Franchise, the  
19 San Francisco Administrative Code, or other Applicable Law, including, without limitation,  
20 taxes, fees, liquidated damages, penalties, and any Losses which would otherwise be offset  
21 by the Security Interest described in subsection (a) above. Grantee shall redeposit monies  
22 within ten (10) City business days of such an offset to return the Deposits to the levels  
23 required herein.

24  
25

1           **(c)**    Material Breach. Grantee’s failure to provide or maintain the Security Interest or  
2 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’ 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 53. 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.

25

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 shall Indemnify the City and the Indemnified Parties from all Losses  
9 arising out of the City's action with respect to any other cable or OVS operator in the City or  
10 any applicant for a cable or OVS franchise in the City, if such operator or applicant claims that  
11 the City has acted unlawfully by granting this Franchise, or if such operator or applicant relies  
12 on the City's grant of this Franchise in support of a claim that the City is required to take some  
13 action or is precluded from taking some action with respect to the operator or applicant.

14           **(f)**     Grantee's failure to Indemnify the City and the Indemnified Parties in  
15 accordance with this Section shall be deemed a Material Breach of this Franchise.

16   **Section 54.** INCIDENTAL AND CONSEQUENTIAL DAMAGES. Grantee shall be  
17 responsible for incidental and consequential damages resulting in whole or in part from  
18 Grantee's acts or omissions relative to this Franchise. Nothing in this Franchise shall  
19 constitute a waiver or limitation of any rights that City may have under Applicable Law.

20   **Section 55.** WORK PERFORMED BY CONTRACTORS AND SUBCONTRACTORS. Any  
21 contractor or subcontractor used for work or construction, installation, operation, maintenance,  
22 or repair of the System must be properly licensed pursuant to Applicable Law. Each such  
23 contractor or subcontractor shall have the same obligations with respect to its work as  
24 Grantee would have if the work were performed by Grantee. Grantee shall ensure that all  
25 contractors, subcontractors and all employees who perform work for it are trained and



1 experienced. Grantee shall be responsible for ensuring that the work of contractors and  
2 subcontractors is performed consistent with this Franchise and other Applicable Law, shall be  
3 responsible for acts or omissions of contractors or subcontractors under this Franchise to the  
4 same degree it is responsible for the acts of its employees, shall be responsible for promptly  
5 correcting acts or omissions by any contractor or subcontractor, and shall implement a quality  
6 control program to ensure that the work contemplated by this Franchise is properly performed.

7 **Section 56.** NO LIMITATION ON LIABILITY. None of the provisions of this Part or any  
8 insurance policy required herein, or any damages recovered by the City hereunder shall be  
9 construed to excuse the faithful performance by or limit the liability of Grantee under this  
10 Franchise for damages either to the limits of such policies or otherwise.

11 PART 12 - VIOLATIONS OF THIS FRANCHISE

12 **Section 57.** REMEDIES.

13 (a) Remedies Available at Law or in Equity. In the event of any breach of this  
14 Franchise, the City shall have all rights and remedies available at law and in equity. Without  
15 limiting the foregoing, the City shall be entitled to equitable relief, including not limited to  
16 injunctive relief, relative to any violation of any term, covenant, condition or provision of this  
17 Franchise. No Termination or Revocation of this Franchise pursuant to the terms hereof or  
18 by operation of law or otherwise shall in any instance relieve Grantee of its liabilities and  
19 obligations hereunder arising on or before Termination or Revocation of this Franchise.

20 (b) No Accord or Satisfaction. No submission by Grantee or acceptance by City of  
21 full or partial payment of any sum hereunder during the continuance of any failure by Grantee  
22 to perform any obligations hereunder shall waive any of City's rights or remedies or constitute  
23 any accord or satisfaction, whether or not City had knowledge of any such failure. No  
24 endorsement or statement on any check or remittance by or for Grantee or in any  
25 communication accompanying or relating to such payment shall operate as a compromise or

1 accord or satisfaction unless the same is approved as such in writing by City. City may  
2 accept such check, remittance or payment and retain the proceeds thereof, without prejudice  
3 to its rights to recover the balance of any amounts due from Grantee and to pursue any right  
4 or remedy provided for or permitted under this Franchise or in law or at equity.

5       **(c)**     Material Breaches. In the event Grantee's commits a Material Breach as  
6 defined in Section 1(jjj) above, the City may seek Revocation of the Franchise pursuant to  
7 Section 11.16 of Chapter 11, provided that Grantee shall have the notice, cure, and other  
8 rights set forth in Section 11.16 of Chapter 11. Grantee acknowledges and agrees that  
9 violation of the following sections shall constitute a Material Breach of this Franchise: Section  
10 2(b) (Services Authorized), Section 4 (Transfers – City Approval Required), Section 8(d)  
11 (Construction Sequence – No Discrimination), Section 11 (Payment of Franchise Fee),  
12 Section 42(h) (Emergency Alert System), Section 44 (Fiber Optic Infrastructure For City Use),  
13 Section 45 (Free Service to City-Designated Buildings), Section 46 (City Conduit), Section 47  
14 (PEG Contributions), Section 48 (PEG Channels), Section 51 (Insurance), Section 52  
15 (Performance Guarantees), Section 53 (Indemnification), Section 64 (Nondiscrimination), and  
16 Section 69 (EIC Forms). Notwithstanding the foregoing list, Grantee understands and  
17 acknowledges that a breach of any Section of this Franchise may be, or may become, a  
18 Material Breach as that term is defined herein.

19       **(d)**     Cure Periods for Non-Material Breaches. The notice and cure periods of this  
20 subsection shall apply to all alleged breaches of this Franchise other than alleged Material  
21 Breaches, which are governed by (c) above. In the event that Grantee fails to pay any sum  
22 due and owing to the City hereunder, Grantee shall have a period of ten (10) City business  
23 days from the date of written notice of such failure from the City in which to cure the  
24 nonpayment; provided, the City shall not be required to provide such notice regarding  
25 Grantee's failure to make any given payment when due more than twice during any calendar

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

19 **Section 58. LIQUIDATED DAMAGES.** Without limiting Section 57 above, the City shall be  
20 entitled to liquidated damages for specified breaches as set forth in this Section. Nothing in  
21 this Section shall limit or impair the City's power to: (i) Revoke this Franchise as a result of  
22 any Material Breach of its provisions; or (ii) impose penalties and costs as set forth in  
23 Chapter 11; provided, however, the City cannot simultaneously impose, with respect to a  
24 specific breach, both liquidated damages under this Section and penalties and costs under  
25 Chapter 11.

1           **(a)**   Liquidated Damages Set Forth Herein Are Not Penalties. By executing this  
2 Franchise, Grantee agrees that in the event it fails to comply with certain provisions of this  
3 Franchise, the City will suffer actual damages that will be impractical or extremely difficult to  
4 determine. Grantee further agrees that the amounts set forth in this Section that will be owed  
5 to the City as a result of its failure to comply are not penalties, but reasonable estimates of the  
6 damages that the City will incur as a result of Grantee's failure to comply, based on the facts  
7 known to Grantee and the City and established in light of the circumstances existing at the  
8 Effective Date of this Franchise.

9           **(b)**   Notice and Withdrawal. In the event of a default triggering liquidated damages  
10 pursuant to this Section, the City shall notify Grantee of the default in writing and Grantee  
11 shall have ten (10) City business days from the date of the City's issuance of the notice to  
12 cure the default or, in the event the default cannot reasonably be cured within ten (10) City  
13 business days, to begin to take steps to cure the default and notify the City of its plan to cure  
14 within a certain time. In the event the default is not timely cured, Grantee shall be liable to the  
15 City for liquidated damages in the amounts set forth in this Section and liquidated damages  
16 shall continue to accrue for so long as the default continues, up to the full amount of Grantee's  
17 Security Interest and the applicable Deposits. The City may, in its discretion, withdraw  
18 liquidated damages owed to it from an applicable Deposit pursuant to Section 52(b) above, or  
19 Grantee's Security Interest pursuant to Section 52(a) above, in the event Grantee fails to pay  
20 the liquidated damages within the time provided.

21           **(c)**   Events of Default Triggering Liquidated Damages. Grantee shall be liable to the  
22 City for liquidated damages in the following amounts (adjusted by the CPI-U on each  
23 anniversary date of the Effective Date) whenever the following defaults of this Franchise have  
24 occurred:  
25

1           (1)     Failure to Submit Required Reports, Information, and Plans. Grantee  
2 shall pay the City liquidated damages of five hundred dollars (\$500) per City business day  
3 from the City Deposit or Security Interest for failure to provide, within five (5) days following  
4 City’s written notice of such failure, any report, test result, or plan required pursuant to Parts 5  
5 and 6 of this Franchise.

6           (2)     Failure to Provide Fiber Optic Infrastructure. Upon activation of any Node  
7 Area where the City has requested a Fiber Drop pursuant to Section 44(f) above, Grantee  
8 shall pay the City liquidated damages of three hundred dollars (\$300) per day from the City  
9 Deposit or Security Interest for failure to provide the City’s Fiber Optic Infrastructure pursuant  
10 to Section 44 above.

11          (3)     Failure to Maintain City’s Fiber Optic Infrastructure. Upon activation of  
12 any Node Area where the City has requested a Fiber Drop pursuant to Section 44(f) above,  
13 Grantee shall pay the City liquidated damages of three hundred dollars (\$300) per day from  
14 the City Deposit or Security Interest for failure to maintain the City’s Fiber Optic Infrastructure  
15 pursuant to Section 44 above.

16          (4)     Failure to Timely Provide Fiber Drops. Upon activation of any Node Area  
17 where the City has requested a Fiber Drop pursuant to Section 44(f) above, Grantee shall pay  
18 the City liquidated damages of fifty dollars (\$50) per City business day from the City Deposit  
19 or Security Interest for failure to timely provide the City with a Fiber Drop or access to its  
20 Fiber Backbone pursuant to Section 44 above.

21          (5)     Failure to Provide PEG Channels or Transmission. Grantee shall pay the  
22 City liquidated damages of two hundred and fifty dollars (\$250) per day, per Channel, from the  
23 City Deposit or Security Interest for failure to provide any PEG Channel, any PEG Digital  
24 Channel Equivalent, or meet any Video Feed requirement pursuant to Section 48 above.  
25

1           (6)     Customer Service Requirements of Chapter 11. Grantee shall pay the  
 2 City liquidated damages of fifty dollars (\$50) per day, per incident, from the Subscriber  
 3 Deposit or Security Interest for failure to comply with the customer service requirements of  
 4 Section 11.46 of Chapter 11, including, without limitation, the restrictions on exclusive  
 5 contracts, the requirement to provide inside wiring, and the obligation to promptly disconnect a  
 6 Subscriber upon the Subscriber's request.

7           (7)     Failure to Meet Customer Service Standards.

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

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

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

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



1 results in preemption or abrogation, with the effect that a party to this Franchise is not  
2 receiving the benefits of the bargain intended under this Franchise as evidenced by its terms,  
3 the City and Grantee shall negotiate in good faith to amend this Franchise to redistribute the  
4 benefits of the bargain to equitably maintain the balance of benefits between the parties. In  
5 the event either the City or Grantee believes that such a preemption or abrogation has  
6 occurred, it shall send a written notice to the other party requesting negotiations pursuant to  
7 this Section. The notice shall, at a minimum, include: (1) citations to the applicable state or  
8 federal law; (2) an analysis of which provisions of this Franchise are affected and the benefits  
9 of the bargain that are consequently denied to the party by the preemption or abrogation; (3) a  
10 proposal to redistribute the benefits of the bargain, including specific language changes to the  
11 Franchise; and (4) a proposed schedule for negotiations. The parties shall have forty (40) City  
12 business days after receipt of a request for negotiations pursuant to this Section to agree to  
13 any proposed amendments (“Negotiation Period”). A notice which does not meet the criteria  
14 set forth herein shall not trigger the Negotiation Period. In the event that the parties are  
15 unable to agree to Franchise amendments within the Negotiation Period, either party may  
16 request non-binding mediation. If the parties are unable to agree to Franchise amendments  
17 after participating in mediation over a period of no less than twenty (20) City business days,  
18 then the party against whom the preemption or abrogation was asserted may Terminate this  
19 Franchise. The parties acknowledge and agree that any state or federal law shall be read and  
20 construed as narrowly as possible so as to prevent preemption or abrogation of the terms of  
21 this Franchise. Unless expressly prohibited by the applicable state or federal law, the terms  
22 as reflected in this Franchise shall be deemed to have been “grandfathered” and not severed  
23 or altered as a result of the change in state or federal law.

24       **(b)** Single Franchise. This Franchise, as to the provisions regarding Video Service  
25 and the Facilities related thereto, is issued pursuant to the City’s authority under the California



1 Constitution, California law, and the San Francisco Charter and Codes. Grantee intends to  
2 build a System consisting of Facilities over which it may provide Video Services,  
3 Telecommunication Services and Cable Internet Services. The provisions of this Franchise  
4 relating to the construction, installation, repair, maintenance and operation of Facilities to  
5 provide Telecommunication Services represent an exercise of the City's authority under the  
6 California Constitution, California law, and the City's Charter and Codes. In connection with  
7 its construction of a single multi-purpose System, Grantee has requested a single Franchise  
8 which grants the authority required and establishes the conditions under which Grantee may  
9 occupy and use the Public Rights-of-Way to construct, install, repair, maintain and operate  
10 Facilities to provide Video Services as well as the conditions under which it may occupy and  
11 use the Public Rights-of-Way to construct, install, repair, maintain and operate Facilities to  
12 provide Telecommunication Services and other Services. If, as a result of the grant of a  
13 single Franchise in which the City exercises its authority under Applicable Law with respect to  
14 Video Services, Telecommunication Services and Cable Internet Services, any provision of  
15 this Franchise, including but not limited to, the franchise fee provisions, is not fully enforceable  
16 according to its terms with respect to a particular type of service other than Video Service (the  
17 "Affected Service"), the following shall occur.

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

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

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

7 **Section 61. NOTICES.** Unless otherwise expressly provided herein, all written  
8 communications sent by the City or Grantee may be by United States mail, and shall be  
9 addressed as follows:

10 To City: Department of Telecommunications and Information Services  
11 875 Stevenson Street, 5th Floor  
12 San Francisco, CA 94103  
13 Attn: OVS Franchise Administrator  
14 and  
15 San Francisco City Attorney's Office  
16 City Hall, Room 234  
17 San Francisco, CA 94102  
18 Attn: Energy and Telecommunications Team Leader

19 To Grantee: RCN Telecom Services, Inc.  
20 1400 Fashion Island Boulevard, Suite 100  
21 San Mateo, CA 94404  
22 Attn: General Manager

23 **Section 62. TAXES.**

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

(b) Grantee shall collect and remit to City the utility users tax pursuant to Article 10  
of Part III of the San Francisco Municipal Code, as amended, if the System is used to provide

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

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

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

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

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

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

4 **Section 63.** CONFLICT OF INTEREST. Through its execution of this Franchise, Contractor  
5 acknowledges that it is familiar with the provisions of section 15.103 of City's Charter, Article  
6 III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 *et*  
7 *seq.* and sections 1090 *et seq.* of the Government Code of the State of California, and  
8 certifies that it does not know of any facts which constitute a violation of said provision and  
9 agrees that if it becomes aware of any such fact during the Term of this Agreement it shall  
10 immediately notify the City.

11 **Section 64.** NON-DISCRIMINATION.

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

22 (b) Subcontracts. Grantee shall incorporate by reference in all subcontracts the  
23 provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative  
24 Code (copies of which are available from Purchasing) and shall require all subcontractors to  
25

1 comply with such provisions. Grantee's failure to comply with the obligations in this  
2 subsection shall constitute a Material Breach of this Franchise.

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

14       **(d)** Condition to Franchise. As a condition to this Franchise, Grantee shall execute  
15 the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-  
16 12B-101) with supporting documentation and secure the approval of the form by the San  
17 Francisco Human Rights Commission.

18       **(e)** Incorporation of Administrative Code Provisions by Reference. The provisions  
19 of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this  
20 Section by reference and made a part of this Franchise as though fully set forth herein.  
21 Grantee shall comply fully with and be bound by all of the provisions that apply to this  
22 Franchise under such Chapters of the San Francisco Administrative Code, including but not  
23 limited to the remedies provided in such Chapters. Without limiting the foregoing, Grantee  
24 understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a  
25 penalty of \$50 for each person for each day during which such person was discriminated

1 against in violation of the provisions of this Franchise may be assessed against Grantee  
2 and/or deducted from any payments due Grantee, including the City Deposit held by the  
3 Controller pursuant to Section 52(b) above.

4 **Section 65. CONTRACTING WITH MINORITY/WOMEN AND LOCALLY-OWNED**  
5 **BUSINESS ENTERPRISES.**

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

1 shall include an increase in the contracting goal set forth above as the percentages of  
2 available MBE/WBE contractors increase during the Term of this Franchise.

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

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

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

1     **Section 66.** TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN. Pursuant to §804(b)  
2 of the San Francisco Environment Code the City urges Grantee not to import, purchase,  
3 obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin  
4 redwood or virgin redwood wood product.

5     **Section 67.** MACBRIDE PRINCIPLES. Pursuant to San Francisco Administrative Code  
6 Section 12.F.5, the City urges companies doing business in Northern Ireland to move towards  
7 resolving employment inequities, and encourages such companies to abide by the MacBride  
8 Principles. The City urges San Francisco companies to do business with corporations that  
9 abide by the MacBride Principles.

10    **Section 68.** PROHIBITION ON TOBACCO PRODUCTS ADVERTISING. Pursuant to  
11 Section 4.20 of the San Francisco Administrative Code, Grantee acknowledges and agrees  
12 that no advertising of cigarettes or tobacco products is allowed on any real property owned by  
13 or under the control of the City. This prohibition includes the placement of the name of a  
14 company producing, selling or distributing cigarettes or tobacco products or the name of any  
15 cigarette or tobacco product in any promotion of any event or product. This prohibition does  
16 not apply to any advertisement sponsored by a state, local or nonprofit entity designed to  
17 communicate the health hazards of cigarettes and tobacco products or to encourage people  
18 not to smoke or to stop smoking.

19    **Section 69.** EARNED INCOME CREDIT (EIC) FORMS.

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



1           **(b)** Failure to comply with any requirement contained in subparagraph (a) of this  
2 Section shall constitute a Material Breach by Grantee of the terms of this Franchise. If, within  
3 thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure  
4 such breach or, if such breach cannot reasonably be cured within such period of thirty (30)  
5 days, Grantee fails to commence efforts to cure within such period or thereafter fails to  
6 diligently pursue such cure to completion, the City may pursue any rights or remedies  
7 available under this Franchise or other Applicable Law.

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

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

13 **Section 70.** POLICE AND REGULATORY POWERS RESERVED. In executing this  
14 Franchise, Grantee acknowledges that its rights are subject to the powers of the City to adopt  
15 and enforce general ordinances necessary to the safety and welfare of the public. Grantee  
16 shall comply with all Applicable Laws, including but not limited to those enacted by the City  
17 pursuant to any such power. Any conflict between the terms of this Franchise and any  
18 present or future lawful exercise of the City's police and regulatory powers shall be resolved in  
19 favor of the latter.

20 **Section 71.** REMEDIES CUMULATIVE. All remedies under this Franchise are cumulative  
21 unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of  
22 another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties  
23 relieve Grantee of its obligations to comply with its Franchise or other Applicable Law.  
24 Remedies may be used singly or in combination. In addition, either party may exercise any  
25 rights it has at law or in equity.

1 **Section 72.** RIGHT OF CONDEMNATION RESERVED. Nothing in this Franchise shall  
2 limit any right the City may have to acquire by eminent domain or otherwise any property of  
3 Grantee; provided, however, that Grantee shall be compensated for any such acquisition  
4 pursuant to Applicable Law.

5 **Section 73.** COMPLIANCE WITH LAWS. Grantee shall comply with all Applicable Laws  
6 relating to its activities under this Franchise and its conduct of business within the City as they  
7 exist or may be amended hereafter. Grantee shall also keep itself fully informed of all  
8 Applicable Laws that in any manner affect Grantee's performance under this Franchise,  
9 including, without limitation, the City's Charter, codes, ordinances and regulations. The parties  
10 acknowledge and agree that Grantee's obligation to comply with all present or future  
11 Applicable Laws as provided herein is a material part of the bargained-for consideration under  
12 this Franchise. Grantee shall promptly upon request provide City with evidence of its  
13 compliance with any Applicable Law.

14 **Section 74.** TIME IS OF THE ESSENCE. Time is of the essence with respect to each  
15 provision of this Franchise, including, but not limited to, the provisions relating to extension of  
16 the Initial Term and to the payment of franchise fees and other sums due hereunder, subject  
17 to the provisions of Section 59 above.

18 **Section 75.** NO WAIVER. The failure of the City on one or more occasion to exercise a  
19 right, to require Grantee's compliance or performance with an obligation under this Franchise,  
20 the San Francisco Administrative Code or any other Applicable Law, or the City's failure to  
21 pursue a breach thereof shall not be deemed to constitute a waiver of such right, obligation or  
22 breach. Grantee shall not be excused from such right, obligation, or breach unless such right,  
23 obligation or breach has been specifically waived in writing by the City. No express written  
24 waiver of any default or the performance of any provision hereof shall affect any other default  
25 or performance, or cover any other period of time, other than the default, performance or

1 period of time specified in such express waiver. One or more written waivers of a default or  
2 the performance of any provision hereof shall not be deemed to be a waiver of a subsequent  
3 default or performance of the same or any other provision.

4 **Section 76.** NO RECOURSE FOR GRANTEE’S DAMAGES. Grantee shall have no  
5 recourse against the City for any loss, cost, expense, or damage arising out of the  
6 enforcement or lack of enforcement of any provision or requirement of this Franchise, or other  
7 Applicable Law. Notwithstanding the foregoing, nothing herein precludes Grantee from  
8 seeking and obtaining any injunctive relief against the City.

9 **Section 77.** MODIFICATION. This Franchise may not be modified, nor may compliance with  
10 any of its terms be waived, except by written instrument executed and approved in  
11 accordance with the requirements of Chapter 11 and the City’s Charter.

12 **Section 78.** VENUE. The formation, interpretation, and performance of this Franchise shall  
13 be governed by the laws of the State of California. Venue for all litigation relative to the  
14 formation, interpretation and performance of this Franchise shall be in San Francisco.

15 **Section 79.** CONSTRUCTION OF FRANCHISE. The provisions of this Franchise shall be  
16 liberally construed to effectuate its objectives consistent with Chapter 11 and other Applicable  
17 Law and the public interest. Paragraph captions shall be for reference only and shall not be  
18 considered in construing this Franchise.

19 **Section 80.** ENTIRE DOCUMENT. This document and its attachments, appendices, and  
20 exhibits, including all documents and instruments incorporated by reference, sets forth the  
21 entire agreement between the City and Grantee and supersedes all other oral or written  
22 provisions. This document may only be modified as provided in Section 77 above.

23 **Section 81.** ORDER OF PRECEDENCE. Except as precluded by Applicable Law, to the  
24 extent the provisions of this Franchise, Chapter 11, or other Applicable Law are in conflict, the  
25

1 provisions which impose the higher or greater legal duty or obligation upon Grantee shall take  
2 precedence, unless a different order of precedence is expressly set forth herein.

3 **Section 82. SEVERABILITY.** If any non-material provision of this Franchise, or the  
4 application thereof to any Person or circumstance, is held invalid, by a court of competent  
5 jurisdiction (following the exhaustion of any permitted appeals), the remainder of this  
6 Franchise, including the application of such part or provision to other Persons or  
7 circumstances, shall not be affected thereby and shall continue in full force and effect. To this  
8 end, the non-material provisions of this Franchise are severable. For purposes of this  
9 Section, a non-material provision shall be deemed a provision that, upon deletion, (i) does not  
10 undermine the balance of the bargain agreed to by the parties as reflected by this Franchise,  
11 and (ii) does not cause the continued enforcement of the remainder of this Franchise to be  
12 inequitable under all of the circumstances. In addition, any provision, the breach of which is  
13 defined as a Material Breach hereunder, shall be deemed a material provision for purposes of  
14 this Section. In the event any material provision of this Franchise is held invalid by a court of  
15 competent jurisdiction (following the exhaustion of any permitted appeals), the procedures  
16 and remedies set forth in Section 57above shall govern.

17 **Section 83. HAZARDOUS MATERIALS.** Grantee and its Agents shall comply with all  
18 Hazardous Materials Laws. Without limiting the generality of the foregoing, Grantee, on  
19 behalf of itself and its Agents, covenants and agrees that it will not use, generate, transport,  
20 store, emit, discharge or dispose of Hazardous Materials on, under or about the Public Rights-  
21 of-Way, nor will it transport or permit the transport of Hazardous Materials to or from the  
22 Public Rights-of-Way, except for (A) standard building materials and equipment that do not  
23 contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs),  
24 (B) gasoline and other fuel products used to transport and operate vehicles and equipment,  
25 and (C) any Hazardous Materials which do not require a permit or license from, or that need

1 not be reported to, a governmental agency, which Hazardous Materials are used in the  
2 construction of the Facilities in the ordinary course of Grantee's business, and which are  
3 reported to, and approved by, City prior to any such use and, in any case, are used in strict  
4 compliance with all Applicable Laws.

5 **Section 84. NO JOINT VENTURE.**

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

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

18 **Section 85. PREVAILING WAGES.** Grantee agrees that any person performing labor in the  
19 construction of the Facilities shall be paid not less than the highest prevailing rate of wages  
20 and that Grantee shall include, in any contract for construction of such improvements, a  
21 requirement that all persons performing labor under such contract shall be paid not less than  
22 the highest prevailing rate of wages for the labor so performed. Grantee further agrees that,  
23 as to the construction of such improvements under this Franchise, Grantee shall comply with  
24 all the provisions of Section 6.22(E) of the San Francisco Administrative Code that relates to  
25 payment of prevailing wages. Grantee shall require any contractor to provide, upon request,

1 certified payroll reports with respect to all persons performing labor in the construction of any  
2 Facilities.

3 **Section 86.** GRANTEE’S REPRESENTATIONS AND WARRANTIES. Grantee represents,  
4 warrants and covenants to City as follows, as of the Effective Date:

5 (a) Valid Existence; Good Standing. Grantee is a corporation duly organized and  
6 validly existing under the laws of the State of ~~California~~Pennsylvania. Grantee has all  
7 requisite power and authority to own its property and conduct its business as presently  
8 conducted. Grantee has made all required corporate filings and is a corporation in good  
9 standing in the State of ~~California~~. ~~[NOTE: NEED TO CHECK IF THESE CHANGES ARE~~  
10 ~~ACCURATE FOR RCN. MAY ONLY BE TRUE W/R/T/ PENN]~~Pennsylvania.

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

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

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

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

10 **Section 87.** FALSE CLAIMS. Article 5 of Chapter 6 of the San Francisco Administrative  
11 Code, relating to the submission of false claims, shall apply to this Franchise. Accordingly, if  
12 Grantee submits a false claim, it shall be liable to the City for three times the amount of  
13 damages that the City sustains because of the false claim. Grantee shall also be liable to the  
14 City for the cost, including Attorneys' Fees and Costs, of a civil action brought to recover any  
15 of those penalties or damages and may be liable to the City for a civil penalty of up to (ten  
16 thousand dollars) \$10,000 for each false claim. Grantee will be deemed to have submitted a  
17 false claim to the City if Grantee: (a) knowingly presents or causes to be presented to the City  
18 a false statement of Gross Revenues; (b) knowingly makes, uses or causes to be made or  
19 used a false record or statement to get a false claim paid to or approved by the City;  
20 (c) conspires to defraud the City by getting a false claim allowed or paid to or approved by the  
21 City; (d) knowingly makes, uses or causes to be made or used a false record or statement to  
22 conceal, avoid or decrease an obligation to pay or transmit money or property to the City;  
23 (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently  
24 discovers the falsity of the claim, and fails to disclose the false claim to the City within a  
25 reasonable time after discovery of then false claim.

1     **Section 88.** PESTICIDE PROHIBITION. Grantee shall comply with the provisions of  
2 Chapter 3 of the San Francisco Environment Code (the “Pesticide Ordinance”), which prohibit  
3 the use of certain pesticides on City property. Nothing herein shall prevent Grantee, through  
4 the DTIS, from seeking a determination from the Commission on the Environment that it is  
5 exempt from complying with certain portions of the Pesticide Ordinance as provided in Section  
6 308(c) thereof. In the event Grantee obtains permission from the Commission on the  
7 Environment to use any biocide, defoliant, chemical fertilizer or other pesticide or  
8 agrochemical, Grantee shall use such substance in strict compliance with the Commission’s  
9 conditions, any and all applicable laws and regulations, and the manufacturer’s instructions for  
10 use.

11     **Section 89.** FIRST SOURCE HIRING.

12             **(a)** Grantee shall comply with the hiring requirements imposed by the City’s First  
13 Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which are  
14 incorporated herein by this reference. Any undefined term used in this Section shall have the  
15 meaning given to such term in San Francisco Administrative Code Chapter 83. Grantee shall  
16 notify the City’s Workforce Development System (the “WDS”) of all projected Entry Level  
17 Positions and the approximate date such positions will be available. It shall also notify the  
18 WDS of all vacancies or new positions for work related to the Work Program, and shall offer  
19 the WDS the first opportunity to provide qualified Economically Disadvantaged Individuals for  
20 employment in these positions. Grantee shall not publicize or otherwise post such vacancies  
21 until the WDS refers Qualified Economically Disadvantaged Individuals for employment in  
22 these positions or notifies Grantee that no Qualified Economically Disadvantaged Individuals  
23 are available for the particular vacancies. The WDS shall respond to Grantee within ten (10)  
24 business days. Grantee shall comply with the First Source Hiring Agreement attached hereto  
25 as Appendix 3 (the “First Source Hiring Agreement”), the terms of which are incorporated



1 herein by this reference. Upon request by the City, Grantee agrees to separately execute the  
2 attached First Source Hiring Agreement, although the lack of such a separate execution shall  
3 not affect the requirements of the First Source Hiring Agreement as incorporated herein.

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

11 **Section 90. LOCAL HIRING.**

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

18       **(b)** Grantee shall keep, and provide to the City, an accurate record showing the  
19 name, place of residence, hours employed and per diem pay of each person employed by the  
20 Grantee, including full-time, part-time, permanent and temporary employees. Grantee shall  
21 keep, and provide to the City, an accurate record describing in detail Grantee's good faith  
22 efforts to secure employment of residents of the City and County of San Francisco. A failure  
23 to abide by the provisions of this Section may result in the imposition of sanctions and  
24 penalties, including those provided for in San Francisco Administrative Code Sections 6.80.

25

1 **Section 91.** ATTORNEYS’ FEES AND COSTS. If either party hereto fails to perform any of  
 2 its respective obligations under this Agreement or if any dispute arises between the parties  
 3 hereto concerning the meaning or interpretation of any provision of this Agreement, then the  
 4 defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any  
 5 and all costs and expenses incurred by the other party on account of such default and/or in  
 6 enforcing or establishing its rights hereunder, including, without limitation, reasonable  
 7 Attorneys’ Fees and Costs. Any such Attorneys’ Fees and Costs incurred by either party in  
 8 enforcing a judgment in its favor under this Agreement shall be recoverable separately from  
 9 and in addition to any other amount included in such judgment. For purposes of this  
 10 Agreement, if either party uses its own attorney employees, the reasonable fees of such  
 11 attorneys shall be based on the fees regularly charged by private attorneys with the equivalent  
 12 number of years of experience in the subject matter area of the law for which the services  
 13 were rendered who practice in the City and County of San Francisco.

14 **Section 92.** GUARANTY. On or before the execution of this Franchise by Grantee, RCN  
 15 Corporation, a Delaware corporation, shall execute and deliver to the City a Guaranty  
 16 Agreement in the form attached hereto as Appendix 1 (“Guaranty Agreement”). This  
 17 Franchise shall not become effective unless and until the City’s receives the duly executed  
 18 Guaranty Agreement.

19 **Section 93.** MITIGATION MEASURES. The Mitigation Measures as set forth in the negative  
 20 declaration and as attached hereto as Appendix 2 are incorporated into this Franchise by this  
 21 reference. Grantee shall perform all the Mitigation Measures as they relate to any activities  
 22 under this Franchise. Without limiting the City’s rights and remedies under this Franchise for  
 23 the failure to perform any Mitigation Measure, DPW and DTIS will monitor and enforce  
 24 implementation of the Mitigation Measures through the permitting process.

25

1     **Section 94.** PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC. As of July 1,  
2     2003, Grantee may not purchase preservative-treated wood products containing arsenic in the  
3     performance of this Franchise unless an exemption from the requirements of Chapter 13 of  
4     the San Francisco Environment Code is obtained from the Department of the Environment  
5     under Section 1304 of the Code. The term “preservative-treated wood containing arsenic”  
6     shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an  
7     arsenic copper combination, including, but not limited to, chromated copper arsenate  
8     preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate  
9     preservative. Grantee may purchase preservative-treated wood products on the list of  
10    environmentally preferable alternatives prepared and adopted by the Department of the  
11    Environment. This provision does not preclude Grantee from purchasing preservative-treated  
12    wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean  
13    a pressure-treated wood that is used for construction purposes or facilities that are partially or  
14    totally immersed in saltwater

15    **Section 95.** GENERAL PLAN REVIEW. In finding that the Franchise is in conformity with  
16    the City’s General Plan and consistent with the Eight Priority Policies of City Planning Code  
17    Section 101.1, the Planning Department has reviewed only those Facilities used by Grantee  
18    to provide Service under this Franchise that are installed on existing utility poles. Grantee  
19    may not install any Facilities necessary to provide Service in any area where Grantee cannot  
20    install such Facilities on utility poles (except for underground conduits) until the Planning  
21    Department has determined that Grantee’s construction of such Facilities is in conformity with  
22    the City’s General Plan and consistent with the Eight Priority Policies of City Planning Code  
23    Section 101.1.

24    **Section 96.** NOTIFICATION ON LIMITATION ON CONTRIBUTIONS. Through execution of  
25    this Franchise, Grantee acknowledges that it is familiar with section 1.126 of City’s Campaign

1 and Governmental Conduct Code, which prohibits any person who contracts with the City for  
2 the rendition of personal services or for the furnishing of any material, supplies or equipment  
3 to the City, whenever such transaction would require approval by a City elective officer or the  
4 board on which that City elective officer serves, from making any campaign contribution to the  
5 officer at any time from the commencement of negotiations for the contract until three months  
6 after the date the contract is approved by the City elective officer or the board on which that  
7 City elective officer serves.

8 Acknowledged and Agreed TO BY THE PARTIES:

9 CITY & COUNTY OF SAN FRANCISCO: RCN TELECOM SERVICES, INC.:

10 Approved By:

11  
12 \_\_\_\_\_  
13 LEWIS LOEVEN, Director, Department of  
14 Telecommunications and Information  
Services

15 Date: : \_\_\_\_\_

16 APPROVED AS TO FORM:  
17 DENNIS J. HERRERA, City Attorney

18 By: \_\_\_\_\_  
19 ATTORNEY'S NAME  
Deputy City Attorney

\_\_\_\_\_  
Signature

Name: Douglas  
Schulz \_\_\_\_\_

Title: ~~Vice President and General~~  
Manager \_\_\_\_\_

Address: 1400 Fashion Island Blvd. Ste.  
100 \_\_\_\_\_  
San Mateo, CA 94404  
\_\_\_\_\_

20 Date: : \_\_\_\_\_

21 \_\_\_\_\_ CALIFORNIA, INC.:

\_\_\_\_\_  
Signature

24 Hankin \_\_\_\_\_  
25 \_\_\_\_\_

Name: David

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Title: ~~Vice President, Regulatory & Government Affairs~~

Address: ~~1400 Fashion Island Blvd., Ste. 100 San Mateo, CA 94404~~

Date: \_\_\_\_\_

Appendix 1

Guaranty Agreement

THIS GUARANTY AGREEMENT (this "Guaranty") dated as of \_\_\_\_\_, 2002, is made by RCN CORPORATION, a Delaware 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, Inc., a ~~California~~Pennsylvania 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

1 remedies under this Guaranty, whether or not suit is brought. Any delinquent payment for the  
2 Guaranteed Obligations and the Reimbursement Amount shall be accompanied by interest on  
3 such amounts at the lesser of ten percent (10%) per annum or the maximum amount  
4 permitted by law, from the date due through and including the date of payment of such  
5 amounts (calculated on the basis of a 365-day year for the actual number of days elapsed).  
6 Guarantor’s guaranty of payment of the Guaranteed Obligations shall be discharged and  
7 satisfied only as provided in Section 6 below relating to termination of this Guaranty.

8  
9  
10 1.2 Definition of Guaranteed Obligations. For purposes of this Guaranty,  
11 “Guaranteed Obligations” shall mean the obligation of the Grantee (the “Obligor”) to make any  
12 payments and timely perform any obligations set forth in the Franchise, including, without  
13 limitation, the payment of franchise fees and the completion of the System as set forth in the  
14 Franchise.

15  
16 1.3 Acknowledgments by Guarantor. Guarantor acknowledges, confirms, and  
17 agrees that: (a) it has received fair and adequate consideration for its execution of this  
18 Guaranty; (b) it will derive material financial benefit from the City’s execution of the Franchise;  
19 (c) the City’s agreement to enter into the Franchise and take the actions required in  
20 connection therewith is in consideration of, and in reliance upon, the Guarantor’s execution  
21 and delivery of this Guaranty; and (d) there are no conditions to the full effectiveness of this  
22 Guaranty other than those expressly set forth in this Guaranty.

23  
24 1.4 Independent Obligations; Continuing Guaranty. Subject to the provisions of this  
25 Guaranty, this Guaranty is a primary and original obligation of Guarantor and is an absolute,  
unconditional, continuing and irrevocable guaranty of payment and performance.

2. Indemnity

2.1 Indemnity. Guarantor agrees to indemnify, defend and hold harmless the  
Indemnified Parties from and against any and all liabilities, obligations, losses, damages,  
penalties, actions, causes of action, judgments, suits, claims, costs, expenses and  
disbursements of any kind or nature whatsoever (including, without limitation, Attorneys’ Fees  
and Costs as hereinafter defined) arising in connection with any investigative, administrative  
or judicial proceeding, that may be imposed on, incurred by or asserted against such  
Indemnified Party, in any manner relating to or arising out of or in connection with the  
payment or enforcement of this Guaranty (collectively, the “Indemnified Liabilities”).

1 Notwithstanding the foregoing, Indemnified Liabilities shall not include liabilities, obligations,  
2 losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs,  
3 expenses and disbursements to the extent caused by or resulting from the willful misconduct  
4 or negligence of such Indemnified Party. Guarantor agrees to defend the Indemnified Parties  
5 against any claims that are actually or potentially within the scope of the indemnity provisions  
6 of this instrument, even if such claims may be groundless, fraudulent or false.

7 2.2 Notice. The Indemnified Parties agree to give prompt notice to Guarantor with  
8 respect to any suit or claim initiated or threatened against the Indemnified Parties, at the  
9 address for notices of Guarantor set forth in this Guaranty, which the Indemnified Party has  
10 reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is  
11 not given to Guarantor, then Guarantor’s liability hereunder shall terminate as to the matter for  
12 which such notice is not given, provided that failure to notify the Guarantor shall not prejudice  
13 the rights of the Indemnified Party hereunder unless the Guarantor is prejudiced by such  
14 failure, and then only to the extent of such prejudice. The Guarantor shall, at its option but  
15 subject to the reasonable consent and approval of the Indemnified Party, be entitled to control  
16 the defense, compromise or settlement of any such matter through counsel of the Guarantor’s  
17 own choice; provided, however, that in all cases the Indemnified Party shall be entitled to  
18 participate in such defense, compromise, or settlement at its own expense. If the Guarantor  
19 shall fail, however, in the Indemnified Party’s reasonable judgment, within a reasonable time  
20 following notice from the Indemnified Party alleging such failure, to take reasonable and  
21 appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party  
22 shall have the right promptly to hire counsel at the Guarantor’s sole expense to carry out such  
23 defense, compromise or settlement, which expense shall be immediately due and payable to  
24 the Indemnified Party upon receipt by the Guarantor of a reasonably detailed invoice therefor.

17  
18 3. Waivers by Guarantor

19  
20 3.1 Waivers. Guarantor waives: notice of acceptance of this Guaranty; notice of the  
21 amount of the Guaranteed Obligations; notice of any other fact that might increase the  
22 Guarantor’s risk; and notice of presentment for payment, demand, protest and notice of  
23 protest, notice of dishonor, diligence in collection and notice of nonpayment as to any  
24 instrument. Guarantor also waives any and all rights, by statute or otherwise, to require the  
25 City to institute suit against the Obligor or to exhaust any of the City’s rights, powers or  
remedies against such Obligor.



1           3.2    Waiver of Subrogation. Upon satisfaction in full of all of the Guaranteed  
 2 Obligations, Guarantor shall be subrogated to the rights of the City against the Obligor with  
 3 respect to the Guaranteed Obligations, and the City agrees to take such steps as Guarantor  
 4 may reasonably request to implement such subrogation (provided that Guarantor shall pay  
 5 any and all of City's costs and expenses in connection therewith, including, without limitation  
 6 City's Attorneys' Fees and Costs and provided further that the City shall not incur any liabilities  
 7 in taking any such steps).

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4.        Consents by Guarantor

          4.1    Consents; No Discharge of Obligations. Without releasing, discharging,  
 impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the  
 validity or enforceability of this Guaranty, the City may, by action or inaction, in its sole,  
 absolute and unlimited discretion and without notice to Guarantor: compromise, settle, extend  
 the time for payment or performance of all or any part of the Guaranteed Obligations; refuse  
 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;  
 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  
 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  
 or thing that might otherwise operate as a legal or equitable discharge of a surety, except as  
 specified in the proviso at the end of the preceding sentence.

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

1           4.3    Additional Rights. This Guaranty is in addition to, and not in substitution for or in  
2 reduction of, any other guaranty by Guarantor or any obligation of Guarantor under any other  
3 agreement or applicable Law that may now or hereafter exist in favor of the City. The liability  
4 of Guarantor under this Guaranty shall not be contingent upon the enforcement of any lien or  
5 realization upon the security, if any, the City may at any time possess with respect to the  
6 Guaranteed Obligations.

7           4.4    Recourse. The City shall have the right to seek recourse against Guarantor to  
8 the full extent provided for in this Guaranty, which right shall be absolute and shall not in any  
9 way be impaired, deferred, or otherwise diminished by reason of any inability of the City to  
10 claim any amount of such Guaranteed Obligation from Guarantor as a result of bankruptcy or  
11 otherwise, including, but not limited to, any limitation on the City’s claim from Guarantor under  
12 section 502(b)(6) of the United States Bankruptcy Code, as amended (11 U.S.C. §502(b)(6)).  
13 No election to proceed in one form of action or proceeding, or against any person, or on any  
14 obligation, shall constitute a waiver of the City’s right to proceed in any form of action or  
15 proceeding or against other persons unless City has expressly waived that right in writing.

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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.

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

(c)    No Limitation on Ability to Perform. Neither the Guarantor’s articles of  
organization or operating agreement, nor the organization documents of any of the  
Guarantor’s members, nor any other agreement or Law in any way prohibits, limits or  
otherwise affects the right or power of the Guarantor to enter into and perform all of the terms  
and covenants of this Guaranty. Neither the Guarantor nor any of its members are party to or  
bound by any contract, agreement, indenture, trust agreement, note, obligation or other

1 instrument which could prohibit, limit or otherwise affect the same. No consent, authorization  
2 or approval of, or other action by, and no notice to or filing with, any governmental authority,  
3 regulatory body or any other Person is required for the due execution, delivery and  
4 performance by the Guarantor of this Guaranty or any of the terms and covenants contained  
5 in this Guaranty. There are no pending or threatened suits or proceedings or undischarged  
6 judgments affecting the Guarantor or any of its members before any court, governmental  
7 agency, or arbitrator which might materially adversely affect the enforceability of this Guaranty  
8 or the business, operations, assets or condition of the Guarantor or any of its members.

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

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

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

17 5.2 Independent Investigation. Guarantor has performed its own independent  
18 investigation as to the matters covered by this Guaranty.

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

21 6. Termination of Guaranty

22 Guarantor's liability under this Guaranty shall be discharged and satisfied, and  
23 Guarantor shall be relieved of any and all further obligations under this Guaranty, upon the  
24 later of (a) Termination of the Franchise and (b) payment and performance in full of the  
25 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

1 within which a trustee or other similar official in an action under any insolvency law may avoid,  
2 rescind, or set aside any payment of any of the Guaranteed Obligations. Upon Guarantor's  
3 request the City will confirm in writing the fact of termination of this Guaranty if this Guaranty  
4 has terminated.

5 7. Notices

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

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

10  
11 Department of Telecommunications and Information Services  
12 875 Stevenson Street, 5th Floor  
13 San Francisco, CA 94103  
14 Attn: OVS Franchise Administrator

15  
16 with a copy to:

17  
18 San Francisco City Attorney's Office  
19 City Hall, Room 234  
20 San Francisco, CA 94102  
21 Attn: Telecommunications Team Leader

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23  
24 (b) And in the case of a notice or communication sent to Guarantor:  
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RCN Corporation  
1400 Fashion Island Blvd., Suite 100  
San Mateo, CA 94404  
Attn.: ~~Frank Cirone~~Douglas Schulz

with a copy to:

~~John Jones~~  
Deborah M. Royster  
105 Carnegie Center  
Princeton, N.J. 08540

For the convenience of the parties, copies of notice may also be given by telefacsimile.

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:

- (a) the Section of this Guaranty pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

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

1 official or binding notice by telefacsimile. The effective time of a notice shall not be affected  
2 by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

3 8. General Provisions  
4

5 8.1 Successors and Assigns. This Guaranty is binding upon and will inure to the  
6 benefit of the successors and assigns of the City and the Guarantor, subject to the limitations  
7 set forth in Section 8.11 below. Where the term "Guarantor," or "City" is used in this  
8 Agreement, it means and includes their respective successors and assigns.

9 8.2 Amendments. Except as otherwise provided herein, this Guaranty may be  
10 amended or modified only by a written instrument executed by the City and Guarantor.

11  
12 8.3 Waivers. No action taken pursuant to this Guaranty by the City shall be deemed  
13 to be a waiver by that party of the Guarantor's compliance with any of the provisions hereof.  
14 No waiver by the City of any breach of any provision of this Guaranty shall be construed as a  
15 waiver of any subsequent or different breach. No forbearance by the City to seek a remedy  
16 for noncompliance hereunder or breach by the Guarantor shall be construed as a waiver of  
17 any right or remedy with respect to such noncompliance or breach.

18 8.4 Continuation and Survival of Covenants. Subject to Section 6 above, all  
19 covenants by Guarantor contained herein shall be deemed to be material and shall survive  
20 any Termination of the Franchise or portion thereof if the obligations thereunder have arisen  
21 and are not satisfied before such date.

22 8.5 Governing Law; Selection of Forum. This Guaranty shall be governed by and  
23 construed in accordance with the laws of the State of California. As part of the consideration  
24 for the Franchise, the Guarantor agrees that all actions or proceedings arising directly or  
25 indirectly under this Guaranty may, at the sole option of City, be litigated in courts located  
within the State of California, and the Guarantor expressly consents to the jurisdiction of any  
such local, state or federal court, and consents that any service of process in such action or  
proceeding may be made by personal service upon the Guarantor wherever the Guarantor

1 may then be located, or by certified or registered mail directed to the Guarantor at the address  
2 set forth in this Guaranty for the delivery of notices.

3 8.6 Merger of Prior Agreements. The parties intend that this Guaranty (including all  
4 of the attached exhibits and schedules, which are incorporated into this Guaranty by  
5 reference) and the Franchise shall be the final expression of their agreement with respect to  
6 the subject matter hereof and may not be contradicted by evidence of any prior or  
7 contemporaneous oral or written agreements or understandings. The parties further intend  
8 that this Guaranty shall constitute the complete and exclusive statement of its terms and that  
9 no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes  
therefrom) may be introduced in any judicial, administrative or other legal proceeding involving  
this Guaranty.

10 8.7 Interpretation of Guaranty. The section and other headings of this Guaranty and  
11 the table of contents are for convenience of reference only and shall not affect the meaning or  
12 interpretation of any provision contained herein. Whenever the context so requires, the use of  
13 the singular shall be deemed to include the plural and vice versa, and each gender reference  
14 shall be deemed to include the other and the neuter. To the extent the recitals contained  
15 herein are inconsistent with the operative provisions of this Guaranty, the operative provisions  
16 shall control. This Guaranty has been negotiated at arm's length and between persons  
17 sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has  
18 been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of  
19 law (including California Civil Code Section 1654) or legal decision that would require  
20 interpretation of any ambiguities in this Guaranty against the party that has drafted it is not  
21 applicable and is waived. The provisions of this Guaranty shall be interpreted in a reasonable  
22 manner to effect the purposes of the parties and this Guaranty.

23 8.8 Attorneys' Fees and Costs. Should any party institute any action or proceeding  
24 in court to enforce any provision hereof or for damages by reason of an alleged breach of any  
25 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 c 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.

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22 GUARANTOR

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24 RCN CORPORATION, a Delaware corporation  
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By \_\_\_\_\_

Print Name ~~John J. Jones~~; Deborah M. Royster

Its ~~Executive Vice President~~, General Counsel and  
Corporate Secretary

By \_\_\_\_\_

Print Name ~~Timothy J. Stoklosa~~ \_\_\_\_\_

Its ~~Executive Vice President and Chief Financial  
Officer~~ \_\_\_\_\_

ACCEPTED AND AGREED:

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal  
corporation

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APPROVED AS TO FORM:

\_\_\_\_\_

Deputy City Attorney

Appendix 2  
Mitigation Measures

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Grantee shall comply with all mitigation measures, with respect to all activities of Grantee and its Agents under this Franchise, that are now or hereafter contained in (i) the 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").

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

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

B. General Cumulative Impacts. The Negative Declaration requires Grantee to consult with the DTIS and DPW and to abide by the standards established by local agencies. 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.

C. Geological Resources. The Negative Declaration requires compliance with all local design, construction and safety standards by obtaining all applicable permits from local 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.

D. Water Resources. The Negative Declaration requires consultation with appropriate local, state, and federal water agencies for projects in close proximity to water resources (underground or surface), and requires compliance with applicable water resource regulations, including development of site-specific measures to address water quality, 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.

E. Air Quality. The Negative Declaration requires compliance with applicable air quality standards established by the Bay Area Air Quality Management District (BAAQMD), and also requires development and implementation of dust control measures as recommended by the BAAQMD. Basic control measures recommended by BAAQMD include the following: water all active construction areas at least twice daily; cover all trucks hauling soil, sand, and other

1 loose materials or require all trucks to maintain at least two feet of freeboard; pave or apply  
2 water three times daily to unpaved areas; sweep daily with water sweepers all paved areas at  
construction sites, and adjacent streets if soil materials are visible.

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

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

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

16 I. Aesthetics. The Negative Declaration requires that Grantee consult the Planning  
17 Department regarding placement of above-ground structures such as supply units, to ensure  
18 that such units are placed so as to mitigate any visual impacts (e.g. placed in areas where  
19 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.

20 J. Cultural Resources. While the Negative Declaration requires Grantee to conduct  
21 appropriate research into known cultural resources, and to avoid such resources, Grantee's  
22 project would affect previously-disturbed rights of way, and research does not appear  
23 warranted. Grantee would be required, however, to halt construction activities if previously  
24 unknown cultural resources are encountered during excavation, to retain the services of an  
25 archaeologist to evaluate the resources, and to adopt mitigation strategies such as avoidance,  
data collection and documentation, or other recommendations of the archaeologist.

Appendix 3  
First Source Hiring Agreement

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

1. For purposes of this Agreement, initially capitalized terms shall be defined as follows:

- a. Economically Disadvantaged Individual: An individual who is either (a) eligible for services under the Job Training Partnership Act, 29 U.S.C. section 1503, as determined by the San Francisco Private Industry Council; or (b) designated as "economically disadvantaged" by the FSHA as an individual who is at risk of relying upon, or returning to, public assistance.
- b. Employer: Grantee, Subcontractor, partner, agent, or employee of Grantee, or a combination thereof, engaged in commercial activities of the Franchise, who is subject to the requirements of Chapter 83 of the San Francisco Administrative Code.
- c. Entry Level Position: A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than 2 years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.
- d. First Opportunity: Consideration by Employer of the System referrals for filling Entry Level Positions prior to recruitment and hiring of non-System job applicants.
- e. FSHA: First Source Hiring Administration, the body designated to administer and 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.
- g. Job Classification: Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

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

13 2. SAFE HARBOR PROVISION

14 Employer will make good faith efforts to: 1) fill its first available Entry Level Position for  
15 work in connection with the Franchise with a job applicant referred through the First  
16 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.

17 Fulfillment of this target establishes Employer’s good faith efforts. However, failure to  
18 meet this target does not impute “bad faith.” Failure to meet this target triggers a  
19 review of the referral process and the Employer’s efforts.

20 Good Faith Efforts

- 21 a. The Employer must provide a clear, accurate job description, including  
22 expectations, standard of appearance, any special requirements, e.g., language skills,  
23 drug testing, driver’s license. Job descriptions must be in accord with skills,  
24 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  
              from other sources during the specified time.
  
- 3        c.        Employers subject to collective bargaining agreement(s) requiring compliance  
4                with a pre-established applicant referral process as set forth in such agreement(s) for  
              available Entry Level Positions must:
  - 5                i.        Notify the appropriate union(s) of the Employer's First Source obligation  
6                    and request assistance from the union(s) in referring Qualified Economically  
7                    Disadvantaged applicants for the available Entry Level Position(s), to the extent  
8                    such referral can conform to the requirements of the collective bargaining  
                  agreement(s).
  - 9                ii.        Use "name call" privileges, in accordance with the terms of the applicable  
10                    collective bargaining agreement(s), to seek Qualified Economically  
11                    Disadvantaged applicants for the available Entry Level Position(s).
  - 12                iii.        Sponsor Qualified Economically Disadvantaged apprenticeship  
13                    applicants, referred through the Workforce Development System, for applicable  
14                    union membership.
  
- 15        d.        The Employer must give due consideration to all referrals made by the System,  
16                resumes must be reviewed, and interviews conducted in accordance with the non-  
17                discrimination provisions of this Franchise.
  
- 18        e.        The Employer must provide constructive feedback on all applicants referred by  
19                the System.
  - 20                i.        Employers who meet the safe harbor provision must only respond orally  
21                    to follow-up questions asked by the 1st Source account executive.
  - 22                ii.        Employers who are unable to meet the safe harbor provision will be  
23                    required to provide written comments on all referrals.
  - 24                iii.        Job applicants will also be required to provide brief feedback on the  
25                    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.

- 1 3. In the event that Grantee subcontracts a portion of the work under this Franchise,  
2 Grantee shall determine how many, if any, of the Entry Level Positions are to be  
3 employed by its Subcontractor(s), provided, however, that Grantee shall retain the  
4 primary responsibility for meeting the requirements imposed under this Agreement.  
5 Grantee shall ensure that this Agreement is incorporated into and made applicable to  
6 such Subcontract.
- 7 4. Grantee agrees to offer the System the First Opportunity to provide Qualified  
8 Economically Disadvantaged Individuals for employment consideration in Entry Level  
9 Positions, subject to any enforceable collective bargaining agreements. Employers  
10 shall consider all applications of Qualified Economically Disadvantaged Individuals  
11 referred by the System for employment. Provided Employer utilizes nondiscriminatory  
12 screening criteria, Employer shall have the sole discretion to interview and hire  
13 individuals referred or certified by the System as being Qualified Economically  
14 Disadvantaged Individuals.
- 15 5. The duration of the First Source Program Interviewing Requirement shall be 10 days.  
16 During this period, Employer may only Publicize the availability of Entry Level Positions  
17 by calling the System referral number: (415) 749-7500.
- 18 6. Grantee shall provide the System with all the following information:
  - 19 a. Projected employment needs for work performed under this Franchise.  
20 Describe such needs by Job Classification, weekly hours required, wages paid,  
21 and duration of employment.
  - 22 b. Timely notification of Entry Level Positions as they become available.
  - 23 c. Identification of specific job qualifications, if any (e.g. driver's license).
  - 24 d. Identification of English language proficiency requirements or absence thereof.
  - 25 e. Notification of projected hiring schedule and procedures for each job  
classification, including the time and place of hiring for each Entry Level  
Position.
- 7. Nothing in this Agreement precludes Grantee from using temporary or reassigned  
existing employees to perform essential functions of its operation; provided, however,  
the obligations of this Agreement to make Good Faith Efforts to fill such vacancies  
permanently with System referrals remains in effect. For these purposes, "essential  
functions" means those functions absolutely necessary to remain open for business.
- 8. The City is entitled to the remedies set forth in section 83.10 of the San Francisco  
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



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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.

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