

1 [RCN Proposed OVS Franchise]

2 **Ordinance granting a 13 year franchise to RCN Telecom Services, Inc. for use of the**
3 **public rights of way within the City and County of San Francisco to provide open video**
4 **system services, cable internet services and other services upon payment of five**
5 **percent of gross revenues to the City and County of San Francisco.**

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 City's Administrative Code, as amended by Ordinance No. 58-00.

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

- 13 1. The California Public Utilities Commission ("CPUC") issued a Certificate of Public
14 Convenience and Necessity ("CPCN") to Grantee to provide telecommunications services
15 in California pursuant to CPUC Decision No. 98-09-066.
- 16 2. On September 17, 1998, the CPUC approved and adopted a Final Negative Declaration
17 ("Negative Declaration")(Docket No. I.95-04-044) for the issuance of the CPCN to Grantee.
18 The CPCN authorizes Grantee to provide facilities-based and resold local exchange,
19 interLATA and intraLATA telecommunications services throughout the State of California.
- 20 3. Grantee is authorized by the Federal Communications Commission to provide interstate
21 interLATA telecommunications services.
- 22 4. Pursuant to its authority under federal, state, and local law, the City issued a Utility
23 Conditions Permit ("UCP") to Grantee on March 25, 1999, prescribing terms and
24 conditions for Grantee's use of the public rights of way in San Francisco to construct,
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- 1 install, and maintain facilities in the public rights of way solely for the provision of
2 telecommunications services.
- 3 5. Grantee is currently constructing, installing, and maintaining facilities in the public rights of
4 way and is authorized to provide telecommunications services within the City.
- 5 6. On July 30, 1999, Grantee submitted a written application for a cable system franchise
6 (“Application”) to the Board of Supervisors (“Board”) and on September 7, 1999 submitted
7 the necessary application processing fee.
- 8 7. Pursuant to the Application, Grantee sought authority to provide cable services, cable
9 internet service, and other service within the geographic area of the City and County of
10 San Francisco.
- 11 8. On July 25, 2000, the Board approved Grantee’s Cable Franchise.
- 12 9. On _____, 2002, Grantee applied to the City to convert its Cable Franchise to an Open
13 Video System (“OVS”) Franchise, as authorized by 47 U.S.C. Section 573.
- 14 10. Pursuant to 47 U.S.C. Section 573, Grantee [is certified/has filed an application for
15 certification] to operate an OVS in the City and County of San Francisco.
- 16 11. The City has authority pursuant to Article XI, Sections 7 and 9 of the California
17 Constitution, and Section 16.111 of its Charter, to grant a franchise to Grantee to install
18 facilities in the public rights of way and to provide OVS services using such facilities.
- 19 12. The City has authority pursuant to 47 U.S.C. Section 573 of the Telecommunications Act
20 to grant a franchise to Grantee to install and maintain an OVS in the public rights of way
21 and to provide services using such facilities.
- 22 13. On August 7, 2002, Grantee and the DTIS Director executed this Franchise, signifying
23 Grantee’s agreement to the terms and conditions contained herein, and the DTIS
24 Director’s recommendation of the terms and conditions contained herein to the Board.
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1 14. This Franchise replaces, supercedes, and extinguishes all of RCN's rights, obligations,
2 and liabilities pursuant to its Cable Franchise, and RCN's rights, obligations, and liabilities
3 to the City shall henceforth by as set forth in this OVS Franchise.

4 15. This Franchise will permit Grantee to provide video services, cable internet service, and
5 other services within the geographic area of the City and County of San Francisco. The
6 FCC has declared Cable Internet Services to be interstate information services, FCC 02-
7 77, rel. March 15, 2002, but has not ruled definitively as to whether local franchise
8 authorities may, nonetheless, regulate or charge franchise fees on such services. Pending
9 a resolution of those issues, Grantee has agreed to the following obligations regarding
10 cable modem-delivered internet service: (i) Grantee will voluntarily comply with certain
11 customer service requirements set forth in this Franchise; (ii) Grantee will pay the City a
12 fee on gross revenues received for the provision of cable internet service, and comply with
13 customer service requirements and enforcement mechanisms, if Grantee agrees to do so
14 elsewhere in California; and (iii) Grantee has agreed to be bound by any lawful ordinance
15 of the Board of Supervisors requiring Grantee and other persons granted a franchise to
16 provide OVS or cable internet services to provide nondiscriminatory access to broadband
17 transport services and establish consumer protection standards regarding cable internet
18 service.

19 16. In compliance with Charter Section 16.111 and Section 11.13(a) of Chapter 11 which
20 require a "competitive process" before a franchise is awarded, the City issued a request for
21 proposals on _____, 2002 for the grant of an OVS franchise, on terms and conditions
22 similar to those set forth herein. The notice was distributed to all facilities-based
23 telecommunications providers licensed to do business in the state of California, distributed
24 by mail and electronic mail to all cable overbuilders and OVS providers identified by DTIS
25 in a review of national cable publications, published in the San Francisco Independent and

1 Multichannel News, and posted on the San Francisco Telecommunications Commission's
2 website.

3 17. No proposals were received in response to the request for proposals prior to the
4 _____, 2002 deadline.

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

9 19. The Public Works and Public Protection Committee of the Board of Supervisors held a
10 public hearing on _____, 2002 to consider the proposed Franchise and its procedural
11 and substantive impacts on the City. The Board has determined that this Franchise is
12 sufficient to meet current and future community needs and interests and that it is in the
13 best interest of the City to award this Franchise to Grantee. The Board also finds that this
14 Franchise will have numerous positive impacts on the City and consumers.

15 20. Under this Franchise, Grantee will provide advanced telecommunications infrastructure
16 and services to San Francisco neighborhoods, including residential neighborhoods, and
17 provide an additional source of video service and cable internet service to residents and
18 businesses.

19 21. The Board finds that granting an OVS franchise within the geographic area of the City in
20 lieu of Grantee's existing cable franchise will enable continued competition in the provision
21 of video service and cable internet service.

22 22. Continued competition between Grantee and the incumbent cable television franchise
23 holder may result in lower prices for cable services and cable internet service, innovative
24 service offerings to consumers, and increased incentives for franchisees to provide high
25 quality customer service.

- 1 23. Among other benefits, under this Franchise Grantee will continue to provide additional
2 channel capacity, facilities, and support and for public, education, and government (“PEG”)
3 access cable television programming. Grantee has agreed to provide 7 PEG access
4 channels. Grantee has also agreed to a procedure for converting those channels into
5 digital equivalents at an equitable ratio for the City. Grantee has agreed to provide 17
6 video feeds for PEG channels and PEG financial support, on a per subscriber basis,
7 equivalent to the support currently provided by the incumbent cable provider. Grantee has
8 also agreed to provide an additional \$1.55 million, in addition to sums already paid
9 pursuant to Grantee’s cable franchise, for a total of \$1.75 million, to be adjusted for
10 inflation, in one-time grants for PEG support over the first eight years of the Franchise..
- 11 24. In addition, Grantee will pay to the City a five percent (5%) fee on gross revenues derived
12 from operation of the system to provide services to compensate the City for the benefits
13 derived from use of the public rights of way. Grantee will also pay all of the fees and taxes
14 required by applicable law, including the Street Damage Restoration Fee set forth in
15 Section 2.4.44 of the San Francisco Public Works Code.
- 16 25. Grantee will provide to the City, for City use, fiber optic infrastructure, cable service or
17 cable internet service and conduit for installing fiber optic infrastructure.
- 18 26. By the terms of this Franchise, Grantee has agreed to continue to serve the locations
19 within the City currently served by its system.
- 20 27. Grantee has also agreed to criteria for any future expansion of its system that will
21 preclude discrimination on the basis of the income level or minority status of the residents
22 of a neighborhood and has agreed to specific provisions that explicitly prohibit
23 discrimination.

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- 1 28. Grantee will provide eligible low income subscribers a discounted rate on video service
2 that should make video service more affordable and may increase subscribership among
3 low income consumers.
- 4 29. Pursuant to the terms of a letter agreement dated July 10, 2000, and adopted by
5 Resolution of the Board No. 730-00, Grantee will also provide, at no cost to the City, cable
6 drops, cable modems, and cable internet services for use in a City administered pilot
7 project designed to address and bridge the digital divide.
- 8 30. Grantee has demonstrated that it has the technical and financial qualifications and ability
9 to provide video service and cable internet service as authorized in this Franchise.
10 Grantee is currently providing such services to consumers in the New York, Boston,
11 Chicago, Los Angeles and Washington D.C. metropolitan areas. In addition, Grantee
12 offers service in South San Francisco, Daly City, San Mateo, Redwood City, Burlingame,
13 and San Mateo County.
- 14 31. The technical capabilities and performance standards of Grantee's facilities are equal to
15 or exceed those generally being deployed on a large scale for residential consumers
16 throughout the nation and currently within the City.
- 17 32. An additional video system in the City appears to be economically feasible. Grantee
18 intends to provide and generate revenue from not only video service, but cable internet
19 service and telecommunications service as well. The combination of these revenue
20 streams increases the viability of an additional video system.
- 21 33. Grantee has committed to meeting all of the City's construction and physical requirements
22 for the system.
- 23 34. The Board finds that this Franchise will not cause unreasonable disruption or
24 inconvenience to existing users of utility poles, public easements, or public rights of way.
25

1 Under this Franchise, Grantee will arrange for any necessary relocation of facilities on
2 poles, public easements, and public rights of way at its own cost.

3 35. Grantee's use of poles, public easements, and public rights of way is unlikely to have any
4 significant impact on future use by existing occupants. However, to the extent that
5 Grantee occupies space on utility poles, public easements, and public rights of way there
6 may be less space for subsequent entrants.

7 36. By the terms of this Franchise, Grantee has agreed to be subject to all governing
8 applicable law as it is now and as it may be adopted, including all policies and procedures
9 that the City adopts governing the placement of facilities in the public right of way. Those
10 policies and procedures may mitigate any aesthetic impact due to additional cables,
11 nodes, and power supplies attached to utility poles or additional utility boxes placed in the
12 public right of way by Grantee pursuant to its authorization under this Franchise.

13 37. Grantee has demonstrated its commitment to abide by City conditions, applicable law and
14 the terms of the Franchise by agreeing to enforcement mechanisms and strong incentives
15 for compliance.

16 38. The Director of the City's Planning Department has found that the grant of this Franchise
17 was in conformity with the City's General Plan and consistent with the Eight Priority
18 Policies of City Planning Code Section 101.1.

19 39. The Environmental Review Officer of the City's Planning Department, by letter dated
20 May 29, 2000 (the "Environmental Review Letter"), a copy of which is on file with the Clerk
21 of the Board of Supervisors, determined that the City may act as a responsible agency in
22 the grant of the RCN cable television franchise, Ordinance No. 204-00, pursuant to CEQA
23 Guidelines Section 15381. The Environmental Review Letter analyzes the potential
24 impacts from the grant of the RCN cable television franchise, Ordinance No. 204-00, in
25 accordance with CEQA Guidelines Section 15164.

- 1 40. The Board of Supervisors has reviewed and relied upon the Negative Declaration, the
2 Environmental Review Letter, and the above-referenced public hearing by the Public
3 Utilities and Deregulation Committee for the basis of its actions. The Board of Supervisors
4 finds on the basis of the whole record before it that the Negative Declaration is adequate
5 and complete. In exercising its independent judgment, the Board of Supervisors concurs
6 with and adopts the findings and conclusions made in the Negative Declaration and the
7 Environmental Review Letter, and incorporates said findings and conclusions as though
8 fully set forth herein. The Board of Supervisors also finds, on the basis of substantial
9 evidence and in light of the whole record, that there have been no changes to the
10 proposed activities, no changes to the circumstances surrounding the proposed activities
11 have occurred, and no new information has become available, since adoption of the
12 Negative Declaration that would alter the findings set forth therein.
- 13 41. The Board of Supervisors finds that, while the proposed construction activities associated
14 with this Franchise may be potentially disruptive at each location that is under construction
15 for the duration of that construction, the activities would not result in impacts that exceed
16 those generally accepted in an urban environment where construction work is a fact of life.
17 With implementation of the mitigation measures set forth in the Negative Declaration, the
18 Environmental Review Letter and this Franchise, site specific impacts will be mitigated to a
19 less than significant level, and the project overall will not have a significant adverse effect
20 on the environment.
- 21 42. The mitigation measures included in the Negative Declaration and Environmental Review
22 Letter are adopted as conditions of approval to this Franchise and will be implemented as
23 set forth in the Negative Declaration and the Environmental Review Letter. The City's
24 Department of Public Works and DTIS will enforce and monitor implementation of the
25 Mitigation Measures through the permitting process.

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

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

6 PART 1 – DEFINITIONS

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

25 (a) "Affected Service" shall have the meaning set forth in Section 52(b) below.

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

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

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

9 **(e)** "Analog PEG Channel" shall have the meaning set forth in Section 49(a)
10 below.

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

14 **(g)** "Attorneys Fees and Costs" means any and all attorneys' fees, costs,
15 expenses and disbursements, including, but not limited to, expert witness fees and costs,
16 travel time and associated costs, transcript preparation fees and costs, document copying,
17 exhibit preparation, courier, postage, facsimile, long-distance and communications expenses,
18 court costs and the costs and fees associated with any other legal, administrative or
19 alternative dispute resolution proceeding, fees and costs associated with execution upon any
20 judgment or order, and costs on appeal.

21 **(h)** "Bandwidth" means the extent of the range of frequencies between minimum
22 and maximum endpoints measured in megahertz (MHz).

23 **(i)** "Board" means the City's Board of Supervisors.

24 **(j)** "Board Approval" means the approval of the San Francisco Board of
25 Supervisors by resolution or ordinance, as applicable, and the approval of the Mayor unless

1 the Mayor's disapproval is overridden by the Board of Supervisors. Board approval shall not
2 be deemed to have occurred unless and until the applicable resolution or ordinance becomes
3 effective in accordance with Applicable Law.

4 **(k)** "Bona Fide Institutional Lender" means any one or more of the following: (1) a
5 savings bank, a savings and loan association, a commercial bank or trust company, an
6 insurance company, a real estate investment trust, or any other Person which, at the time a
7 pledge in trust or mortgage is recorded in favor of such Person, has assets of at least
8 \$500 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged
9 in the financial services business; or (2) any special account, managed fund, department,
10 agency or Affiliate of any of the foregoing; or (3) any Person acting in a fiduciary capacity for
11 any of the foregoing. For purposes hereof: (1) acting in a "fiduciary capacity" shall be deemed
12 to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan
13 agreement, indenture or other loan document; and (2) a lender, even if not a Bona Fide
14 Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if, no more than
15 thirty (30) City business days after such loan is consummated, the note(s) or other evidence
16 of indebtedness or the collateral securing the same are assigned to a Person then qualifying
17 as a Bona Fide Institutional Lender.

18 **(l)** "Cable Drop" shall have the meaning set forth in Section 46 below.

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

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

1 **(o)** “Capacity” means the maximum transmission capability of the System. The
2 Capacity for the System can be expressed in terms of bandwidth measured in hertz (cycles
3 per second) between minimum and maximum endpoints.

4 **(p)** “Channel” means both Analog Channels and Digital Channel Equivalents.

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

7 **(r)** "City" means the City and County of San Francisco, a municipal corporation of
8 the State of California.

9 **(s)** “City business day” shall mean each Monday through Friday, excluding any
10 day recognized as an official holiday by the City.

11 **(t)** “City Conduit” shall have the meaning set forth in Section 47(a) below.

12 **(u)** “City Deposit” shall have the meaning set forth in Section 54(b) below.

13 **(v)** “C/N” shall have the meaning set forth in Section 49(g)(3) below.

14 **(w)** “Communications Project Grant” shall have the meaning set forth in Section
15 45(e).

16 **(x)**

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

19 **(z)** “Construction Sequence Plans” shall have the meaning set forth in Section
20 17(a) below.

21 **(aa)** "Control" means the power to control the affairs and key decisions of another
22 Person, in whatever manner exercised, whether directly or indirectly.

23 **(bb)** “CPI-U” means the Consumer Price Index for All Urban Consumers (base
24 years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the
25 United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that

1 the base year differs, the Index shall be converted in accordance with the conversion factor
2 published by the United States Department of Labor, Bureau of Labor Statistics. If the Index
3 is discontinued or revised during the Term, such other government index or computation with
4 which it is replaced shall be used in order to obtain substantially the same result as would be
5 obtained if the Index had not been discontinued or revised. Adjustments in CPI-U shall be
6 calculated by comparing the CPI-U most recently published with the CPI-U in effect on
7 February 1, 2000. If the CPI-U has increased, then the sum or amount payable on the
8 calculation date shall be set by multiplying the sum or payment by a fraction, the numerator of
9 which is the CPI-U as of the calculation date and the denominator of which is the CPI-U in
10 effect on February 1, 2000.

11 **(cc)** "CPUC" means the California Public Utilities Commission.

12 **(dd)** "CULCOP" shall have the meaning set forth in Section 6(c) below.

13 **(ee)** "Demarcation Point" shall be the point within a building or otherwise
14 designated by the City where Grantee's fiber terminates.

15 **(ff)** "Deposits" shall have the meaning set forth in Section 54(b) below.

16 **(gg)** "Digital Channel Equivalent" means the portion of the Capacity of the System
17 required to deliver a digital video Signal, with accompanying audio, meeting or exceeding
18 National Television System Committee ("NTSC") quality standards.

19 **(hh)** "DTIS" means the City's Department of Telecommunications and Information
20 Services.

21 **(ii)** "DTIS Director" means the Director of DTIS, or his or her designee.

22 **(jj)** "DPW" means the City's Department of Public Works.

23 **(kk)** "EAS" shall have the meaning set forth in Section 43(i) below.

24 **(ll)** "Effective Date" means _____, 2002.

25

1 **(mm)** "Eligible Employee" shall have the meaning set forth in Chapter 12-O of the
2 San Francisco Administrative Code.

3 **(nn)** "Excavator" means "Utility Excavator" as defined in Section 2.4.4(s) of the
4 City's Public Works Code.

5 **(oo)** "Facilities" includes any physical element of the System used in connection
6 with, or designed to be used in connection with, the provision of Services or
7 Telecommunication Services, whether or not located in the Public Rights-of-Way, including,
8 without limitation, Hubs, Nodes, the Headend, pedestals, cabinets, ducts and conduits
9 (whether empty or occupied), transformers, equipment, drains, handholds, lines, manholes,
10 poles, power supplies and generators, splice boxes, surface location markers, vaults, tunnels,
11 amplifiers, power guards, coaxial cables, and fiber strands (whether active or dark).

12 **(pp)** "FCC" means the Federal Communications Commission.

13 **(qq)** "Fiber Backbone" shall mean Grantee's inter-Hub trunking, and shall not
14 include fiber optic or coaxial cable running from Hubs to Nodes or Nodes to buildings.

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

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

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

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

20 **(vv)** "Financial Arbitration" shall have the meaning set forth in Section 51(i)(5)
21 below.

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

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

24 **(yy)** "First Source Hiring Agreement" shall have the meaning set forth in Section
25 91(a) below.

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

11 **(aaa)** “Grantee” means RCN Telecom Services, Inc., and any lawful permitted
12 successor or assign.

13 **(bbb)** “Gross Revenues” means any and all income, receipts, consideration and
14 other revenue of any kind or nature, including but not limited to the value of goods or services
15 received in-kind or in a barter arrangement, derived by Grantee or any Affiliate from the
16 operation or use of the System to provide Service within the City. The use of the phrase
17 “within the City” does not limit Gross Revenues to those generated solely from operations
18 within the City. Rather, Gross Revenues include any revenues derived in any part through or
19 in connection with the operation of the System, including, but not limited to, such portion as is
20 attributable to the City, in accordance with general accounting principles, of advertising or
21 other revenues generated on a regional or national basis from Grantee's operations both
22 within and outside the City. Gross Revenues include, by way of illustration and not limitation:
23 any amounts or fees collected from Subscribers, regardless of how they are enumerated on
24 the bill, including subscriber fees, capacity fees, usage-based fees, installation fees,
25 disconnection fees, reconnection fees, change-in-service fees, late fees, and administrative

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

20 **(ccc)** "Hazardous Material" means any material that, because of its quantity,
21 concentration or physical or chemical characteristics, is deemed by any federal, state or local
22 governmental authority to pose a present or potential hazard to human health or safety or to
23 the environment. Hazardous Material includes, without limitation, any material or substance
24 defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the
25 Comprehensive Environmental Response, Compensation and Liability Act of 1980

1 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections
2 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any
3 "hazardous waste" as defined in Section 25117 or listed pursuant to Section 25140 of the
4 California Health & Safety Code; any asbestos and asbestos containing materials whether or
5 not such materials are part of any Facilities to be constructed on the Public Rights-of-Way by
6 or on behalf of Grantee, or are naturally occurring substances on, in or about the Public
7 Rights-of-Way, and petroleum, including crude oil or any fraction thereof, and natural gas or
8 natural gas liquids.

9 **(ddd)** "Headend" means the point in the System where all Signals are collected and
10 formatted for transmission on the System.

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

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

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

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

22 **(iii)** "Indemnify" means indemnify, protect, defend, reimburse and hold harmless
23 forever.

24 **(jjj)** "Loan" shall have the meaning set forth in (aaaaa) below.

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

1 **(lll)** “Local Origination Programming” means Programming produced in
2 San Francisco or containing San Francisco-related content.

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

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

15 **(ooo)** “Mid-Term Report” shall have the meaning set forth in Section 51(b) below.

16 **(ppp)** “Mid-Term Technical Review” shall have the meaning set forth in Section
17 51(a) below.

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

19 **(rrr)** “Negotiation Period” shall have the meaning set forth in Section 52(a) below.

20 **(sss)** “Node” means the equipment that receives Signals from a Hub and
21 redistributes the Signals to individual Subscribers.

22 **(ttt)** “Node Area” shall have the meaning set forth in Section 9(a) below.

23 **(uuu)** “Normal Business Hours” means a total of sixty (60) hours per week and
24 shall include the hours between 9:00 a.m. and 6:00 p.m. Monday through Friday and 10:00
25

1 a.m. and 6:00 p.m. on Saturday. The remaining seven (7) hours shall include some hours
2 after 6:00 p.m. during the week.

3 **(vvv)** "NTSC" shall have the meaning set forth in (gg) above.

4 **(www)** "One Year Construction Plan" shall have the meaning set forth in Section
5 17(a)(1) below.

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

9 **(yyy)** "PEG Digital Channel Equivalents" shall have the meaning set forth in
10 Section 49(b) below.

11 **(zzz)** "PEG Operating Contributions" shall have the meaning set forth in Section
12 48(a) below.

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

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

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

19 **(dddd)** "Programming" means any video, audio, text or data coded Signals carried
20 over the System.

21 **(eeee)** "Proposal" shall have the meaning set forth in Chapter 11.

22 **(ffff)** "Proposed Ordinance" shall have the meaning set forth in Section 51(b)
23 below.

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

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

1 **(iii)** “Quarterly Reports” shall have the meaning set forth in Section 17.

2 **(jjj)** “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 **(kkk)** “Revocation” means the City’s affirmative act of Terminating this Franchise.

6 **(lll)** “SAP” shall have the meaning set forth in Section 49(g)(4) below.

7 **(mmm)** “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 **(nnn)** “Security Interest” shall have the meaning set forth in Section 54(a) below.

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

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

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

23 **(sss)** “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 **(tttt)** “Subscriber Deposit” shall have the meaning set forth in Section 54(b) below.

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

4 **(vvvv)** “System Acceptance Tests” shall have the meaning set forth in Section 36(a)
5 below.

6 **(wwww)** “Telecommunications Service” means any service regulated by the CPUC or
7 the FCC as a telecommunications service and provided to customers by Grantee in its
8 capacity as a telephone corporation regulated by the CPUC and certificated pursuant to recital
9 Number 1 above.

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

11 **(yyyy)** “Termination” means the conclusion of a Franchise by any means, including,
12 but not limited to, by expiration of its term, abandonment, or Revocation.

13 **(zzzz)** “Termination Date” shall have the meaning set forth in Section 52(b)(1)
14 below.

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

1 transfer or cumulative transfer of a voting interest by a Person or group of Persons acting in
2 concert of twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or
3 any change in the managing general partners of a Grantee is a change of Control. "Transfer"
4 does not include: (1) a lease to a UVPP pursuant to 47 U.S.C. Section 573; (2) the
5 transmission of a commodity or electronic signal using Facilities on a common carrier basis;
6 (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224,
7 California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in
8 trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a
9 Bona Fide Institutional Lender in connection with a loan or other financing required to secure
10 the construction, operation, or repair of the Facilities ("Loan") provided that such Loan is
11 subject to the rights and powers of the City pursuant to the Franchise and Applicable Law,
12 including, without limitation, the right of the City to approve any Transfer upon foreclosure.
13 "Transferring" and "Transferee" shall have correlative meanings.

14 **(bbbbbb)** "TSC" shall have the meaning set forth in Section 45(e) below.

15 **(cccccc)** "Two Year Construction Plan" shall have the meaning set forth in Section
16 17(a)(2) below.

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

18 **(eeeeee)** "UVPP" shall mean an unaffiliated video programming provider, which is any
19 Person who uses capacity on Grantee's Cable System to deliver Cable Service or other
20 communications service (as that term is used in 47 U.S.C. Section 542(h)) to Subscribers and
21 who is not an Affiliate of Grantee.

22 **(ffffff)** "Video Feeds" shall have the meaning set forth in Section 49(g)(2) below.

23 **(gggggg)** "Video Service" shall mean Cable Service provided over an OVS.

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

1 PART 2 – FRANCHISE GRANT

2 **Section 2. FRANCHISE GRANT**

3 (a) Board Authorization. Pursuant and subject to Charter Section 16.111, Chapter
4 11, and the terms and conditions agreed to herein, the City hereby authorizes Grantee to
5 occupy and use the Public Rights-of-Way to construct, install, repair, maintain and to operate
6 its System within the City to provide the Services specified in subsection (b) below during the
7 Term. This Franchise does not confer any rights other than those expressly provided herein
8 and does not authorize Grantee to occupy and use the Public Rights-of-Way for any purposes
9 other than to construct, install, repair, maintain and operate its System to provide the Services
10 specified in subsection (b) below.

11 (b) Services Authorized. Subject to the acknowledgment and agreement in (c)
12 below, this Franchise authorizes Grantee to use the Public Rights-of-Way to provide Video
13 Service and Cable Internet Service, leasing or offering the use of the System through any
14 other arrangement to any Person otherwise authorized to use the Public Rights-of-Way
15 pursuant to Sections 11.3 or 11.4 of Chapter 11 or to a UVPP, and all other services which
16 are provided via the transmission of Signals over its System, so long as Grantee provides the
17 City with written notice at least ten (10) City business days before providing any service in
18 addition to Cable Service or Cable Internet Service and so long as Grantee complies with the
19 terms and conditions of this Franchise. Grantee shall have no obligation under this
20 subsection (b) to notify the City before providing Telecommunications Services. Grantee's
21 failure to obtain City approval prior to providing any service not authorized pursuant to this
22 Franchise shall be a Material Breach of this Franchise.

23 (c) Telecommunications Services. Subject to the conditions set forth in subparts
24 (a) through (d) of this subsection, the City hereby acknowledges and agrees (i) that Grantee
25 may operate and use its Facilities to provide Telecommunications Services and shall not be

1 liable for payment of franchise fees on Gross Revenues from the operation of the System to
2 provide Telecommunications Services pursuant to Part 4 below, and (ii) that Grantee shall not
3 be required to obtain another Utility Conditions Permit pursuant to Section 11.9 of Chapter 11.
4 The City's acknowledgment and agreement is subject to the following conditions: (a) There is
5 no change in §7901 of the California Public Utilities Code or its interpretation, which, as of the
6 Effective Date, is interpreted to prohibit local governments from requiring telephone
7 corporations in California to obtain a local Franchise or pay fair and reasonable compensation
8 for use of the Public-Rights-of-Way in connection with the provision of Telecommunications
9 Services; (b) Grantee maintains a current Certificate of Public Convenience and Necessity
10 from the California Public Utilities Commission authorizing Grantee to provide
11 Telecommunications Services, or other successor authorization presented to the City
12 pursuant to subpart (d) below and accepted by the City, and (c) Grantee is in compliance with
13 all the provisions of its Certificate of Public Convenience and Necessity from the California
14 Public Utilities Commission or other successor authorization presented to and accepted by the
15 City; and (d) Grantee provides the City written notice within 10 City business days of any
16 material modification to its Certificate of Public Convenience and Necessity. Grantee shall
17 promptly provide to the City a copy of any modification to its Certificate of Public Convenience
18 and Necessity. If, at any time, any of the aforementioned conditions are not satisfied, DTIS
19 may deem the acknowledgment and agreement set forth in this subsection to be null and void
20 upon 20 City business days written notice to Grantee, may require RCN to apply for a UCP
21 pursuant to Section 11.9 of Chapter 11, or may require Grantee to obtain any other lawful
22 authorization that it may deem appropriate in its sole discretion. With the exception of the
23 franchise fee requirements of Part 4 below, notwithstanding their use to provide
24 Telecommunications Services, Grantee's Facilities and the operation and use of its Facilities
25 and System shall be subject to all the terms and conditions of this Franchise.

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

2 (1) The FCC has declared Cable Internet Services to be interstate information
3 services, FCC 02-77, rel. March 15, 2002, but has not ruled definitively as to whether local
4 franchise authorities may, nonetheless, regulate or charge franchise fees on such services.
5 Pending a resolution of those issues, RCN agrees as follows:

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

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

23 **(f)** Effective Date. Provided it has been accepted by Grantee pursuant to Section
24 11.13 of Chapter 11, the Term of this Franchise shall commence (the "Effective Date") on the
25

1 effective date of the ordinance of the San Francisco Board of Supervisors enacting this
2 Franchise.

3 (g) Term. The term of this Franchise shall be thirteen (13) years, commencing upon
4 the Effective Date (the "Term").

5 (h) As Is Condition of City Property. Grantee agrees that the use of the Public
6 Rights-of-Way is being offered by the City and accepted by Grantee in its "AS IS WITH ALL
7 FAULTS" condition. Grantee specifically acknowledges and agrees that neither the City nor its
8 Agents has made, and there is hereby disclaimed the making of, any representation or
9 warranty, express or implied, of any kind, with respect to the condition of the Public Rights-of-
10 Way or appurtenances thereto, or the suitability of the Public Rights-of-Way for Grantee's
11 intended uses. In connection with Grantee's use of the Public Rights-of-Way, Grantee hereby
12 releases the City from any and all claims relating to the matters set forth in this Section.

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

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

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

20 (c) Agrees that this Franchise was granted pursuant to processes and procedures
21 consistent with Applicable Law, and that it will not raise any claim to the contrary, or allege in
22 any claim or proceeding by Grantee against the City that any provision, condition or term of
23 Applicable Law or this Franchise at the time of its acceptance was unreasonable, arbitrary, or
24 void, or that the City had no power or authority to make or enforce any such provision,
25

1 condition or term; provided, that nothing in the foregoing is intended to limit Grantee's ability to
2 challenge or dispute any interpretation of any provision of this Franchise.

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

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

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

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

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

1 **Section 4.** TRANSFERS: City Approval Required. This Franchise is a privilege that is in
2 the public trust and personal and specific to Grantee and is granted in consideration of the
3 unique knowledge, skill and expertise possessed by Grantee. Consequently, the City and
4 other Subscribers shall not be required to accept performance of this Franchise from a third
5 party who has not submitted its qualifications for review and approval pursuant to Section
6 11.14 of Chapter 11. Any Transfer shall be subject to all the terms and conditions of Section
7 11.14 of Chapter 11. Any Transfer without the approval of the City as set forth in Chapter 11
8 shall be considered to impair the City's assurance of due performance, and may, at the City's
9 sole option, be voidable and/or constitute a Material Breach of this Franchise.

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

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

22 PART 3 – CONSTRUCTION OF SYSTEM

23 **Section 6.** CONDITIONS ON CONSTRUCTION.

24 (a) No Waiver. Unless expressly stated otherwise herein, nothing in this Franchise
25 is intended to constitute a waiver in favor of Grantee of any construction, excavation, or

1 Facility placement requirement, or any fee, tax, charge, or assessment that may be required
2 by Applicable Law.

3 **(b)** Grantee Shall Obtain All Necessary Permits And/Or Approvals. Consistent with
4 Grantee's obligation to comply with all Applicable Laws, Grantee shall not commence any
5 construction, installation or relocation of Facilities within the Public Rights-of-Way until any
6 necessary permits and/or approvals have been issued by the proper City officials. Grantee
7 shall pay all fees required as a condition precedent to the issuance of any such permits and/or
8 approvals in accordance with the applicable rates and charges then in effect. Additionally, the
9 City may impose such conditions and regulations on a permit or approval as are necessary, in
10 the discretion of the City, consistent with Applicable Law, including, without limitation,
11 conditions imposed for the purpose of protecting and/or preserving the Public Rights-of-Way
12 and any structures in the Public Rights-of-Way, and the protection of the public or the
13 continuity of pedestrian or vehicular traffic over the Public Rights-of-Way.

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

24 **(d)** Underground Service Alert. In accordance with the provisions of Chapter 3.1 of
25 Division 5 of Title I of the Government Code of the State of California (Section 4216 et seq.),

1 Grantee as an operator of a subsurface installation shall obtain and maintain membership in a
2 regional notification center (e.g., Underground Service Alert - Northern California), and shall
3 otherwise comply with the provisions of the referenced chapter, division and title upon
4 demand. Grantee shall furnish written proof of such membership to DPW within 10 days of
5 the Effective Date. Repeal of any Law requiring such membership shall not negate Grantee's
6 obligation to maintain such membership.

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

11 (f) Public Notices. The Grantee shall endeavor to notify all residents concerning
12 the impact of the installation of its Facilities in a neighborhood in which it plans construction
13 prior to commencing construction and periodically during the course of its construction by
14 letter and when appropriate through neighborhood newspapers and neighborhood
15 associations. At a minimum, Grantee shall comply with the requirements of Section 2.4.50 of
16 the City's Public Works Code. For construction activities involving excavation that is
17 incidental to aerial construction, Grantee shall comply with Section 2.4.50(a) of the Public
18 Works Code even if such compliance is not otherwise required by the terms of Section
19 2.4.50(a). For all other excavation, Grantee shall comply with Section 2.4.50(b) of the Public
20 Works Code, even if such compliance is not otherwise required by the terms of Section
21 2.4.50(b). In addition, Grantee shall deliver written notice of its aerial construction activities to
22 affected residents not less than seventy-two (72) hours prior to commencing construction. All
23 notices issued to residents pursuant to this Section shall provide a toll free number that
24 residents may call to report problems or request additional information.

25 **Section 7. INSTALLATION OF FACILITIES.**

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

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

23 **(c)** Installation Shall Be Permanent In Nature. All Facilities installed in the Public
24 Rights-of-Way shall be of a permanent nature, using durable components, except where
25 maintenance or emergency repairs require the installation of temporary Facilities. Temporary

1 Facilities shall be replaced as soon as possible. Grantee shall notify DTIS in writing if
2 replacement of temporary Facilities will not be achieved within sixty (60) days of their
3 installation. Nothing in the foregoing shall be deemed to grant to Grantee a permanent right
4 or interest in the Public Rights-of-Way, or to limit the City's relocations rights as set forth in
5 any Applicable Law or permit.

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

10 **Section 8. SYSTEM CONSTRUCTION AND CITY ACCEPTANCE.**

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

19 (b) Joint Excavation. Grantee shall take advantage of every opportunity to
20 participate in joint excavation in areas where: (i) underground facilities are required; (ii)
21 Grantee anticipates installing Facilities, and; (iii) joint excavation is mandated by Section
22 2.4.12 of the San Francisco Public Works Code, provided that DPW determines that
23 installation of dry utility facilities is feasible. This provision shall not be read to expand any of
24 Grantee's obligations pursuant to Article 2.4 of the Public Works Code with respect to
25 excavations solely to connect Facilities in the Public Rights of Way to an individual building.

1 **Section 9.** CONSTRUCTION SEQUENCE.

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

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

14 **(c)** Sequence of Construction of Fiber Routes. Subject to any necessary approvals
15 and physical considerations, Grantee shall schedule the sequence of construction of each
16 Hub Area and each Fiber Route in a Hub Area based upon the following criteria: the density of
17 Residential Units along the Fiber Route, the percentage of the Fiber Route that will be aerial
18 Facilities, and the amount of excavation along a Fiber Route being performed by other
19 Excavators. Subject to any necessary approvals and to the extent physically practical,
20 Grantee shall first construct in a Hub Area and along those Fiber Routes in a Hub Area with
21 the highest density of Residential Units, those served by aerial Facilities, and those with a
22 significant amount of excavation being performed by other Excavators.

23 **(d)** No Discrimination. Grantee shall: (i) provide the same scope and quality of
24 Service throughout the System; (ii) shall not differentiate the technical qualities of its System
25 in any geographic area of the City, or plan, schedule or perform construction or Service

1 activation in a Hub Area, a Node Area, or of a Fiber Route in a discriminatory manner; or (iii)
2 otherwise discriminate against Persons located in a Hub Area, a Node Area, or along a Fiber
3 Route on the basis of the fact or perception of a Person's or area's income, race, color, creed,
4 religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic
5 partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV
6 status (AIDS/HIV status). Grantee's failure to comply with the non-discrimination provisions of
7 this subsection shall be a Material Breach of this Franchise.

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

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

21 PART 4 - FRANCHISE FEE PAYMENTS

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

1 **Section 12.** PAYMENT. Grantee's payment of franchise fees shall be subject to the
2 provisions of Chapter 11. Grantee shall make quarterly franchise fee payments pursuant to
3 Section 11.22 of Chapter 11 and shall owe interest on any late franchise fee payments
4 pursuant to Section 11.27 of Chapter 11. All franchise fees and any other payments due to
5 the City hereunder shall be paid by Grantee to the City, without offset or prior demand, in
6 immediately available funds of the United States of America at the address for notices to the
7 City specified in this Franchise or to such other Person or at such other place as the City may
8 from time to time designate by written notice to Grantee. Grantee's failure: (1) to place any
9 disputed amount of franchise fees in an escrow fund pursuant to Section 11.26 of Chapter 11
10 within 30 days following written demand from the City; or (2) to make two successive quarterly
11 franchise fee payments to the City in full as and when required hereunder shall constitute a
12 Material Breach of this Franchise.

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

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

21 **PART 5 - REPORTING REQUIREMENTS**

22 **Section 15.** REQUIRED REPORTS AND NOTICES. Grantee shall comply with the
23 reporting requirements of Article IV of Chapter 11. In addition, Grantee shall give City notice
24 promptly of any material deficiency in the System including, but not limited to, any of the
25 following: (i) material defects in construction or installation; (ii) deterioration or obsolescence

1 of the System which has caused any material portion of it to become dysfunctional; and
2 (iii) failure to meet any material requirement of any regulatory agency with jurisdiction.
3 Grantee shall promptly develop and implement a plan to address any such deficiency, and
4 shall make, upon request, periodic reports to City of its progress in correcting such deficiency

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

7 **Section 17. INFORMATION DUE DURING SYSTEM CONSTRUCTION.** No later than ten
8 (10) City business days after the Effective Date of this Franchise, Grantee shall provide to
9 DTIS the information described in this Section (“First Report”). Thereafter, Grantee shall
10 provide such information to DTIS every three (3) months, on the same day of the month as
11 the First Report was due, or the next City business day, if the day is not a City business day
12 (“Quarterly Reports”). Both the First Report and the Quarterly Reports shall be provided in a
13 paper and electronic form acceptable to the DTIS Director.

14 (a) Construction Sequence Plans. Grantee shall provide DTIS with System
15 construction plans, as described below, showing the anticipated sequence of Grantee’s
16 construction (“Construction Sequence Plans”). The Construction Sequence Plans shall
17 contain all information at a level of detail and in a form acceptable to the Director of DTIS.
18 Grantee shall also include written summaries regarding its planned sequence of construction
19 with both the One and Two Year Construction Plans, providing information sufficiently detailed
20 for the City to establish that its construction projections comply with the criteria set forth in
21 Section 9 above.

22 (1) One Year Construction Plan. One set of Construction Sequence Plans
23 shall include Grantee’s anticipated construction sequence for no less than one (1) year from
24 the date the plan is provided to the City (“One Year Construction Plan”). The One Year
25

1 Construction Plan shall designate which quarter of the year the Grantee intends to begin the
2 construction in each area scheduled for construction.

3 (2) (2) Two Year Construction Plan. One set of Construction Sequence
4 Plans shall include Grantee’s anticipated construction sequence for no less than two (2) years
5 from the date the plan is provided to the City (“Two Year Construction Plan”). The Two Year
6 Construction Plan shall designate which quarter of the year the Grantee intends to begin the
7 construction in each area scheduled for construction.

8 (b) Certifications. Grantee shall include a written certification with the Construction
9 Sequence Plans certifying that it has not planned, and will not execute, any construction
10 sequence in a manner that would improperly discriminate against any Person in violation of
11 Section 9(d) above.

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

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

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

21 (3) Explanation Of Deviation From Prior Construction Sequence Plans.
22 Grantee shall construct the System substantially in accordance with the Construction Plans
23 submitted to the City. Upon deviating from such plans, Grantee shall submit a written
24 explanation and any necessary maps to clearly demonstrate how Grantee’s actual System
25

1 construction has deviated from the representations made by Grantee in its System
2 Construction Plans submitted in its prior Quarterly Report to DTIS (“Update”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 PART 7– CUSTOMER SERVICE

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

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

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

24 **Section 28.** LANGUAGES. Grantee shall have employees able to respond to billing
25 inquiries and Service requests in all languages in which Grantee markets Services. At a

1 minimum, Grantee shall have employees able to respond to billing inquiries and Service
2 requests in English and the 5 other languages DTIS determines to be spoken by the largest
3 number of San Francisco residents.

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

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

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

25

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

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

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

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

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

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

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

22 **(e)** Respond by telephone to complaints referred to it by the City no later than the
23 next business day after the referral and follow up in writing no later than two (2) business days
24 after the referral; and
25

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

6 **Section 31. RATES AND CHARGES.**

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

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

1 renewal of the TSC franchise (Ordinance 105-64) or the grant of a subsequent franchise to
2 TSC, RCN's obligations under this section shall be automatically adjusted to correspond to
3 the low income requirements to be provided by TSC under its new franchise.

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

16 **Section 33. CABLE TELEVISION ACCESS AND DEVELOPMENT FUND.** After the
17 allocation provided in Section 32 above, an amount equivalent to two tenths of one percent
18 (0.2%) of Grantee's Gross Revenues shall be allocated by the City to the Cable Television
19 Access and Development Fund for public, educational, and municipal access activities. The
20 not-for-profit corporation designated by the Board pursuant to the terms of Ordinance 105-64,
21 as amended, shall receive not less than one-third of any amount that may be allocated
22 pursuant to this Section. This potential allocation is intended for the benefit of the City only,
23 and no other Person, including but not limited to Grantee, may rely upon, or seek to enforce or
24 benefit from, the proposed allocation or failure to allocate. The terms of this Franchise shall
25 be governed by and subject to the budgetary and fiscal provisions of the City's Charter.

1 Notwithstanding anything to the contrary contained herein, there shall be no obligation for the
2 allocation, payment or expenditure of money by the City unless the City's Controller first
3 certifies, pursuant to Section 3.105 of the Charter, that there is a valid appropriation from
4 which the expenditure may be made and that unencumbered funds are available for the
5 allocation or expenditure.

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

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

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

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

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

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

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

24 **Section 36. SYSTEM ACCEPTANCE TESTS.**

25

1 **(a)** Tests Required. Grantee shall perform the following tests to establish that the
2 System complies with this Franchise, FCC rules, and other Applicable Laws (“System
3 Acceptance Tests”). As applicable, System Acceptance Tests shall be conducted at end-of-
4 line locations served by five percent (5%) of all Nodes within the System:

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

21 The System Acceptance Tests will be complete when, after any necessary
22 corrective action pursuant to Section 42 below, the DTIS Director determines that the System
23 meet applicable requirements.

24 **(b)** Measurements Prior To Tests. Prior to the System Acceptance Tests, Grantee
25 shall take the following measurements at its Headend, under the City’s supervision: (i) video

1 carrier levels and picture quality on all Channels leaving the Headend; (ii) audio carrier levels
2 on all Channels leaving the Headend; and (iii) FM radio carrier levels, if any. Additionally,
3 prior to the tests, Grantee shall present the City with copies of current calibration certificates
4 issued by an independent calibration laboratory for all frequency/voltage sensitive equipment
5 that will be used in the tests.

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

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

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

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

21 **Section 40. TEST RESULTS.** Upon DTIS's written request, Grantee shall provide DTIS a
22 written report of the results of any test and any other written materials in Grantee's control or
23 possession relating to the test, no later than ten (10) City business days after the test unless
24 otherwise instructed by DTIS. The complete results of all tests performed pursuant to this
25

1 Part shall be retained by Grantee and shall be available for inspection or copying by DTIS for
2 five (5) years after they are completed.

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

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

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

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

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

24 (c) Temperature Specifications. The System shall be capable of operating over an
25 outdoor temperature range of negative ten (-10) degrees Fahrenheit to one hundred and

1 twenty five (125) degrees Fahrenheit and over variation in supply voltages from 105 to 130
2 volts AC without catastrophic failure or irreversible performance changes.

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

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

16 (f) Electrical Power Purchases. At two year intervals, commencing with the
17 second (2nd) anniversary of the Effective Date, Grantee shall provide the City with a full
18 description of the electrical power required to operate Grantee's System and a full description
19 of all terms and conditions under which Grantee is purchasing or proposes to purchase
20 electrical power to meet these needs. Grantee shall provide the Hetch Hetchy Water & Power
21 Division (HHW&P) of the City's Public Utilities Commission not less than eighty (80) City
22 business days to review Grantee's requirements and current and proposed service terms to
23 determine whether HHW&P can offer comparable service on terms equal to or better than
24 Grantee has been able to obtain through other electrical service providers. If HHW&P offers
25 power to Grantee on terms equal to or better than those terms that Grantee is able to obtain

1 from any other power supplier, Grantee shall purchase HHW&P power unless doing so would
2 create an undue hardship on Grantee, provided however that Grantee shall not enter into any
3 long term agreement for the purchase of electrical power without providing to HHW&P the
4 information and opportunity to offer a competitive proposal as set forth in this section. By
5 written notice from its General Manager, HHW&P shall have the authority to waive the
6 periodic report and notice provisions of this section so long as such waiver is consistent with
7 the purposes of this Section.

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

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

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

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

24 **(h)** Service for the Disabled. All closed-caption programming retransmitted on the
25 System shall include the closed-caption signal. For hearing impaired Subscribers, Grantee

1 shall provide information concerning the cost and availability of equipment to facilitate the
2 reception of all Services for the hearing impaired. In addition, Grantee must have TDD/TTY
3 (or equivalent) equipment available for use in its local office, and a publicly listed telephone
4 number to access such equipment so that hearing impaired Subscribers may communicate
5 with Grantee for all their service needs. When such equipment is commercially available,
6 Grantee shall offer, for purchase or lease, remote control devices to operate any Grantee-
7 provided equipment for those Subscribers who are mobility-limited.

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

1 communities. Grantee's failure to install and maintain the EAS pursuant to this Section shall
2 be deemed a Material Breach.

3 **Section 44. SYSTEM MAINTENANCE.**

4 (a) Service Interruptions to be Minimized. Grantee shall schedule System
5 maintenance to minimize the likelihood of Service Interruptions.

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

15 PART 9 - CITY FACILITIES AND BENEFITS

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

19 (a) Fiber Strands Provided To City. Within thirty (30) City business days of a DTIS
20 request made after Grantee has completed construction of its System or a discrete portion of
21 the System, Grantee shall provide and maintain for the City's use and at no cost to the City,
22 up to four (4) dark fiber optic strands along its Fiber Backbone route(s) ("Fiber Strands").

23 (b) Fiber Drops. Grantee shall, at no cost to the City, connect up to 350 City-
24 designated locations to the Fiber Strands using two single-mode fiber strands from the Hub to
25 each location ("Fiber Drops"). The City may designate some locations in which multiple Fiber

1 Drops shall be installed, provided that Grantee shall have no obligation to provide a total of
2 more than 350 Fiber Drops. The designation of a Fiber Drop will reduce the number of free
3 Cable Drops available to the City under Section 46 below by 1.5 Cable Drops per Fiber Drop.
4 Grantee shall make Fiber Drops available to the City pursuant to the procedure set forth in
5 subsection (f) below.

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

13 (d) Monitoring and Maintenance Of Fiber Strands. Grantee shall be responsible for
14 providing continuity of the City's Signal at useful signal levels from any Demarcation Point to
15 another, but shall not be responsible for the maintenance of the City equipment on the City
16 side of the Demarcation Point, or any termination equipment used by the City at the Fiber
17 Drops, except as set forth in subsection (b) above. Grantee shall be responsible for
18 maintaining and repairing, at no cost to the City, the Fiber Strands up to the Demarcation
19 Point. Grantee shall use the same efforts to maintain and repair the City's Fiber Strands and
20 Fiber Drops as it uses to maintain and repair its own fiber strands. Grantee shall strive to
21 ensure that outages are minimized by monitoring the Fiber Strands as part of its System, shall
22 notify a DTIS-designated City employee as soon as possible in the event Grantee detects an
23 outage or problem with the Fiber Strands, and shall test and remedy the outage or problem in
24 as efficient a manner as possible. DTIS shall contact Grantee in the event that the City
25 experiences service problems or an outage on the FOI and Grantee shall cooperate with DTIS

1 and perform testing to determine the source and resolve the problem as soon as possible.
2 Grantee shall notify a DTIS-designated City employee of scheduled System maintenance
3 activities which may impact the City's use of the Fiber Strands at least two (2) City business
4 days prior to such scheduled maintenance.

5 (e) Communications Project Grant. On each anniversary of the Effective Date up to
6 and including the third (3rd) anniversary, Grantee shall pay to DTIS fifty thousand dollars
7 (\$50,000) for the City's purchase of equipment and services related to City communications
8 projects and related uses as determined by the City in its sole discretion ("Communications
9 Project Grant"). The Communications Project Grant may be used, without limitation, to fund
10 the City's use of the FOI, including, without limitation, consultants, equipment, and
11 administrative costs. On the [fourth (4th) anniversary of the Effective Date, Grantee's funding
12 obligation shall be automatically adjusted on a prospective basis (without credit for prior
13 contributions) to match similar contributions agreed to by Television Signal Corporation or its
14 successor in interest ("TSC") in Ordinance 105-64, as it may be amended. The adjustment
15 shall be made equitably and proportionally. Accordingly, if the TSC Communications Project
16 Grant to the City is a lump sum contribution based upon the total number of TSC subscribers,
17 then Grantee's funding shall be a lump sum contribution prorated based upon the comparative
18 number of Subscribers (TSC grant amount divided by the number of TSC subscribers and
19 then multiplied by the number of Grantee's Subscribers) and paid in the same manner as
20 TSC's funding. If the TSC Communications Project Grant is in cash, but is based upon a
21 percentage of TSC's Gross Revenues or some other formula, then Grantee's contribution
22 shall be in cash and based upon the same percentage or other formula. If the TSC
23 Communications Project Grant is in the form of a service or in the provision of certain goods
24 or equipment, then the City shall have the option of either: (i) requiring the same service,
25 goods or equipment from the Grantee, equitably prorated based upon the comparative

1 number of Subscribers, to the extent Grantee can reasonably provide the service, goods or
2 equipment; or (ii) requiring Grantee to pay to the City an equivalency in cash, determined on
3 the basis of the cost to TSC of providing the service, goods or equipment, equitably prorated
4 based upon the comparative number of Subscribers. Notwithstanding the foregoing, in no
5 event shall Grantee's contribution be less than ten thousand dollars (\$10,000) per year after
6 the 3rd anniversary of the Effective Date, adjusted annually from the Effective Date by the
7 CPI-U.

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

1 intent to pass DTIS's designated Fiber Drop location. Additionally, notwithstanding DTIS's six
2 (6) month notice obligation, DTIS may designate its first round of Fiber Drop locations along
3 any route shown on the first set of One Year Construction Reports provided to it within thirty
4 (30) City business days of receipt and Grantee shall install Fiber Drops at those locations
5 pursuant to the provisions of this Section. Grantee shall provide a Fiber Drop no later than
6 twenty (20) City business days after activating Service in the Node Area where the Fiber Drop
7 is located.

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

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

21 **(i)** Additional Fiber Drops. In the event the City desires to designate more Fiber
22 Drops than are provided in subsection (b) above, the City may pay Grantee the Incremental
23 Labor and Materials Cost for installing a Fiber Drop. The remaining provisions of this Section
24 regarding Fiber Drops shall apply to all Fiber Drops installed pursuant to this subsection.
25

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

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

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

20 **Section 46. FREE SERVICE TO CITY-DESIGNATED BUILDINGS.** Grantee shall install one
21 (1) drop, including reasonable interior wiring, to as many as 525 City-designated buildings
22 with an exterior wall within 125 feet of Grantee's System for underground wiring and 150 feet
23 of Grantee's System for above-ground wiring ("Cable Drop"); provided, if a City-designated
24 building requires a Cable Drop in excess of the above-referenced length, Grantee shall
25 provide the Cable Drop so long as the City agrees to pay the Incremental Labor and Materials

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

20 **Section 47. CITY CONDUIT.**

21 (a) Conduit For City's Sole and Exclusive Use. During construction of its System
22 and whenever it places Facilities underground, Grantee, in conjunction with the installation of
23 its own conduit, shall install conduit for the sole and exclusive use of the City and without
24 charge to the City ("City Conduit"). The City shall have a right to a minimum of 539 linear
25 miles of one (1) two inch (2") conduit or any combination of conduit of equivalent value.

1 Consequently, the City may elect to trade the right to one (1) linear mile of one (1) two inch
2 (2") conduit for .54 (54/100) linear miles of (1) four inch (4") conduit; or .22 (22/100) linear
3 miles of (2) four inch (4") conduits. The City may also elect to have Grantee install additional
4 City Conduit upon payment to Grantee of Incremental Labor and Materials Costs. The DTIS
5 Director shall designate the placement of the City Conduit in the same manner as provided for
6 Fiber Drops in Section 45(f) above. Grantee's failure to provide City Conduit pursuant to this
7 Section shall constitute a Material Breach of this Franchise.

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

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

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

24 **(e)** Use of Conduit. The City, or any City-designated entity, may use the City
25 Conduit for any lawful municipal or public purpose for or on behalf of the City acting in its

1 governmental or proprietary capacity; provided, however, that the City shall not use or permit
2 the use of the City Conduit to provide any services for profit for any non-municipal or non-
3 public purpose in competition with services provided by Grantee over its Facilities. The City
4 may solicit bids to provide services using the City Conduit. Grantee shall be invited to
5 respond to any such solicitation.

6 **Section 48. PEG CONTRIBUTIONS.**

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

15 (b) Automatic Adjustment of Quarterly Contributions. Grantee's PEG Operating
16 Contributions shall be automatically adjusted on a prospective basis (without credit for prior
17 contributions) to correspond to any payments provided to the City by TSC that may be used to
18 support the purchase of equipment, the development of programming or the operation and
19 maintenance of the PEG Channels upon the effective date of an act of the Board renewing the
20 franchise granted by Ordinance 105-64 to TSC or otherwise granting a subsequent franchise
21 to TSC. The adjustment shall be made equitably and proportionally. Accordingly, if the PEG
22 Operating Contributions are a lump sum contribution based upon the total number of TSC
23 subscribers, then Grantee's funding shall be a lump sum contribution prorated based upon the
24 comparative number of Subscribers (TSC grant amount divided by the number of TSC
25 subscribers and then multiplied by the number of Grantee's Subscribers) and paid in the same

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

- 11 • Capital Contributions. For the support of equipment and production facilities for the PEG
12 Channels, Grantee shall make the following payments to the City in addition to all other
13 payments set forth in this Franchise:
 - 14 • \$200,000, adjusted by the CPI-U, on or before the first (1st) anniversary of the Effective
15 Date;
 - 16 • \$675,000, adjusted by the CPI-U, on or before the third (3rd) anniversary of the Effective
17 Date; and
 - 18 • \$675,000, adjusted by the CPI-U, on or before the eighth (8th) anniversary of the Effective
19 Date.

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

22 **Section 49. PEG CHANNELS.**

23 (a) PEG Channels. Grantee shall provide seven Analog Channels for public,
24 educational and/or governmental use within sixty (60) City business days of offering Services
25 under this Franchise ("Analog PEG Channels"). The PEG Channels shall be put in the same

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

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

22 **(c)** Automatic Adjustment of PEG Channels and Digital Channels. Grantee's
23 obligations pursuant to subsections (a) and (b) above shall be adjusted to correspond to any
24 Analog PEG Channels or Digital Channel Equivalents required to be provided to the City by
25 Television Signal Corporation, or its successor, upon the effective date of an act of the Board

1 renewing the franchise granted by Ordinance 105-64 to Television Signal Corporation or
2 otherwise granting a subsequent franchise to Television Signal Corporation or its successor.

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

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

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

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

23 (1) PEG Signal Transmission. Pursuant to Section 11.53 of Chapter 11, the
24 System shall be designed and constructed to permit interconnection with other systems.

1 Upon the DTIS Director's request, Grantee shall promptly interconnect to other systems as
2 may be necessary in order to transmit PEG programming to Subscribers.

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

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

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

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

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

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

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

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

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

20 **(h)** Grantee Request For Negotiations. In the event Grantee believes it can
21 negotiate mutually agreeable alternative amendments, or believes it is not economically or
22 technologically feasible to implement the terms of the Proposed Ordinance, Grantee and DTIS
23 shall engage in negotiations for no more than forty (40) City business days to determine
24 whether alternative amendments can be mutually agreed upon.

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

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

20 (2) Within twenty (20) City business days following the engagement of the
21 Technical Experts, each party shall submit to the Technical Experts and to the other party a
22 statement as to the issues to be decided by the Technical Experts as well as any written
23 arguments or materials to support their position with respect to each issue. The issues to be
24 decided will be strictly limited to matters relating to the Mid-Term Technical Review, the Mid-
25 Term Report, and the Proposed Ordinance as set forth in this Section, and the parties shall

1 not allege or raise any other issues. Each party may, within thirty-five (35) City business days
2 following the engagement of the Technical Experts, submit rebuttal information to the
3 Technical Experts. At the request of the Technical Experts, the parties may be asked to
4 present information or attend an arbitration hearing in San Francisco to discuss and debate
5 the merits of each party's position. Notwithstanding anything to the contrary herein, there
6 shall be no communication whatsoever between a party hereto and any Technical Expert
7 except for communications: (i) in writing and sent simultaneously to the other party and to all
8 of the Technical Experts; or (ii) in person or telephonically in the presence of the other parties
9 and all of the Technical Experts.

10 (3) Within sixty (60) business days following the engagement of the
11 Technical Experts, the Technical Experts shall jointly issue a written report which addresses
12 and resolves the disputed issues between the parties. The Technical Experts shall make
13 clear all assumptions upon which their professional conclusions are based. The conclusions
14 set forth in the written report of the Technical Experts shall be binding on the parties. In the
15 event the Technical Experts do not agree upon any issue, they shall so state in their report. If
16 the parties are unable to resolve the matter within ten (10) City business days following
17 receipt of the report, then the Technical Experts shall jointly select and appoint a third
18 Technical Expert that meets the qualifications set forth above. Each party may submit to the
19 third Technical Expert and simultaneously to the other party, within ten (10) City business
20 days following the appointment of the third Technical Expert, written materials or arguments
21 addressing the issues not agreed upon by the first two Technical Experts. The third Technical
22 Expert shall review the written report of the first two Technical Experts, meet and confer with
23 them if necessary, and resolve the differences per a written report to be completed within
24 forty-five (45) days after having been hired. The parties shall equally pay the cost of the third
25 Technical Expert.

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

9 (5) The Technical Experts shall not have the power to modify any of the
10 provisions of this Franchise except to increase the Grantee's obligations to upgrade its
11 System. The determination of the Technical Experts as set forth above shall be conclusive,
12 final and binding on the parties; provided, however, (i) either party may challenge the findings
13 pursuant to California Code of Civil Procedure Section 1286.2 (as the same may be amended
14 from time to time), and (ii) either party may challenge the determination of the Technical
15 Experts with respect to the economic feasibility of requiring certain upgrades to Grantee's
16 System (the "Financial Arbitration") by sending a written notice of intent to commence an
17 arbitration with respect to the issue of economic feasibility only. The Financial Arbitration shall
18 be conducted by a single arbitrator ("Financial Arbitrator"), who shall be a member in good
19 standing of the California bar with substantial corporate accounting experience and/or not less
20 than ten (10) years' experience in determining issues of the economic feasibility of corporate
21 action, and who shall not be an existing or former employee, agent, consultant or affiliate of
22 either party. If the parties cannot agree on a Financial Arbitrator within fifteen (15) days
23 following the arbitration notice, then either party may request that one be appointed pursuant
24 to (4) above. The Financial Arbitration shall be in accordance with the rules of the American
25 Arbitration Association.

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

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

11
12 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE
13 ANY DISPUTE AS SET FORTH IN THIS SECTION 52(i) DECIDED BY NEUTRAL
14 ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP
15 ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A
16 COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING
17 UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE
18 RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES"
19 PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING
20 TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE
21 AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR
22 AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

23
24
25

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

5 _____
6 Grantee's Initials City's Initials
7

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

11 **Section 52. PREEMPTION / ABROGATION.**

12 (a) General Provision. In the event that a material provision of this Franchise is
13 preempted or otherwise declared unenforceable by a change in state or federal law, or the
14 parties agree that the underlying legal authority for a material provision of this franchise
15 results in preemption or abrogation, with the effect that a party to this Franchise is not
16 receiving the benefits of the bargain intended under this Franchise as evidenced by its terms,
17 the City and Grantee shall negotiate in good faith to amend this Franchise to redistribute the
18 benefits of the bargain to equitably maintain the balance of benefits between the parties. In
19 the event either the City or Grantee believes that such a preemption or abrogation has
20 occurred, it shall send a written notice to the other party requesting negotiations pursuant to
21 this Section. The notice shall, at a minimum, include: (1) citations to the applicable state or
22 federal law; (2) an analysis of which provisions of this Franchise are affected and the benefits
23 of the bargain that are consequently denied to the party by the preemption or abrogation; (3) a
24 proposal to redistribute the benefits of the bargain, including specific language changes to the
25 Franchise; and (4) a proposed schedule for negotiations. The parties shall have forty (40) City

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

13 **(b)** Single Franchise. This Franchise, as to the provisions regarding Cable Service
14 and the Facilities related thereto, is issued pursuant to the City’s authority under 47 U.S.C.
15 Section 573 and the City’s authority under the California Constitution, California law, and the
16 San Francisco Charter and Codes. Grantee intends to build a System consisting of Facilities
17 over which it may provide Cable Services, Telecommunication Services and other Services.
18 Subject to Section 2(d) above, the provisions of this Franchise relating to the construction,
19 installation, repair, maintenance and operation of Facilities to provide Telecommunication
20 Services and other Services (other than Cable Services) represent an exercise of the City’s
21 authority under the California Constitution, California law, and the City’s Charter and Codes.
22 In connection with its construction of a single multi-purpose System, Grantee has requested a
23 single Franchise which grants the authority required and establishes the conditions under
24 which Grantee may occupy and use the Public Rights-of-Way to construct, install, repair,
25 maintain and operate Facilities to provide Cable Services as well as the conditions under

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

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

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

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

24 PART 11 - LIABILITY/INSURANCE/INDEMNIFICATION

25 **Section 53. INSURANCE.**

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

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

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

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

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

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

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

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

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

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

6 Department of Telecommunications and Information Services
7 875 Stevenson St., 5th Floor
8 San Francisco, CA 94103-0948
9 Attn: Franchise Administrator

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

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

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

21 **(h)** Ten (10) City days prior to commencing any operations under this Franchise,
22 Grantee must furnish to City certificates of insurance, in form and with insurers satisfactory to
23 City, evidencing all coverages set forth above, and shall furnish complete copies of policies
24 promptly upon City request.
25

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

4 **Section 54. PERFORMANCE GUARANTEES.**

5 **(a)** Security Interest. Within ten (10) City business days of the Effective Date of this
6 Franchise, Grantee shall provide to DTIS, and maintain during the entire term of this
7 Franchise, except as provided in (4)(i) below, a performance bond or other security interest
8 approved by the City's Risk manager in favor of the City in the amount of {one million dollars}
9 \$1,000,000 to guarantee Grantee's faithful performance of the terms and conditions of this
10 Franchise, the San Francisco Administrative Code, and other Applicable Law ("Security
11 Interest"). The Security Interest shall meet the following conditions:

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

22 (2) Events Triggering Forfeiture Of The Security Interest. The City may
23 immediately collect or draw upon the entire collateral evidenced by the Security Interest in the
24 event:
25

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

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

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

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

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

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

22 Any other Security Interest shall meet similar criteria.

23 (i) Reduction of Security Interest. Upon the City's consent, Grantee
24 may reduce the amount of the Security Interest required by subsection (a) above to {five
25 hundred thousand dollars} \$500,000 adjusted by (5) below.

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

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

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

23 **(d)** Segregation of Funds; No Limitation on Liability. The City's obligations with
24 respect to the Deposits and the Security Interest are solely that of debtor and not trustee. The
25 City shall not be required to keep the Deposits separate from its general funds, and Grantee

1 shall not be entitled to any interest on the Deposits. The provisions of this Section shall not
2 be deemed to limit Grantee's liability under the Franchise in any way.

3 **Section 55. INDEMNIFICATION.**

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

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

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

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

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

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

18 **(c)** Material Breaches. In the event Grantee's commits a Material Breach as
19 defined in Section 1(nnn) above, the City may seek Revocation of the Franchise pursuant to
20 Section 11.16 of Chapter 11, provided that Grantee shall have the notice, cure, and other
21 rights set forth in Section 11.16 of Chapter 11. Grantee acknowledges and agrees that
22 violation of the following sections shall constitute a Material Breach of this Franchise: Section
23 2(b)(Services Authorized), Section 4 (Transfers – City Approval Required), , Section 9(d)
24 (Construction Sequence – No Discrimination), Section 12(Payment of Franchise Fee), Section
25 43(i)(Emergency Alert System), Section 45 (Fiber Optic Infrastructure For City Use), Section

1 46 (Free Service to City-Designated Buildings), Section 47 (City Conduit), Section 48 (PEG
2 Contributions), Section 49 (PEG Channels), Section 51 (Mid-Term Technical Review), Section
3 53 (Insurance), Section 54 (Performance Guarantees), Section 55 (Indemnification), Section
4 65 (Nondiscrimination), and Section 70 (EIC Forms). Notwithstanding the foregoing list,
5 Grantee understands and acknowledges that a breach of any Section of this Franchise may
6 be, or may become, a Material Breach as that term is defined herein.

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

1 notice. Notwithstanding anything to the contrary set forth above, the cure periods set forth in
2 this subsection (d) shall apply only to those provisions in this Franchise which, by their
3 express terms or by incorporation of Chapter 11, do not have specified cure periods. If a
4 notice or cure period is required by the express terms of a provision of this Franchise or by
5 Chapter 11, then this subsection (d) shall not require the giving of a second notice or the grant
6 of a second cure period.

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

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

22 **(b) Notice And Withdrawal.** In the event of a default triggering liquidated damages
23 pursuant to this Section, the City shall notify Grantee of the default in writing and Grantee
24 shall have ten (10) City business days from the date of the City's issuance of the notice to
25 cure the default or, in the event the default cannot reasonably be cured within ten (10) City

1 business days, to begin to take steps to cure the default and notify the City of its plan to cure
2 within a certain time. In the event the default is not timely cured, Grantee shall be liable to the
3 City for liquidated damages in the amounts set forth in this Section and liquidated damages
4 shall continue to accrue for so long as the default continues, up to the full amount of Grantee's
5 Security Interest and the applicable Deposits. The City may, in its discretion, withdraw
6 liquidated damages owed to it from an applicable Deposit pursuant to Section 54(b) above, or
7 Grantee's Security Interest pursuant to Section 54(a) above in the event Grantee fails to pay
8 the liquidated damages within the time provided.

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

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

18 (2) Failure To Provide Fiber Optic Infrastructure. Upon activation of any
19 Node Area where the City has requested a Fiber Drop pursuant to Section 45(f) above,
20 Grantee shall pay the City liquidated damages of three hundred dollars (\$300) per day from
21 the City Deposit or Security Interest for failure to provide the City's Fiber Optic Infrastructure
22 pursuant to Section 45 above.

23 (3) Failure to Maintain City's Fiber Optic Infrastructure. Upon activation of
24 any Node Area where the City has requested a Fiber Drop pursuant to Section 45(f) above,
25 Grantee shall pay the City liquidated damages of three hundred dollars (\$300) per day from

1 the City Deposit or Security Interest for failure to maintain the City's Fiber Optic Infrastructure
2 pursuant to Section 45 above.

3 (4) Failure To Timely Provide Fiber Drops. Upon activation of any Node Area
4 where the City has requested a Fiber Drop pursuant to Section 45(f) above, Grantee shall pay
5 the City liquidated damages of fifty dollars (\$50) per City business day from the City Deposit
6 or Security Interest for failure to timely provide the City with a Fiber Drop or access to its
7 Fiber Backbone pursuant to Section 45 above.

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

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

18 (7) Failure to Meet Customer Service Standards.

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

- 22 • Failure to have its City office open for Subscribers during Normal Business
23 Hours;

24

25

- 1 • Failure to have trained company representatives available to respond to
2 telephone inquiries during Normal Business Hours pursuant to 47 C.F.R.
3 76.309(c)(1)(i)(A);
- 4 • Failure to maintain a local or toll free telephone number twenty four (24) hours
5 a day, seven (7) days a week pursuant to 47 C.F.R. 76.309(c)(1)(i); and
- 6 • Failure to respond to Subscriber inquiries by the next business day pursuant
7 to 47 C.F.R. 76.309(c)(1)(i)(B).

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

- 12 • Failure to answer its business telephone lines within the time limits
13 prescribed by 47 C.F.R. 76.309(c)(1)(ii) for three (3) quarters in a row, or for
14 two (2) quarters in a row, if the difference between the performance standard
15 and the actual performance is not reduced by at least twenty percent (20%)
16 between quarters; and
- 17 • Failure to meet the requirements of 47 C.F.R. 76.309(c)(2) regarding
18 installations, outages and service calls.

19 **Section 61. FORCE MAJEURE.** Grantee shall not be deemed in default of a provision of
20 this Franchise where performance was rendered impossible or delayed by causes beyond
21 Grantee's reasonable control, including, but not limited to wars or riots, labor strikes or civil
22 disturbances, floods, earthquakes, fire, explosions, or epidemics, or other acts of God, and
23 this Franchise shall not be Revoked or Grantee penalized for such noncompliance, provided
24 that Grantee takes immediate and diligent steps to bring itself back into compliance with this
25 Franchise and to comply as soon as possible under the circumstances without unduly

1 endangering the health, safety, and integrity of the Grantee's employees or property, or the
2 health, safety, and integrity of the public, Public Rights-of-Way, public property, or private
3 property. Acts beyond Grantee's reasonable control shall not include (i) failure to obtain
4 financing or have adequate funds, or (ii) work shortages when qualified workers are available.
5 The provisions of this Section shall have no application unless a party seeking an extension of
6 time for performance under this Franchise shall have first notified the other party in writing of
7 the cause or causes thereof within thirty (30) days after its reasonable determination that an
8 event may constitute a force majeure delay under this Section..

9 PART 13 - MISCELLANEOUS PROVISIONS

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

13 To City: Department of Telecommunications and Information Services
14 875 Stevenson Street, 5th Floor
15 San Francisco, CA 94103
16 Attn: Cable Franchise Administrator

17 and

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

22

23 To Grantee: RCN Telecom Services, Inc.
24 1400 Fashion Island Boulevard, Suite 100
25 San Mateo, CA 94404

1 Attn: General Manager

2 **Section 63. TAXES.**

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

6 (b) Grantee shall collect and remit to City the utility users tax pursuant to Article 10
7 of Part III of the San Francisco Municipal Code, as amended, if the System is used to provide
8 services that are subject to the tax, as well as the emergency response fee pursuant to Article
9 10A of Part III of the San Francisco Municipal Code, as amended, if the System is used to
10 provide services subject to the fee. Grantee shall provide such records to City as City may
11 require to confirm compliance with this requirement.

12 (c) Grantee recognizes and understands that this Franchise may create a
13 "possessory interest" for property tax purposes. If such a possessory interest is created, then
14 the following shall apply:

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

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

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

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

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

15 **Section 65. NON-DISCRIMINATION.**

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

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

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

17 **(d)** Condition to Franchise. As a condition to this Franchise, Grantee shall execute
18 the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-
19 12B-101) with supporting documentation and secure the approval of the form by the San
20 Francisco Human Rights Commission.

21 **(e)** Incorporation of Administrative Code Provisions by Reference. The provisions
22 of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this
23 Section by reference and made a part of this Franchise as though fully set forth herein.
24 Grantee shall comply fully with and be bound by all of the provisions that apply to this
25 Franchise under such Chapters of the Administrative Code, including but not limited to the

1 remedies provided in such Chapters. Without limiting the foregoing, Grantee understands that
2 pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for
3 each person for each day during which such person was discriminated against in violation of
4 the provisions of this Franchise may be assessed against Grantee and/or deducted from any
5 payments due Grantee, including the City Deposit held by the Controller pursuant to Section
6 54(b) above.

7 **Section 66. CONTRACTING WITH MINORITY/WOMEN AND LOCALLY-OWNED**
8 **BUSINESS ENTERPRISES.**

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

1 terms of this Section; provided, the failure to develop such a plan shall not limit Grantee's
2 obligations or the City's rights under this Section. The implementation plan shall include an
3 increase in the contracting goal set forth above as the percentages of available MBE/WBE
4 contractors increase during the Term of this Franchise.

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

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

21 **(d)** If the HRC Director believes, after notice and an opportunity for Grantee to
22 present evidence to the contrary, that Grantee is in violation of the terms of this Section with
23 respect to one or more contracts, the HRC Director will refer the matter to HRC's
24 Commissioners. If the HRC Commissioners determine, after a public hearing, that Grantee is
25 in violation of this Section with respect to one or more contracts, then the HRC

1 Commissioners may assess liquidated damages against Grantee in an amount not to exceed
2 \$25,000 or 5% of the contract amount, whichever is greater, for each such violation.

3 **Section 67.** TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN. Pursuant to San
4 Francisco Administrative Code Section 12I.5(b), the City urges Grantee not to import,
5 purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood
6 product, virgin redwood or virgin redwood wood product.

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

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

21 **Section 70.** Earned Income Credit (EIC) FORMS.

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

1 annually between January 1 and January 31 of each calendar year during the term of this
2 Franchise.

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

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

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

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

22 **Section 72. REMEDIES CUMULATIVE.** All remedies under this Franchise are cumulative
23 unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of
24 another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties
25 relieve Grantee of its obligations to comply with its Franchise or other Applicable Law.

1 Remedies may be used singly or in combination. In addition, either party may exercise any
2 rights it has at law or in equity.

3 **Section 73.** RIGHT OF CONDEMNATION RESERVED. Nothing in this Franchise shall
4 limit any right the City may have to acquire by eminent domain or otherwise any property of
5 Grantee; provided, however, that Grantee shall be compensated for any such acquisition
6 pursuant to Applicable Law.

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

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

20 **Section 76.** NO WAIVER. The failure of the City on one or more occasion to exercise a
21 right, to require Grantee's compliance or performance with an obligation under this Franchise,
22 the Administrative Code or any other Applicable Law, or the City's failure to pursue a breach
23 thereof shall not be deemed to constitute a waiver of such right, obligation or breach. Grantee
24 shall not be excused from such right, obligation, or breach unless such right, obligation or
25 breach has been specifically waived in writing by the City. No express written waiver of any

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

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

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

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

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

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

25

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

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

19 **Section 84.** Hazardous Materials. Grantee and its Agents shall comply with all Hazardous
20 Materials Laws. Without limiting the generality of the foregoing, Grantee, on behalf of itself
21 and its Agents, covenants and agrees that it will not use, generate, transport, store, emit,
22 discharge or dispose of Hazardous Materials on, under or about the Public Rights-of-Way, nor
23 will it transport or permit the transport of Hazardous Materials to or from the Public Rights-of-
24 Way, except for (A) standard building materials and equipment that do not contain asbestos or
25 asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and

1 other fuel products used to transport and operate vehicles and equipment, and (C) any
2 Hazardous Materials which do not require a permit or license from, or that need not be
3 reported to, a governmental agency, which Hazardous Materials are used in the construction
4 of the Facilities in the ordinary course of Grantee's business, and which are reported to, and
5 approved by, City prior to any such use and, in any case, are used in strict compliance with all
6 Applicable Laws.

7 **Section 85.** No Joint Venture.

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

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

20 **Section 86.** Prevailing Wages. Grantee agrees that any person performing labor in the
21 construction of the Facilities shall be paid not less than the highest prevailing rate of wages
22 and that Grantee shall include, in any contract for construction of such improvements, a
23 requirement that all persons performing labor under such contract shall be paid not less than
24 the highest prevailing rate of wages for the labor so performed. Grantee further agrees that,
25 as to the construction of such improvements under this Franchise, Grantee shall comply with

1 all the provisions of Section 6.22(E) of the San Francisco Administrative Code that relates to
2 payment of prevailing wages. Grantee shall require any contractor to provide, upon request,
3 certified payroll reports with respect to all persons performing labor in the construction of any
4 Facilities.

5 **Section 87.** Grantee's Representations and Warranties. Grantee represents, warrants and
6 covenants to City as follows, as of the Effective Date:

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

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

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

1 adversely affect the Grantee's ability to install and operate the System or perform its
2 obligations under this Franchise.

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

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

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

17 **Section 89.** False Claims. Article 5 of San Francisco Administrative Code Chapter 6,
18 relating to the submission of false claims, shall apply to this Franchise. Accordingly, if
19 Grantee submits a false claim, it shall be liable to the City for three times the amount of
20 damages which the City sustains because of the false claim. Grantee shall also be liable to
21 the City for the cost, including Attorney's Fees and Costs, of a civil action brought to recover
22 any of those penalties or damages and may be liable to the City for a civil penalty of up to
23 \$10,000 for each false claim. Grantee will be deemed to have submitted a false claim to the
24 City if Grantee: (a) knowingly presents or causes to be presented to the City a false statement
25 of Gross Revenues; (b) knowingly makes, uses or causes to be made or used a false record

1 or statement to get a false claim paid to or approved by the City; (c) conspires to defraud the
2 City by getting a false claim allowed or paid to or approved by the City; (d) knowingly makes,
3 uses or causes to be made or used a false record or statement to conceal, avoid or decrease
4 an obligation to pay or transmit money or property to the City; (e) is beneficiary of an
5 inadvertent submission of a false claim to the City, subsequently discovers the falsity of the
6 claim, and fails to disclose the false claim to the City within a reasonable time after discovery
7 of then false claim.

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

17 **Section 91.** First Source Hiring.

18 (a) Grantee shall comply with the hiring requirements imposed by the City's First
19 Source Hiring Ordinance (SF Administrative Code Chapter 83), which are incorporated herein
20 by this reference. Any undefined term used in this Section shall have the meaning given to
21 such term in SF Administrative Code Chapter 83. Grantee shall notify the City's Workforce
22 Development System (the "WDS") of all projected Entry Level Positions and the approximate
23 date such positions will be available. It shall also notify the WDS of all vacancies or new
24 positions for work related to the Work Program, and shall offer the WDS the first opportunity to
25 provide qualified Economically Disadvantaged Individuals for employment in these positions.

1 Grantee shall not publicize or otherwise post such vacancies until the WDS refers Qualified
2 Economically Disadvantaged Individuals for employment in these positions or notifies Grantee
3 that no Qualified Economically Disadvantaged Individuals are available for the particular
4 vacancies. The WDS shall respond to Grantee within ten (10) business days. Grantee shall
5 comply with the First Source Hiring Agreement attached hereto as Appendix 3 (the "First
6 Source Hiring Agreement"), the terms of which are incorporated herein by this reference.
7 Upon request by the City, Grantee agrees to separately execute the attached First Source
8 Hiring Agreement, although the lack of such a separate execution shall not affect the
9 requirements of the First Source Hiring Agreement as incorporated herein.

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

17 **Section 92.** Local Hiring.

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

24 (b) Grantee shall keep, and provide to the City, an accurate record showing the
25 name, place of residence, hours employed and per diem pay of each person employed by the

1 Grantee, including full-time, part-time, permanent and temporary employees. Grantee shall
2 keep, and provide to the City, an accurate record describing in detail Grantee's good faith
3 efforts to secure employment of residents of the City and County of San Francisco. A failure
4 to abide by the provisions of this Section may result in the imposition of sanctions and
5 penalties, including those provided for in San Francisco Administrative Code Sections 6.80.

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

21 **Section 94.** GUARANTY. On or before the execution of this Franchise by Grantee, RCN
22 Corporation, a Delaware corporation, shall execute and deliver to the City a Guaranty
23 Agreement in the form attached hereto as Appendix 1 (the "Guaranty Agreement"). This
24 Franchise shall not become effective unless and until the City's receives the duly executed
25 Guaranty Agreement.

1 **Section 95.** Mitigation Measures. The Mitigation Measures as set forth in the Negative
2 Declaration and as attached hereto as Appendix 2 are incorporated into this Franchise by this
3 reference. Grantee shall perform all the Mitigation Measures as they relate to any activities
4 under this Franchise. Without limiting the City's rights and remedies under this Franchise for
5 the failure to perform any Mitigation Measure, DPW and DTIS will monitor and enforce
6 implementation of the Mitigation Measures through the permitting process.

7 Acknowledged and Agreed TO BY THE PARTIES:

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

9 Approved By:

10
11 _____
12 LEWIS LOEVEN, Director, Department of
13 Telecommunications and Information
14 Services

15 Date: _____

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

18 By: _____
19 ATTORNEY'S NAME
20 Deputy City Attorney

Signature

Name: Douglas Schulz

Title: Vice President and General Manager

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

Date: 08/01/00

RCN TELECOM SERVICES OF
CALIFORNIA, INC.:

Signature

Name: David Hankin

Title: Vice President, Regulatory &
Government Affairs

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

Date: 8/1/00

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1 Appendix 1

2 Guaranty Agreement

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5 THIS GUARANTY AGREEMENT (this "Guaranty") dated as of _____, 2002, is made
6 by RCN CORPORATION, a Delaware corporation (the "Guarantor"), to and for the benefit of
7 THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"). Unless
8 otherwise defined in this Guaranty, all initially capitalized terms used in this Guaranty shall
9 have the meanings given them in the Franchise (as defined in Recital Paragraph A below).

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

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

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

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

22 1. Guaranty

23 1.1 Guaranty of Obligations. Guarantor unconditionally and irrevocably guarantees
24 to the City the due and punctual payment (and not merely the collectibility) and performance
25 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.

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

3. Waivers by Guarantor

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

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.

12 5. Representations and Warranties of Guarantor

13 5.1 Representations and Warranties. Guarantor represents, warrants and
14 covenants as follows:

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

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

23 (c) No Limitation on Ability to Perform. Neither the Guarantor's articles of
24 organization or operating agreement, nor the organization documents of any of the
25 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: Cable 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
22

23
24 (b) And in the case of a notice or communication sent to Guarantor:
25

1 RCN Corporation
2 1400 Fashion Island Blvd., Suite 100
3 San Mateo, CA 94404
4 Attn.: Frank Cirone

5
6 with a copy to:

7
8 John Jones
9 105 Carnegie Center
10 Princeton, N.J. 08540
11

12
13 For the convenience of the parties, copies of notice may also be given by telefacsimile.

14 Every notice given to a party hereto, pursuant to the terms of this Guaranty, must state
15 (or must be accompanied by a cover letter that states) substantially the following:

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

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

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

22 Any mailing address or telefacsimile number may be changed at any time by giving
23 written notice of such change in the manner provided above at least ten (10) days prior to the
24 effective date of the change. All notices under this Guaranty shall be deemed given, received,
25 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
official or binding notice by telefacsimile. The effective time of a notice shall not be affected
by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

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2 8. General Provisions
3

4 8.1 Successors and Assigns. This Guaranty is binding upon and will inure to the
5 benefit of the successors and assigns of the City and the Guarantor, subject to the limitations
6 set forth in Section 8.11 below. Where the term "Guarantor," or "City" is used in this
7 Agreement, it means and includes their respective successors and assigns.

8 8.2 Amendments. Except as otherwise provided herein, this Guaranty may be
9 amended or modified only by a written instrument executed by the City and Guarantor.

10 8.3 Waivers. No action taken pursuant to this Guaranty by the City shall be deemed
11 to be a waiver by that party of the Guarantor's compliance with any of the provisions hereof.
12 No waiver by the City of any breach of any provision of this Guaranty shall be construed as a
13 waiver of any subsequent or different breach. No forbearance by the City to seek a remedy
14 for noncompliance hereunder or breach by the Guarantor shall be construed as a waiver of
15 any right or remedy with respect to such noncompliance or breach.

16 8.4 Continuation and Survival of Covenants. Subject to Section 6 above, all
17 covenants by Guarantor contained herein shall be deemed to be material and shall survive
18 any termination of the Franchise or portion thereof if the obligations thereunder have arisen
19 and are not satisfied before such date.

20 8.5 Governing Law; Selection of Forum. This Guaranty shall be governed by and
21 construed in accordance with the laws of the State of California. As part of the consideration
22 for the Franchise, the Guarantor agrees that all actions or proceedings arising directly or
23 indirectly under this Guaranty may, at the sole option of City, be litigated in courts located
24 within the State of California, and the Guarantor expressly consents to the jurisdiction of any
25 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
may then be located, or by certified or registered mail directed to the Guarantor at the address
set forth in this Guaranty for the delivery of notices.

1 8.6 Merger of Prior Agreements. The parties intend that this Guaranty (including all
2 of the attached exhibits and schedules, which are incorporated into this Guaranty by
3 reference) and the Franchise shall be the final expression of their agreement with respect to
4 the subject matter hereof and may not be contradicted by evidence of any prior or
5 contemporaneous oral or written agreements or understandings. The parties further intend
6 that this Guaranty shall constitute the complete and exclusive statement of its terms and that
7 no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes
8 therefrom) may be introduced in any judicial, administrative or other legal proceeding involving
9 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
Attorney shall be based on the fees regularly charged by private attorneys with the equivalent
number of years of professional experience in the subject matter area of the law for which the
City Attorney's c services were rendered who practice in the City of San Francisco in law firms
with approximately the same number of attorneys as employed by the City Attorney's Office.

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

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

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

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

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

GUARANTOR

RCN CORPORATION, a Delaware corporation

By _____

1 Print Name John J. Jones
2 Its Executive Vice President, General Counsel and
3 Corporate Secretary

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5 By _____

6 Print Name Timothy J. Stoklosa
7 Its Executive Vice President and Chief Financial Officer

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13 ACCEPTED AND AGREED:
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17 THE CITY AND COUNTY OF SAN FRANCISCO, a municipal
18 corporation

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22 By _____

23 Name: _____

24 Title: _____

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By _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Deputy City Attorney

Appendix 2
Mitigation Measures

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

17 2. SAFE HARBOR PROVISION

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

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

Good Faith Efforts

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

1 b. The Employer must promptly list available Entry Level Position(s) with the
2 Workforce Development System referral network and refrain from seeking applicants
3 from other sources during the specified time.

4 c. Employers subject to collective bargaining agreement(s) requiring compliance
5 with a pre-established applicant referral process as set forth in such agreement(s) for
6 available Entry Level Positions must:

7 i. Notify the appropriate union(s) of the Employer's First Source obligation
8 and request assistance from the union(s) in referring Qualified Economically
9 Disadvantaged applicants for the available Entry Level Position(s), to the extent
10 such referral can conform to the requirements of the collective bargaining
11 agreement(s).

12 ii. Use "name call" privileges, in accordance with the terms of the applicable
13 collective bargaining agreement(s), to seek Qualified Economically
14 Disadvantaged applicants for the available Entry Level Position(s).

15 iii. Sponsor Qualified Economically Disadvantaged apprenticeship
16 applicants, referred through the Workforce Development System, for applicable
17 union membership.

18 d. The Employer must give due consideration to all referrals made by the System,
19 resumes must be reviewed, and interviews conducted in accordance with the non-
20 discrimination provisions of this Franchise.

21 e. The Employer must provide constructive feedback on all applicants referred by
22 the System.

23 i. Employers who meet the safe harbor provision must only respond orally
24 to follow-up questions asked by the 1st Source account executive.

25 ii. Employers who are unable to meet the safe harbor provision will be
26 required to provide written comments on all referrals.

27 iii. Job applicants will also be required to provide brief feedback on the
28 process.

29 f. The Employer must provide timely notification as soon as the job is filled, and
30 identify by whom.

31 g. The Employer must list all Entry Level Positions as they become available
32 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

1 bargaining agreements, the FSHA will take the primary responsibility for integrating the
2 requirements of this First Source Program with any such collective bargaining
3 agreements.

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

8 11. Under this Agreement, the System shall:

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

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

- 13 a. Maintain accurate records demonstrating Grantee's compliance with the First
14 Source Hiring requirements of Chapter 83 of the San Francisco Administrative
15 Code including, but not limited to, the following:
 - 16 (1) Applicants
 - 17 (2) Job offers
 - 18 (3) Hires
 - 19 (4) Rejections
- 20 b. Submit completed reporting forms based on Grantee's records to the System
21 quarterly, unless more frequent submittals are required by FSHA. In this regard,
22 Grantee agrees that if a significant number of positions are to be filled during a
23 given period or other circumstances warrant, the FSHA may require daily,
24 weekly, or monthly reports containing all or some of the above information.
- 25 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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