

ORDINANCE NO. 1056
CABLE TELEVISION FRANCHISE ORDINANCE

AN ORDINANCE OF THE CITY OF POST FALLS, IDAHO, GRANTING A NONEXCLUSIVE CABLE TELEVISION FRANCHISE TO KOOTENAI CABLE, INC., D/B/A ADELPHIA CABLE COMMUNICATIONS PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE; PROVIDING FOR A FRANCHISE FEE; AND PROVIDING AN EFFECTIVE DATE THEREOF

An Ordinance granting a nonexclusive cable television franchise (the "Franchise") to Kootenai Cable, Inc. d/b/a/ Adelphia Cable Communications ("Company") to own, operate and maintain a Cable System in the City of Post Falls, Idaho ("City"), setting forth conditions accompanying the grant of Franchise, and providing for the regulation and use of said Cable System; and,

WHEREAS, The Company owns and operates a Cable System in the City of Post Falls and seeks a new Franchise; and,

WHEREAS, the City in cooperation with the Company has conducted a needs assessment and has, following reasonable notice, conducted a full public hearing, affording all interested Persons reasonable opportunity to be heard, which proceedings were concerned with the analysis and consideration of the technical ability, financial condition, and legal qualifications of the Company and its ability to meet the community's future cable-related needs and interests, taking into account the cost of meeting those needs and interests; and,

WHEREAS, the City after such consideration, analysis and deliberation, has approved and found sufficient the technical ability, financial condition, and legal qualifications of said Company; and,

WHEREAS, the City has at the public hearing, also considered and analyzed the plans of the Company for the construction, reconstruction and operation of the Cable Television System and found the same to be adequate and feasible in view of the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests; and,

WHEREAS, in particular, the City has established through various ascertainment activities the need and interest, and the associated costs, for continuing and expanding the community Access activities it has successfully undertaken during the term of the previous franchise, and the Company has indicated a willingness to support these efforts in a substantial manner; and,

WHEREAS, the City Council has determined that it is in the best interest of and consistent with the convenience and necessity of the City to grant a Franchise to operate a Cable Television

System within the confines of the City to the Company, and on the terms and conditions hereinafter set forth.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POST FALLS, IDAHO, as follows:

ARTICLE I. DEFINITIONS

For the purpose of this Franchise the following terms, phrases, words, and their derivations shall have the meanings given herein, otherwise such words or terms shall have the meaning specified in the Cable Act. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever required. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein or in the Cable Act shall be given their common and ordinary meaning.

- A. "Affiliate" shall mean any corporation, Person or entity who owns or controls, is owned or controlled by, or is under common ownership or control of the Company.
- B. "Basic Cable Service" or "Basic Service" shall mean the service tier that includes the retransmission of local television broadcast signals.
- C. "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996 (collectively 47 U.S.C. Section 521 *et seq.*), all as may be further amended from time to time.
- D. "Cable Operator" means any Person or group of Persons, including the Company, who provide(s) Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.
- E. "Cable Service" means the one-way transmission to Subscribers of (i) Video Programming, or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service by Subscriber.
- F. "Cable Television System" or "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be

considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of Video Programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended; or (5) any facilities of any electric utility used solely for operating its electric utility system. In this Franchise, unless otherwise specified or made clear by the context, this term shall refer to the particular cable system serving Post Falls.

- G. "Channel" means that portion of the electromagnetic spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC.
- H. "City" is the City of Post Falls, Kootenai County, Idaho, a municipal corporation of the State of Idaho.
- I. "City Council" shall mean the governing body of the City.
- J. "Company" means Kootenai Cable Co., Inc., dba Adelpia Cable Communications, the grantee of rights under this Franchise ordinance or its lawful successor, transferee or assignee.
- K. "Easement" shall be limited to those Rights-of-Way owned or controlled by the City.
- L. "Facilities" means any and all fiber optic cable, coaxial cable, equipment and related appurtenances in any way comprising a part of the Cable System.
- M. "FCC" shall mean the Federal Communications Commission and any successor governmental entity of the Federal Communications Commission.
- N. "*Force Majeure*" means any delays caused by reason of (1) civil commotion; (2) riots; (3) Acts of God and nature, including but not limited to floods, earthquakes, ice storms and tornadoes; (4) strikes or labor unrest; (5) the inability to secure materials; and (6) any other similar event or circumstances reasonably beyond the control of the Company.
- O. "Franchise" means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System. Unless otherwise specified or made clear by the context, "Franchise" shall refer to this particular agreement, established by ordinance, authorizing construction, operation and maintenance of a Cable System by Kootenai Cable Co., Inc. in the city of Post Falls, Idaho.
- P. "Franchise Area" shall mean the area within the City limits of the City of Post Falls, Idaho, including areas annexed during the term of this Franchise.
- Q. "Gross Revenues" shall mean any and all consideration of any kind or nature, including, without limitation, cash or credits received or derived directly or indirectly by the Company

from the operation of the Cable Television System to provide Cable Services in the City. Gross revenues shall include, but not be limited to, Subscriber fees, expanded Basic Service, premium and tiered services, pay-per-view services, leased channel fees, converter and other equipment rentals and sales, home shopping commissions, access fees of any kind or nature, any advertising revenues less agency fees booked or allocated locally, Installation, reconnection and change of service fees; fees and payments, or other consideration received by the Company from programmers for carriage of programming on the Cable Television System, exchange of in-kind services and program guides. Gross revenues shall include fees received by the Company from Subscribers for Internet access provided by the Company on the Cable System if Internet access is deemed to be a Cable Service under applicable federal law. Adelphia represents this definition of "Gross Revenue" does not represent any reduction in what is considered "Gross Revenue" under the prior Franchise.

Gross Revenues shall also include any revenue derived directly or indirectly by any Affiliate of the Company where such revenue in the ordinary course of business has been paid or should have been paid to the Company from the operation of its Cable System to provide Cable Services within the Franchise Area. By way of illustration and not limitation, this definition would include revenue derived from the sale of Cable System advertising time by an Affiliate of the Company. It is the intent of the parties that this definition includes all consideration to the fullest extent permitted by law.

Gross Revenues shall not include uncollectable accounts (provided, however, that all or any part of any such actual bad debt that is written off by the Company but subsequently collected shall be included in the Gross Revenues of the period collected) or any taxes on services furnished by the Company which are imposed directly on any Subscriber or user by the state of Idaho, the City, or other governmental unit and which are collected by the Company on behalf of said governmental unit (i.e., a sales tax or excise tax). A franchise fee is not such a tax, nor is the support for PEG Access provided by the Company.

Gross Revenues also include an allocated portion of all revenue derived by the Company or Affiliates pursuant to regional or national compensation arrangements for any service or activity derived from the operation of the Cable System to provide Cable Services in the Franchise Area (e.g., advertising). The allocation shall be based on the number of Subscribers in the Franchise Area divided by the total number of Subscribers relevant to such regional or national arrangements multiplied by the total compensation figure.

- R. "Headend" means the facility, including antennas and associated electronics, which receives, controls, and switches the electronic information transmitted over the Cable System.
- S. "Interconnect" or "Interconnection" means the electronic connection of two or more different Cable Systems for the purpose of exchanging, switching, or retransmitting PEG programming.
- T. "Installation" shall mean the connection of the Cable System from feeder cable via a drop to a Subscriber's residence or building.

- U. "PEG (Public, Educational and Governmental) Access" or "Access" means the Channel capacity designated for public, educational, or governmental use in accordance with applicable federal law and the services, facilities and equipment for the use of such Channel capacity.
1. "Public Access" means Access where organizations and individuals are the primary users, on a first-come, first-served basis.
 2. "Educational Access" means Access in which educational users are the primary users.
 3. "Governmental Access" means Access in which government agencies are the principal users.
- V. "Person" means any individual, sole proprietorship, partnership, association, corporation, or any other form of entity or organization.
- W. "Premium Service" is programming delivered for a fee or charge to Subscribers on a per Channel basis, in addition to the fee or charge to Subscribers for Basic Service.
- X. "Prior Franchise" shall mean the franchise preceding this Franchise, being Post Falls Ordinance No. 752, effective April 19, 1994.
- Y. "Rights-of-Way" or "Right-of-Way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, Easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of a Cable System. No reference in this Franchise to a "Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of a Cable System, and the Company shall be deemed to gain only those rights which the City has the right and power to give and only to the extent necessary to carry out the purposes of this Franchise.
- Z. "Subscriber" means any Person or entity who lawfully subscribes to any Cable Service, whether individually or as part of a bulk Cable Service agreement, whether in a single family unit or in a multiple dwelling unit, and whether or not a fee is paid for such Cable Service. By way of example and not limitation, every unit that receives service in a multiple dwelling unit shall be treated as a Subscriber.
- AA. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. 153(43)).
- BB. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

ARTICLE II. GRANT OF FRANCHISE

SECTION 1. Grant.

- A. There is hereby granted to the Company a non-exclusive right, privilege, and Franchise to have, acquire, construct, reconstruct, maintain, use and operate within the corporate limits of the City, a Cable System for the provision of Cable Service; and to have, acquire, construct, reconstruct, maintain, use and operate in, over, under, along, and across the present and future Rights-of-Way all necessary or desirable wires, cables, underground conduits, manholes and other structures and appurtenances in connection with the Cable System for the provision of Cable Service.
- B. Limited Rights. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Company with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the City's Rights-of-Way covered by this Franchise, including without limitation the right to perform work on its roadways, streets or appurtenant drainage facilities, water and waste water facilities and including constructing, altering, paving, widening, grading, or excavating such streets.
- C. Franchise Area. The Operator's service area shall be the entire incorporated area of the City, in its present incorporated form, or in any later reorganized, consolidated, enlarged, or reincorporated form ("Franchise Area").

SECTION 2. Term.

The Franchise granted hereunder shall be for a term of fifteen (15) years from and after November 2, 2004, (the "effective date"), unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3. Franchise Subject to Other Laws.

This Franchise is subject to and shall be governed by all applicable provisions of federal, state and local law. Notwithstanding any other provisions of this Franchise to the contrary, the Company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. Provided, however, if any such state or federal law or regulations shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any service, in conflict with the terms of this Franchise, City ordinance, or any regulation of the City Council, then as soon as possible following knowledge thereof, the Company and/or City shall notify the other party of the point of conflict believed to exist between such regulation or law and regulations of the City Council, the City's ordinance or this Franchise.

In the event federal law gives the Company optional or discretionary authority to not fulfill any obligation specified herein or incorporated herein by reference, the Company agrees to waive such optional or discretionary authority and agrees instead to abide by the terms and conditions of this Franchise ordinance.

In the event of deregulation by the FCC, conformance of FCC rules or regulations in effect at the time of deregulation may continue to be required by the City as those requirements are set forth in the Franchise, unless superseded by federal law.

SECTION 4. Other Franchises.

- A. This Franchise shall not be construed as any limitation upon the right of the City to grant to other Persons rights, privileges, or authorities similar to or different from the rights, privileges, and authorities herein set forth, in the same or other Rights-of-Way, public ways or public places. The City specifically reserves the right to grant at any time during the term of this Franchise or renewal thereof, if any, such additional Franchises for a Cable System as it deems appropriate, upon reasonable terms and conditions that are not more favorable or less burdensome than the material terms and conditions of this Franchise, as authorized by law, taking into consideration all the circumstances. In addition, and to the extent permitted by law, the City shall require other providers of Cable Service to obtain a Franchise, whether the provision of such service is the primary or ancillary component of the provider's business.
- B. Should the Company desire to provide Telecommunications services or other types of service, which the City has the authority to regulate, or lease capacity on its Cable System to a third party to provide such services, it shall notify the City in writing and if required by applicable law obtain any authorizations, licenses or Franchises as are necessary to provide such services prior to using the Cable Television System for such services.

SECTION 5. Waivers.

- A. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, any cable ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City, nor shall it excuse the Company from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the City.
- B. No waiver by the City of any breach or violation of any provision of this Franchise or any ordinance shall be deemed to be a waiver or a continuing waiver by the City of any subsequent breach or violation of the same or any other provision. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, as provided for under state and federal law, including without limitation the right of eminent domain.

- C. No waiver of any provisions of this Franchise by the City shall be effective unless authorized in writing by the City.
- D. Except as provided in Article II, Section 7B, acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by City or Company, of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. Both parties hereby acknowledge that the other party reserves all of its rights under applicable Federal and State Constitution, laws and regulations.

SECTION 6. Recourse.

In any court proceeding pending on or initiated after the Effective Date, involving any claim against the City or other governmental entity, or any official, member, employee or agent of the City of such entity, arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

SECTION 7. Franchise Acceptance; Prior Franchise Superseded and Repealed.

- A. Upon adoption of this Franchise and execution hereof by the Company, the Company agrees to be bound by all the terms and conditions contained herein, which acceptance shall constitute an absolute and unconditional acceptance of the Franchise and promise to comply with and abide by all its provisions, terms, and conditions. The Company's signature at the end of this Franchise shall constitute compliance with this section. As of the effective date of this Franchise, the Prior Franchise is superseded, namely Ordinance No. 752, and all extensions thereof, and is of no further force and effect, provided, however, that the Company shall pay all franchise fees and other enforceable amounts owed, and for all enforceable actions that the Company was required to undertake under the Prior Franchise up to the effective date of this Franchise subject to any applicable statute of limitation. The grant of this Franchise shall have no effect on the Company's duty under the Prior Franchise to indemnify or insure the City against acts and omissions occurring during the period the Prior Franchise was in effect.
- B. By accepting the Franchise, the Company acknowledges and accepts the City's legal right to issue and enforce the Franchise; (1) that the franchise is legal, valid and binding on the Company; (2) accepts and agrees to comply with each and every provision of this Franchise; and (3) agrees that the Franchise was authorized pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

SECTION 8. Police Powers.

In accepting this Franchise, the Company acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and

welfare of the public, and the Company agrees to comply with all generally applicable laws and ordinances enacted by the City pursuant to such power.

Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

SECTION 9. Permits Required.

In addition to this Franchise, in order for the Company to be allowed to occupy or use the Rights-of-Way of the City to provide Cable Services, the Company shall obtain all other required authorizations, certificates, licenses and permits, in accordance with federal, state and local law.

ARTICLE III. STANDARDS OF SERVICE

SECTION 1. Uses of Rights-of-Way.

- A. Non-exclusive Grant. This grant for the use of all City Rights-of-Way is nonexclusive and does not establish priority for use over other franchise holders, permit holders and the City's own use of public property. Additionally, Company shall respect rights and property of the City and other authorized users of the Rights-of-Way. Disputes between the Company and other entities over the use of the Rights-of-Way shall first be submitted to the Community Development Director of the City for possible resolution.
- B. Interference with Persons and Improvements. The Company's Cable System, poles, wires, and appurtenances shall be located, erected and maintained so that none of its Facilities shall endanger or interfere with the lives of Persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of Rights-of-Way or other public property. The City shall have power at any time to order and require Company to remove and abate any pole, wire, cable, or other structure that is dangerous to life or property, and in case Company, after notice, fails or refuses to act within a reasonable time, the City shall have the power to remove or abate the same at the expense of the Company.
- C. Relocation of the Facilities. In the event that at any time during the period of this Franchise the City shall elect to alter or change any Right-of-Way, the Company, upon reasonable notice by the City, shall begin removing and/or relocating as necessary, its poles, wires, cables, underground conduits, manholes and other fixtures at the Company's expense. If Company fails or refuses to act within ten days (10), of notice from the City, the City shall have the power to remove or abate the same at the expense of the Company.
- D. Interference with Utilities. The Company shall not place poles, equipment or other fixtures in such a manner that will interfere with existing gas, electric or telephone facilities, traffic control signalization, street lights, fire alarm lines or communications lines, or obstruct or hinder in any manner the various utilities serving the residents of the City. All such poles, equipment or other fixtures placed in any Rights-of-Way shall be placed close to the line of

the lot abutting-said Right-of-Way, and then in such a manner as to not interfere with the usual travel on or use of said Rights-of-Way.

- E. Additional Easements. If additional private easements are necessary it shall be the Company's responsibility to secure the same. The grant of this Franchise is limited to the City's control of its Rights-of-Way and does not extend to any other public or private property.

- F. Cooperation with Building Movers. The Company shall, at the request of any Person holding a building-moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The Person requesting the same shall pay the expense of such temporary removal, raising or lowering of wires, and the Company shall have the authority to require such payment from such Person in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

- G. Construction and Maintenance; Excavation
 - 1. Upon request, engineering plans of the location of the proposed Cable System construction in Rights-of-Way shall be submitted to the City prior to construction.

 - 2. Except in an emergency, the Company shall comply with generally applicable City ordinances, policies, engineering standards and rules pertaining to notification and excavating pavement in any Right-of-Way.

SECTION 2. Construction of System; System Design and Capacity.

The following requirements shall govern and be applicable to the construction of the Cable System by Company:

- A. System Configuration. The Company shall provide a Cable System with a minimum capacity of a 750 MHz system (which includes at least 116 Channel capacity). The Cable System shall consist of an activated network providing Cable Services with the System being capable of providing bi-directional communications. The activated System shall have a minimum capacity of 750 MHz, and the Company in accordance with its rate schedule shall offer converters. Capacity utilized for system monitoring functions shall not interfere with or displace Subscriber services. New system extensions shall be designed and built with a minimum capacity of 860 MHz.

- B. Capacity for Two-Way Residential Services. The Cable System shall have the capability for two-way residential services and be designed to support analog and digital transmissions. The Company in accordance with established and uniform rate schedules shall offer all customer equipment necessary for such services, such as home terminals, to Subscribers.

- C. Interconnections. The Company shall provide downstream PEG Access signal distribution only, between the Cable System and the neighboring Adelpia cable systems in Kootenai County; provided that, the Company shall provide for both upstream and downstream delivery of Access programming between the Cable System and the cable system serving Coeur d'Alene, so that programming from any Coeur d'Alene Access Channel may be delivered on a Post Falls Access Channel, and vice versa.
- D. Frequency Availability. The Company shall, at all times during the term of the Franchise, comply with all rules and regulations promulgated by the FCC regarding frequency usage and cable television system requirements.
- E. Detailed Plan. Upon request, Company shall provide to the City a detailed construction plan indicating a schedule and area construction maps without cost. The Company shall periodically update this information for the duration of the construction period and provide such further information upon reasonable request by the City to the extent permitted by law. The Company may withhold proprietary design information from the maps.
- F. Maps. The strand maps of the completed System shall be available to the City upon request for municipal purposes without cost and shall be maintained at the Company's office in the City. To the extent permitted by law, the strand maps and all related data shall remain the confidential, proprietary property of the Company. The strand maps shall be updated annually within thirty (30) days of the anniversary date of the Franchise. A good faith effort shall be made to prepare maps in a form compatible with the City's Geographic Information System and may be included in the City's GIS database.
- G. Construction Phases. The Company shall comply with City directions, if any, regarding the placement of Facilities in the Rights-of-Way.
- H. Coordination of Placement of Manholes. The Company shall coordinate the placement of its manholes, if any, with the affected City Departments.
- I. Movement of Facilities During Emergencies. During emergencies, the City may move the Company's Facilities, but shall first make reasonable attempts to notify the Company.
- J. Payment of the City's Locate Costs. The Company shall only pay for the City's locate costs that specifically relate to the Company and so long as those costs are not already included in the permit fees. The Company shall be required to obtain verifiable locates prior to any digging, trenching or excavation.
- K. Acquisition of Facilities. Upon the Company's acquisition of Facilities in any Right-of-Way, or upon the addition or annexation of any area in which the Company owns or operates any Facility, the Company shall, at the City's request, submit to the City a statement describing all Facilities involved, whether authorized by the Franchise, permit, license or other prior right, and specifying the location of all such Facilities to the extent the Company has possession of such information. Such Facilities shall immediately be subject to the terms of this Franchise.

L. Discontinuing Use of Facilities. Whenever the Company intends to permanently discontinue using any Facility within the Rights-of-Way, the Company shall submit for the City's approval a complete description of the Facility and the date on which the Company intends to discontinue using the Facility. The Company may remove the Facility or request that the City permit it to remain in place. Notwithstanding the Company's request that any such Facility remain in place, the City may require the Company to remove the Facility from the Right-of-Way or modify the Facility to protect the public health, welfare, safety or convenience, or otherwise serve the public interest. The City may require the Company to perform a combination of modification and removal of the Facility. The Company shall complete such removal or modification in accordance with a schedule set by the City. Until such time as the Company removes or modifies the Facility as directed by the City, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, the Company shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the Facility were in active use, and the Company shall retain all liability for such Facility.

M. Hazardous Substances.

1. The Company shall comply with all applicable local, state and federal laws, statutes, regulations, ordinances and orders concerning hazardous substances relating to the Company's Cable System in the Rights-of-Way.
2. The Company shall maintain and inspect its Cable System located in the Rights-of-Way. At any time, the City may inspect the Company's Facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to the Company's Cable System. In removing or modifying the Company's Facilities as provided in this Franchise, the Company shall also remove and properly dispose of all residues of hazardous substances related thereto.
3. The Company shall indemnify, defend, and hold the City harmless against any and all liability, claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by the Company's Cable System in the Rights-of-Way.

N. Completion of Work by the City. On failure of the Company to commence, pursue or complete any work required by law or by the provisions of this Franchise or any applicable permit to be done in any Right-of-Way, within the time prescribed and to the satisfaction of the City, the City may at its discretion cause the work to be done. The Company shall pay liquidated damages in accordance with Article VII, Section 1.

SECTION 3. Cable System Maintenance and Improvements.

A. Efficient Service and Repairs. The Company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such

interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum System use.

- B. Interference with Reception. The Company shall not allow its Cable System or other operations to interfere with television reception of Persons not served by the Company or with that of any radio service. Where there is interference, the Company shall immediately implement all necessary procedures to remove the interference in accordance with applicable law.
- C. Technical Standards and Required Improvements. Construction and maintenance of the Cable System shall be performed in accordance with the technical performance and operating standards established by subpart K of part 76 of the FCC's rules and regulations, as may, from time to time, be amended.
- D. Testing. The Company shall perform all tests required by the Federal Communications Commission. All tests shall be conducted in accordance with the rules and regulations of the FCC. A written report of test results shall be filed with the City upon request.
- E. Compliance. The Company's System shall at all times comply with the:
 - 1. National Electric Safety Code ("NESC");
 - 2. National Electrical Code ("NEC");
 - 3. National Cable Television Association Cable Construction Standards;
 - 4. Requirements of the City in regard to the placement of the Cable System;
 - 5. Applicable FCC and other federal, state and local regulations, and;
 - 6. Applicable permitting procedures of the City.
- F. Emergency Alert System.

The Company shall comply with the FCC's Emergency Alert System requirements throughout the term of the franchise. Should jurisdiction of the FCC over an EAS cease during the term of this Franchise, the Company will continue to provide the emergency alert capability in accordance with the rules in effect as of the effective date of this Franchise Ordinance.

SECTION 4. Cable System Extensions.

- A. Equivalent Service. The Company shall provide Cable Service with nondiscriminatory rates and reasonable terms and conditions. The Company shall not arbitrarily refuse to provide Cable Service to any Person or business within its Franchise Area. However, during any Cable System upgrade period the Company is authorized to activate any upgrades to the

Cable System node by node. The Company shall keep a record of all Cable Service requests and such records shall be available for inspection by the City at the local office of the Company during regular office hours, and shall be continuously maintained to show at least the previous one (1) year of service requests.

B. Service Availability.

1. Required Extensions of Service. This Franchise is granted for the entire territorial limits of the City ("Franchise Area"). Upon request, the Company will make service available to all residences within the territorial limits of the City and any annexed territory in the event that (1) such existing territory has a density of at least twenty-five (25) homes per linear strand mile of cable as measured from the existing cable distribution system; and (2) any such residence requesting service can be provided with service by a standard Installation which will be no more than one hundred fifty feet (150) feet from the existing cable distribution Facilities ("Standard Installation"). Whenever the Company shall receive a request for Cable Service from at least six (6) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers within ninety (90) days, other than the usual connection fees for all Subscribers, provided that such extension is technically feasible. When freezing surface or weather related conditions prevent the Company from achieving such timetable, the Company shall apprise the residence requesting service of the circumstances and the estimated time of service availability.
2. Subscriber Charges for Extensions of Service. No Subscriber shall be refused Cable Service arbitrarily. However, for unusual circumstances, such as the existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers or a density of less than twenty-five (25) residences per linear cable mile of trunk or distribution cable, service may be made available on the basis of a capital grant in aid of construction, including cost of material, labor, and Easements. For the purpose of determining the amount of the capital grant in aid of construction to be borne by the Company and residential Subscribers in the area in which Cable Service may be expanded, the Company will contribute an amount equal to the construction and other costs, multiplied by a fraction whose numerator equals the number of actual residential single or multiple dwelling units per 5280 cable-bearing strand feet of its trunk or distribution cable, and whose denominator equals twenty-five (25). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Company may require under such circumstances that the residential Subscribers pay the balance of the payment of the capital grant in aid of construction in advance.

- C. Commercial Establishments. The Company shall also continue to offer Cable Service on a non-discriminatory basis to commercial establishments in the City. The Company shall make its Cable Service available to any commercial establishment requesting service within one hundred (150) feet of the closest distribution cable at its Standard Installation

rate. However, any commercial establishment beyond one hundred and fifty (150) feet of the closest distribution cable must pay the Company at the rate set forth in Section 4.B.2 above plus the expense of acquiring any easements necessary to provide service to the commercial establishment.

- D. Undergrounding of Cable. Cable plant shall be installed underground at the Company's expense where all existing telephone and electrical utilities are already underground, or are placed underground during the term of the Franchise. The Company shall place cable underground in newly platted areas in concert with both the telephone and electrical utilities, to the extent the Company is notified of such placement. The City agrees to require the developer to provide Company access to those open trenches for deployment of cable facilities and developer to ensure completion of the backfilling of the trenches. Upon thirty (30) days notice from the developer of the availability of the trenches, Company shall respond to the developer with an appropriate schedule for installation of the cable plant which shall allow continued completion of the subdivision and Company shall complete the installation in a timely manner. In the event that any telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, the Company shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities. The Company's obligations in newly platted areas are contingent on the developer's having the approval by the City of the subdivision. The method of underground cable installation, whether boring or trenching, when crossing roadways shall be at the discretion of the City.

SECTION 5. Joint Use of Poles, Trenches and Conduits.

- A. The Company may be required to attach its wires to poles owned and maintained by another Person or entity, or to permit the wires of another Person or entity to be attached to the poles owned by the Company, upon reasonable terms and for just compensation. City may attach wires to the poles owned by the Company, upon reasonable terms, at no charge to the City. All of the Company's requirements pertaining thereto must be in accordance with applicable law.
- B. Cable shall be located on poles in compliance with applicable safety standards and shall not interfere with the erection, replacement, operation, repair, or maintenance of the wires and appurtenances of the Persons or entities occupying the poles. The Company shall not be required to attach its cables to the poles of another Person or entity or to permit the wires of another Person or entity to be attached to the Company's poles if it can be satisfactorily shown that the Company will be subjected to increased risks of interruption of Cable Service or liability for accidents, or if sufficient space is not available. However, if the existing pole facilities are subject to modification so as to remove the risk of interruption of Cable Service or liability for accidents or provide sufficient space, then the Company shall be required to attach its cables to such pole facilities as modified and shall be required to pay for such modification in accordance with applicable law. Should no poles exist, then before installing any poles, the Company shall apply to the City's Community Development Director for permission to install such poles.

- C. The Company may be required by the City to share trench space with another Person or entity for the placement of wires underground. Compensation to the Company as well as terms of sharing trench space shall be resolved between the affected entities. Ducts, cables, or wires shall be placed in trenches in compliance with applicable safety standards and, pursuant to the space allocation plan of the City.

SECTION 6. Changes for Governmental Purposes.

- A. Whenever by reason of changes in any Right-of-Way or in the location or manner of construction any water pipe, gas pipe, sewer or other underground or overhead structure for any governmental purpose whatsoever, it shall be deemed necessary by the Community Development Director of the City to remove, alter, change, adapt, or conform the underground or overhead Facilities of the Company, such alterations or changes shall be made as soon as practicable by the Company and begin within ten (10) days of notice from the City, without claim for reimbursement or damages against the City; provided, however, if said requirements impose a financial hardship upon the Company, the Company shall have the right to present alternative proposals for the City's consideration; however, the City shall have final discretion in whether to accept such alternative proposals. Company shall be reimbursed for the costs of such removal or alteration on the same terms and conditions as other utilities in accordance with applicable law. Except for Franchise revocation or termination or System abandonment, the City shall not require Company to remove its Facilities entirely from a Right-of-Way unless suitable alternatives are available for relocation at a reasonable cost. If Company fails or refuses to begin such alterations or changes within such ten (10) day period or if the Company fails to complete the work in a reasonable time, the City shall have the power to remove or abate the same at the expense of the Company, all without compensation or liability for damages to the Company.
- B. In cases of emergency the City may require relocation of the Company's Facilities at the Company's expense in the event the emergency creates an immediate threat to the public safety, health and welfare.

SECTION 7. Work by Others.

- A. The City reserves the right to lay, and permit to be laid, sewer, electric, phone, gas, water, and other pipelines, cables, conduits and related appurtenances, and to do and permit to be done any underground or overhead work in, across, along, over, or under a Right-of-Way or other public place occupied by the Company. The City also reserves the right to construct new streets and to alter the design of existing streets.
- B. In the event that the City subsequently authorizes someone other than the Company to occupy space under the surface of a Right-of-Way, such grant shall be subject to the rights herein granted or heretofore obtained by the Company. In the event that the City shall close or abandon any Right-of-Way which contains existing Facilities of the Company, any conveyance of land within such closed or abandoned Right-of-Way shall be subject to the rights herein granted or heretofore obtained by Company; provided, that the Company may be ordered to vacate any land so conveyed if an alternate route is practicable and if the

Company is reimbursed by the Person to whom the property is conveyed for the reasonable costs of removal and relocation of Facilities.

- C. If the City shall require the Company to temporarily adapt or conform its Facilities or in any way or manner to temporarily alter, relocate, or change its Facilities solely to enable any other entity or Person, except the City, to use, or use with greater convenience, said Right-of-Way for moving Facilities or for other projects of limited duration, the Company shall not be bound to make any such changes until such other entity or Person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arise out of such change, alteration, or relocation of Company's property; provided, however, that the City shall never be liable for such reimbursement.

SECTION 8. Rights of Individuals.

- A. The Company shall not deny service, access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age, disability or sex. The Company shall comply at all times with all applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination.
- B. The Company shall comply with all applicable Subscriber privacy rules and regulations under state and federal law.
- C. Except as provided by federal law, neither the Company, nor any of its agents or employees, shall sell, or otherwise make available to any party:
 - 1. Lists of the names and addresses of Subscribers, or;
 - 2. Any list which identifies the individual viewing habits of Subscribers.

SECTION 9. Leased Access Channels.

The Company shall offer leased Access Channel capacity on such terms and conditions and rates as may be negotiated with each lessee subject to the requirements of Section 612 of the Cable Act and the rules and regulations of the FCC.

SECTION 10. General Provisions.

The following provisions shall be applicable to the Cable System throughout the life of the Franchise.

- A. Parental Control Devices. The Cable System shall have the ability to lock out Channels upon reasonable advance notice to the Company by the Subscriber. To the extent permitted by law, the Company reserves the right to charge for such services and equipment.

B. Minimum Interference. All transmission lines, equipment, and structures shall be installed, constructed, maintained and located so as to cause minimum interference with the rights and reasonable convenience of property owners and at all times be kept and maintained in a safe and adequate condition, and in good order and repair. The Company shall, at all times, employ necessary and reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisances to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public.

C. Test and Compliance Procedures.

1. Testing. The Company, at its cost, shall perform all tests required by the Federal Communications Commission. A written report of test results shall be filed with the City upon request.

(a) The City, through a qualified engineer familiar with cable systems, at its initial cost and expense, may reasonably perform technical tests of the Cable System (during times and in a manner which does not unreasonably interfere with the normal business operations of the Company or the Cable System) in order to determine whether or not the Company is in compliance with the terms hereof and applicable local, state and federal laws. Such tests may be undertaken only after giving the Company ten (10) days' notice thereof, and providing a representative of the Company an opportunity to be present during such tests. In the event that such testing demonstrates that the Company has substantially failed to comply with the material requirements hereof, the Company shall reimburse the actual costs of such tests to the City.

(b) Nothing in this Franchise shall be construed to require the Company to maintain any test results or reports for a period greater than required by applicable FCC regulations.

2. Notice of Shutdown. At least twenty-four (24) hours before any planned shutdown in excess of four (4) hours, the Company shall give notice to its affected Subscribers and the City. Such notice may be in the form of an on-screen message on the local origination, educational or government Access Channels.

3. Service Calls. The Company shall not charge any Subscriber for any service call directly related to problems with the Company's equipment.

4. Disconnection. There shall be no charge to a Subscriber for a complete disconnection of Cable Services from the Cable System.

5. Employee Identification. The Company shall provide a standard identification document to all employees, including employees of subcontractors, who will be in

contact with the public. Such documents shall include a local telephone number that can be used to verify identification. In addition, the Company shall clearly identify all Personnel, vehicles, and other major equipment that are operating under the authority of the Company.

- D. Services for the Disabled. The Company shall comply with all applicable provisions of the Americans with Disabilities Act and the State Law Against Discrimination.
- E. Parks. The Company shall not construct or place any of its Facilities in any City park outside of an established Easement without the prior written permission of the City. Use of easements within City parks shall require seven days' advance written notice to the City, except in an emergency or unless otherwise provided herein or in a City ordinance, regulation or policy.
- F. Periodic Performance Review. It is the understanding of the City and the Company that the Company will, over the course of the term of the Franchise, provide a state-of-the-art Cable System and services relative to comparable communities, and conduct its business in full compliance with the Franchise and in a manner that represents good corporate citizenship in the City. Accordingly, upon request by the City, with reasonable advance notice, at intervals of no less than three (3) years, the Company shall participate with City in a public review of the Company's Cable System, services and general performance. This review may include consideration of the following:
1. Test results relating to the Company's compliance with technical standards and specifications.
 2. Subscriber complaints received by the Company or the City concerning technical problems or service-related issues.
 3. The types and quality of services provided by the Company.
 4. The results of any Subscriber surveys that may be conducted by the City or the Company, or both.
 5. The Company's overall compliance with the terms and conditions of this Agreement.
 6. Changes in cable system technology and services, an evaluation of established, operating state-of-the-art technology in comparable communities, and the economic and technical feasibility of providing advanced new services.
 7. Changes in state and federal laws and regulations that affect the operation of the Cable System.

SECTION 11. Customer Service Standards.

The Company shall fully comply, at a minimum, with the Customer Service Standards set forth by the FCC in 47 C.F.R. § 76.309. In addition, the Company shall fully comply with such customer service standards as may be adopted by resolution or ordinance by the City from time to time. The Company shall maintain a local customer service operation, no more than fifteen (15) miles from the center of Post Falls, fully staffed with trained Personnel. The Company shall comply fully, promptly and clearly with all City requests for reports on customer service policies and practices and on the degree to which the Company is succeeding in meeting applicable customer service standards. The Company will make available in clearly understandable form all data requested by the City in any attempt to verify Company reports on customer service activities.

SECTION 12. Equal Employment Opportunity.

The Company shall comply with all federal, state and local equal employment opportunity laws.

SECTION 13. Construction Provisions.

- A. **Standards.** The Company's Cable System constructed within the City shall comply with all applicable federal, state and local laws.
- B. **Trimming of Trees.** The Company shall have the authority to trim trees upon and hanging over streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. Except in case of emergency, grantee will consult, coordinate, and work with City Personnel, including but not limited to the City's Urban Forester, before trimming overhanging or problem trees in the Franchise area; provided, however, all trimming shall be done at the expense of the Company, and in conformance with City Code.
- C. **Inspection.** The City shall have the right to inspect all construction and installation work performed by the Company pursuant to this Franchise as it shall find necessary to ensure compliance by the Company. Such inspection shall be in accordance with the provisions of this Franchise.
- D. **Restoration of City Property.** The Company at its own cost and expense and in the manner approved by the City shall replace and restore all City property, including Right-of-Way, which is disturbed by the Company's construction, installation, maintenance or operation of its Facilities, in as good a condition as that before the work was commenced. Nothing herein shall prevent the City from charging the Company its usual and customary fees of general applicability for inspection of such restoration or replacement work. The Company shall be responsible for injury or damage to Persons or property caused by Company activities in the public Right-of-Way from the time of disturbance until such proper restoration. Failure of the Company to replace or restore such City property within a reasonable time period after written notification by the City shall entitle the City to cause the proper restoration to be made at the Company's expense. The Company shall pay to the City the cost thereof, in the itemized amounts reported by the City to the Company, within 30 days after receipt of such itemized report. Such payment shall not excuse a breach of the

Franchise caused by the Company's failure to commence, pursue or complete the required work.

- E. Restoration of Property. Whenever the Company shall cause or any Person acting on its behalf shall cause any disturbance, injury or damage to any private property or City property by or because of the installation, maintenance or operation of its Facilities, such disturbance, injury or damage shall be remedied fully by the Company at its expense. Further, the Company shall, at its own cost and expense, replace and restore the respective property to as good a condition as that before the disturbance, injury or damage occurred within a reasonable time of the disturbance, injury or damage. Nothing in this Franchise shall be construed as authorizing the Company to remove any trees, or shrubs within the public utility Easements, without the express written authorization from the City.
- F. Construction Necessary For Operation. Subject to applicable laws, regulations and ordinances of the City and the provisions of this Franchise, the Company may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all Facilities within the Right-of-Way incident to the Company's Cable System shall, regardless of who performs the construction, be and remain the Company's responsibility.
- G. Joint Trenching and Boring. The Company may make excavations in the Rights-of-Way for any Facility needed for the maintenance or extension of the Company's Cable System. Prior to doing such work, the Company shall give appropriate notice to the City and the notification association in accordance with applicable law (namely the Kootenai County 1 Call – Utility Council). When obtaining a permit, the Company shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, the Company shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of street cuts within the City. If the Company reasonably anticipates that trenching will encounter tree roots, the Company shall consult with the City prior to trenching.
- H. Emergency Repairs. In the event that emergency repairs are necessary to any part of the Cable System, the Company shall immediately notify the City of the need for such repairs. The Company may initiate such emergency repairs, and shall apply for appropriate permits within 48 hours after discovery of the emergency. The Company shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permits or license fees.
- I. Location of Facilities. The Company shall be a member of the Kootenai County 1 Call Utility Council. Within forty-eight (48) hours after any City department, franchisee, licensee, permittee notifies the Company of a proposed street excavation, the Company shall, at the Company's expense:
 - 1. Mark on the surface all of its locatable underground Facilities within the area of the proposed excavation;

2. Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or
3. Notify the excavator that the Company does not have any underground Facilities in the vicinity of the proposed excavation.

J. Restoration of Streets and Sidewalks. If the Company excavates the surface of any Right-of-Way, the Company shall be responsible for restoration of the Right-of-Way in accordance with generally applicable regulations of the City. The City may, after providing notice to the Company, resurface any opening made by the Company in the Right-of-Way, and the Company thereof shall pay the expense. The City may, after providing notice to the Company, remove and/or repair any work done by the Company, which, in the determination of the City, is inadequate or unsatisfactory. The Company shall pay all costs thereof, including the costs of inspection and supervision. All of the Company's work under this Franchise, and this Section, in particular shall be performed and completed in strict compliance with all generally applicable rules, regulations and ordinances of the City.

K. Reservation of City Rights. Nothing in this Franchise shall prevent the City from constructing or establishing any public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the Company's Cable System. However, if any of the Company's Cable System interferes with the construction, maintenance or repair of any public improvement, the Company's Cable System shall be removed or replaced.

Any and all such removal or replacement shall be at the expense of the Company. Should the Company fail to remove, adjust or relocate its Facilities by the date established by the City's written notice to the Company, the City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by the Company. The Company shall be entitled to reimbursement in accordance with applicable law.

L. City Codes.

1. The Company shall strictly adhere to all City codes currently or hereafter in effect, and to all other applicable City, State and Federal regulations. The Company shall arrange its lines, cables, and other appurtenances, on both public and private property; in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of the Company's lines, cables, and other appurtenances from the property in question. Access to private property is neither approved nor implied by this Franchise, except for access to easements on private property provided the Company complies with 47 U.S.C. Section 541.
2. All plans for aerial crossings near existing or proposed traffic signals, signs, flashers, or other traffic control devices shall be submitted to the City for approval. No

crossings shall be permitted that obstruct traffic signals or other official traffic control devices.

M. Prewiring. Any requirement of the City that requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

N. Undergrounding and Overhead Construction

1. Preference for Underground Installation. In all sections of the City where the cables, wires or other like facilities of the telephone company and electric company are placed underground, the Company shall place its cables, wires, or other like facilities underground. If at any time the City determines that existing wires, cables or other like facilities of the telephone company and electric company anywhere in the City shall be changed from an overhead to an underground installation, the Company shall, at Company's sole expense, convert its Facilities to an underground installation. If the Company owns the aerial supporting structures, the additional incremental cost of undergrounding compared to aerial location, or as provided for in the approved tariff, if less, will be paid by the City. Where no overhead poles exist, all cables and Facilities shall be constructed underground, excluding Cable System passive or active electronics that must be housed in low-profile, above ground pedestals due to technical considerations.

2. Overhead. In areas of the City where electrical or telephone systems are installed on poles above ground, the Company shall have the option of installing the Cable System in like manner above ground or, alternatively, underground.

3. In cases of single site Multiple-Dwelling Units, the Company shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically and economically feasible in agreement with the owners and/or owner's association of the Multiple-Dwelling Units.

O. Rights-of-Way Occupancy.

1. Nothing in this Franchise shall give the Company the right to attach its Cable System to structures or poles owned by the City without consent of the City.

2. The Company shall:

(a) Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;

(b) Keep and maintain all transmission lines, equipment and structures in a safe condition, and in good order and repair;

- (c) Employ professional care;
 - (d) Place any fixtures in any Right-of-Way in such manner as not to interfere with the usual travel of the Right-of-Way or cause unsafe conditions of any sort;
 - (e) Submit a traffic control plan to the City for approval and receive such approval at least 48 hours prior to commencing construction except in the case of emergency. Such traffic control plan shall be available for public inspection on the construction site at all times; and
 - (f) Notify adjacent property owners, businesses, residents, and others specified by the City prior to construction and major maintenance projects.
3. The Company shall not make street cuts or curb cuts unless absolutely necessary, and only after a permit has been obtained from the City under such conditions as the City shall in its sole discretion determine.
 4. Before beginning any excavation or other construction activity on a Right-of-Way that crosses or abuts any private property, the Company shall clearly mark with non-polluting water-soluble spray paint the excavation area. After such excavation or other construction activity, the Company shall restore such property to not less than the City's standards.
 5. The Company shall locate, mark, and map any of its installed cable or Cable System for the City at no expense to the City. The Company shall install underground warning tape at least twelve (12) inches above all fiber optic cable where such installation is done by means of open trenching. Where cable is placed by boring or plowing, all fiber optic cable will be accompanied by a metallic tracer wire and all coaxial trunk and feeder cable shall serve as its own tracer for locating purposes.

P. Stop Work.

1. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.
2. The City shall issue a stop work order that shall be:
 - (a) In writing or, in the case of an emergency, verbally given;
 - (b) Given to the individual doing the work, or posted on the work site;
 - (c) Sent to the Company by overnight delivery at the address given herein;

- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

- Q. Company's Contractors. The Company and its contractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements for any contractors working in the Rights-of-Way. Any act or omission of any contractor of the Company that violates any provision of this Franchise shall be considered an act or omission of the Company for the purposes of this Franchise.
- R. Private Property. Except in the case of an emergency involving public safety or service interruption to a large number of Subscribers, the Company shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed; provided that in the case of construction operations, such notice shall be delivered or provided at least forty-eight (48) hours prior to entry. If any damage is caused by any Company activity or omission, the Company shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace the damaged property. In the case of an emergency, the Company shall attempt to contact the property owner or legal tenant in Person, and shall leave a door hanger notice in the event Personal contact is not made.
- S. Burial Standards. Temporary cable drops installed by the Company to residences shall be buried within 10 calendar days of initial Installation. When freezing surface or weather related conditions prevent the Company from achieving such timetable, the Company shall apprise the Subscriber of the circumstances and the estimated time of burial in writing, and shall further provide the Subscriber with the Company's telephone number and instructions as to how and when to call the Company to request burial of the line if the revised schedule is not met.
- T. Construction Notice. At least three (3) months before the Company begins construction on any new project for bandwidth expansion or other upgrade, the Company shall provide to the City a detailed strand map indicating a schedule and the area to be affected. If the City determines that the project will impose a significant impact on residents within the project area, the City may at its option hold a public hearing to obtain testimony from affected citizens. Notice of the public hearing shall be published in the official newspaper of the City and sent to all affected property owners.

SECTION 14. Continuity of Service Mandatory.

- A. It shall be the right of all Subscribers to continue receiving service insofar as their financial and other obligations to the Company are honored. In the event that the Company elects to rebuild, upgrade, modify, or sell the Cable System, or the City gives notice of intent to terminate or fails to renew this Franchise, the Company shall act so as to ensure that all Subscribers receive continuous, uninterrupted service.

In the event of a change of franchisee, or in the event a new operator acquires the Cable System, the Company shall cooperate with the City, new franchisee or operator in maintaining continuity of Cable Service to all Subscribers. During such period, the Company shall be entitled to the revenues for any period during which it operates the Cable System and the City shall be entitled to the franchise fee, the PEG Access Grant, and other monetary requirements as established by this agreement.

- B. Subscriber Information. As Subscribers are connected or reconnected to the Cable System, the Company shall, by appropriate means (such as a card or brochure), furnish information concerning the procedures for making inquiries or complaints, including the address and local or toll free telephone number of the Company to which such inquiries or complaints are to be addressed, and furnish information concerning the City office responsible for administration of the Franchise with the address and telephone number of that office.
- C. Complaints. When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the City casts doubt on the reliability or quality of Cable Service, the City shall have the right and authority to require Company to test, analyze, and report on the performance of the Cable System. The Company shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:
1. The nature of the complaint or problem, which precipitated the special tests.
 2. The Cable System component(s) tested.
 3. The equipment used and procedures employed in testing.
 4. The method, if any, in which such complaint or problem was resolved.

SECTION 15. Company Rules and Regulations.

The Company shall have the authority to promulgate such rules, regulations, terms and conditions affecting its Subscribers as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Franchise, and to assure uninterrupted service to each and all of its Subscribers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable federal, state and local laws, rules and regulations.

SECTION 16. Prohibited Activities.

In the conduct of its business franchised hereunder, neither the Company nor its officers, employees, or agents shall directly or indirectly sell, lease, repair, install or maintain; or recommend for sale, lease, repair, or maintenance television sets or receivers; provided; however, that nothing hereunder shall prohibit the Company, at a Subscriber's request and without payment, from examining and adjusting a Subscriber's television set to determine whether reception difficulties originate in the set or in the Company's Cable System.

ARTICLE IV. PROGRAMMING, PEG ACCESS

SECTION 1. Programming

- A. **Video Programming.** The Company shall provide broad categories of Video Programming choices substantially equal to or an improvement upon what is provided at the time the Franchise commences. The Company shall provide Video Programming services in at least the following broad general categories:
1. Broadcast Stations
 2. Access Channels
 3. Family Programming (including health and religious programming)
 4. Sports Programming
 5. News and Weather Programming
 6. Variety Programming
 7. Cultural/Arts Programming
 8. Music Programming
 9. Educational/Children's Programming
 10. Governmental and Financial/Business Programming

SECTION 2. Public, Educational and Governmental (PEG) Access.

- A. **Channel Capacity and Use.**
1. Upon the effective date of this Franchise, the Company shall continue to make one (1) Channel available for Access use by the City or by a designated Access provider identified by the City, for Government Access purposes. The Government Access Channel shall initially be Channel 13, and shall remain so throughout the term of the Franchise unless Channel 13 is claimed by must-carry obligations of the Company under FCC regulations. In addition, the Company shall provide the following additional Channels for Access use by the City or its designee(s):
 - a. One Channel for Educational Access use by the City of Post Falls, Post Falls public schools, the University of Idaho Research Center, Northern Idaho College, and other accredited educational institutions designated by the City, within 120 days following a written request from the city.
 - b. One Channel for Public Access use, within 180 days following a written request from the City.
 2. The Company agrees to designate, operate, and maintain any local origination Channel independent of the public, educational and governmental Access Channels.
 3. The bandwidth for each PEG Channel shall be at least as broad as the bandwidth of any other Channel offered in the basic tier of service.

- B. Additional Access Channels. When any PEG Access is programmed with locally scheduled non-duplicated programming, thirty-five (35) hours per week on average, over eight (8) consecutive weeks, the Company shall activate for Access use, under City control, no later than 120 days following a written request by the City, one (1) additional full-time Access Channel. The City request shall include a programming schedule as verification that the programming utilization criteria have been met. For the purposes of this section, “non-duplicated programming” shall mean programming in its initial cablecast on an Access Channel, or in up to 3 repeat cablecasts, excluding character generated programming which is not in digital video form similar to Video Programming. However, if, at any time following one year from coming under City’s control, an Access Channel requested under the authority of this subsection (C) is programmed for less than three (3) hours per day (four (4) hours per day any time after two years), for six days per week, for a continuous period of not less than eight consecutive weeks, the Company may request the use of the entire Channel. Company shall submit such request in writing to the city at least 120 days prior to desired utilization date. Company may continue to utilize the Channel for any purposes it so chooses, consistent with this Franchise, until it is required to be designated for PEG purposes pursuant to the provisions herein.
- D. Access Channels on Lowest Tier. All local, educational, and governmental Access Channels shall be carried on the Basic Cable Service tier.
- E. Relocation of Access Channels. Initially, Channel 13 shall continue to be devoted to Post Falls Government Access, and shall remain so throughout the term of the Franchise, unless the Channel is claimed by a must-carry obligation of the Company under FCC rules, or unless the City gives written permission otherwise. For all other PEG Channels, the Company shall consult with the City before assigning any Channel for the first time, and shall provide the City with a minimum of ninety (90) days' notice, and shall use its best efforts to provide one-hundred-twenty (120) days' notice, prior to the time PEG Access Channel designations are changed. The Company shall consult with the City prior to making a final determination regarding any changes in PEG Access Channel designations. Any new channel designation for a PEG Access Channel provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof of performance standards.
- F. Return Feeds From Origination Points. Following the effective date of this agreement, Company shall continue to provide return programming capabilities from City Hall on a basis similar to the capabilities provided on February 2, 2004. However, within 3 months following the effective date of the Franchise, the return feed from City Hall shall be upgraded to an activated fiber optic cable connection to the Company Headend. In addition, within 180 days of a written request by city, fiber optic cable connections shall be installed and activated to the Company Headend from the following locations:

- Post Falls High School
- Planned new City Hall

G. PEG Access Grant.

1. The City has determined that to meet community needs and interests for PEG Access in Post Falls over the term of the Franchise, the following developments, among possible others, are necessary:
 - a. Re-fitting the current City Hall chambers for improved coverage of meetings;
 - b. Establishing mobile and portable field production capability for City coverage of community activities and events;
 - c. Establishing an Educational Access Channel and supporting the production, editing and playback capability for the Channel, which may be used by the City and by elementary, secondary and post-secondary educational institutions;
 - d. Installing meeting coverage and studio capabilities in the planned new City Hall;
 - e. Preparing for the possible establishment of a Public Access Channel and operations.
2. Accordingly, the Company shall provide, in addition to the channels, training and services, technical assistance, return feeds and other support identified in this section, financial grants to the City for PEG Access development, in the following amounts and on the following schedule of due dates:
 - a. Within thirty (30) days following the due date represented by the effective date of this Franchise: \$20,000.
 - b. Within thirty (30) days following the due date represented by January 1, 2005: \$160,000.
 - c. Within thirty (30) days following each due date of December 31, March 31, June 30, and September 30 during the term of the Franchise and any extension thereof: an amount equal to \$.25 per Subscriber per month for the period since the previous PEG Access payment due date, over and above four thousand (4,000) Subscribers, as counted upon the due date of the current payment.

For the purposes of calculating PEG Access payments pursuant to (c) above, the total of all Subscribers as of the current due date shall be used; provided that, Subscribers receiving service under bulk contracts may be counted as Equivalent Billing Units (EBUs), using the Company's lowest residential basic Cable Service rate for calculating the number of EBUs. Each PEG Access payment pursuant to (c) above shall be accompanied by a report of the number of Subscribers at the beginning and end of the period, verified by an officer of the Company.

2. The City acknowledges the Company's right, consistent with FCC regulations, to pass-through and itemize portions of its Subscribers bills, including but not limited to franchise fees, the amount of the bill allocated to fulfill any new Franchise requirements

for PEG Access, and any fee, tax, assessment or charge imposed by any governmental authority on the Company. These itemized charges may be shown "above-the-line" (i.e., prior to the summation of the total amount due).

- H. Agreement as to PEG Contribution. The Company agrees that all contributions, services, equipment, Facilities, support, resources and other activities to be paid for or supplied by the Company pursuant to or in connection with its performance under this Section shall not be off-set against the payment of franchise fees.
- I. Rules Determined by the City. The City shall have the authority to manage the operation of PEG Access, and the City may delegate part or all of this authority to a third party. Rules governing the use of all PEG Access resources, including without limitation the public, educational and governmental Access Channel(s), studios, equipment, facilities, services, origination points, and the PEG Access Grant will be determined by the City or a designee of the City.
- J. Services and Training.
1. The Company will provide ongoing maintenance and technical assistance with return feeds from all programming origination points, and any interface equipment with such feeds.
 2. For a transition period of nine (9) months following the effective date of this Franchise, unless requested not to do so by the City, the Company will provide Personnel and services to continue the taping, playback and live cablecasting of Post Falls City Council, Planning and Zoning, and Parks and Recreation Department meetings.
 3. The Company shall include a listing of all PEG programming, as identified by the City or its designee, along with any local listings of the Company's commercial programming.
 4. The Company shall provide, upon City request, up to twenty-five (25) hours of training for Personnel for carrying out PEG Access production, editing, and playback beyond the meeting coverage described in (2) above.
- K. Public Access and Local Origination.
1. The City may establish and, by itself or through a designee operate, a Public Access Channel, which may be made available, under City-approved rules, on a first-come, first-served nondiscriminatory basis. Prior to beginning operation of a Public Access Channel, the City shall give 6 months' notice to the Company, whereupon, the Company's obligations under the Franchise for providing PEG Access Channels, technical support, training, services, and other support shall be extend to Public Access as well as Governmental and Educational Access.

2. The Company will comply with the local origination requirements of Section 612 of the Cable Act. The Company shall make reasonable efforts to advertise the availability of the Company's studio and services to train and educate users and potential users of local origination programming.

L. Non-Commercial Use. Public, Educational, and Governmental Access Channels shall be utilized solely for non-commercial purposes for the social, educational, cultural, charitable, and informational benefit and general welfare of the community. No Access user shall utilize the Access Channels for any purposes other than as specified and shall not derive any commercial profit therefrom, including the sale of advertising, commercials, or other similar activities. With the exception that the City has the right to delegate its authority to operate and regulate the PEG Access Channels, the right to utilize these Channels shall not be assigned by any Access user to any other Person or entity. The limitations of this section notwithstanding, nothing in this Franchise shall prohibit the solicitation and recognition of financial support for the provision of PEG Access by the City or its designee(s), and for charitable, educational or governmental purposes.

SECTION 3. Complimentary Service to Community Facilities.

Cable Service: The Company will provide and maintain at no expense to the City one (1) connection for Basic Service Tier at each location listed on Attachment 1. In addition, at the City's request, no more often than every two years during the life of the Franchise, the Company shall provide the City with one (1) connection for Basic Tier Service to additional locations of the City's choosing, as long as the location is a primary or secondary school, public library, and or county or municipal administration building and located within one hundred fifty (150) feet of the Company's distribution Facilities. The Company will bring its connection to a specified exterior demarcation point mutually agreed upon by the Company and such institution. There will be no charge for Cable Service on any outlet listed in Attachment 1.

In the event Company terminates its cable in the classroom during the life of this agreement, Company agrees to provide Cable Service to those school K-12 locations originally provided in its cable in the classroom program, but not less than the greatest number of connections any time during the life of the Franchise.

ARTICLE V. ADMINISTRATION AND REGULATION

SECTION 1. Rules and Regulations.

- A. In addition to the City's regulatory control of this Franchise, the City reserves the right and power to promulgate such additional rules and regulations as it shall find necessary in the lawful exercise of its police powers.
- B. Regulatory Authority. The City acting through the City Council or any City official, board, or commission to whom the City Council has delegated its regulatory powers may exercise appropriate regulation authority and power. The City may also adopt additional regulations at the request and upon application of the Company.

SECTION 2. Supervision of the Franchise.

- A. It is the intent of the City to provide day-to-day administration and enforcement of the provisions of this Franchise, and the City may delegate all or part of this responsibility to an entity or entities of the City's choosing.
- B. It shall be the right of the City at all times to be fully informed as to all matters in connection with or affecting the construction, reconstruction, maintenance, operation, and repair of the properties of the Company and its accounting methods and procedures in connection therewith, and the conduct of the Company's business in the City and of service being rendered by the Company. Pursuant to that right, the City is entitled to all materials and records reasonably necessary to monitor compliance with the terms of this Franchise.
- C. The City may delegate the exercise of any of the powers conferred upon the City relating to the supervision and regulation of the Company in the exercise of the rights and privileges herein conferred.
- D. The City shall have the authority to make and publish, after notice to those affected and a hearing, such rules and regulations necessary for it to carry out its duties hereunder.

SECTION 3. Payment of Franchise Fee.

- A. For the reason that the Rights-of-Way to be used by the Company in the operation of its Cable System within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to the Company to use the said Rights-of-Way is a valuable property right without which the Company would be required to invest substantial capital in Rights-of-Way costs and acquisitions, and because the City will incur costs in regulating and administering the Franchise, the Company shall pay to the City quarterly an amount equal to five percent (5%) of the Company's Gross Revenues derived from the operation of the Cable System to provide Cable Services in the City. In the event that the City may lawfully increase the percentage of Franchise fees collected from the Company, but not effective before expiration of the initial term, then the Franchise fees will be increased automatically after the giving of thirty (30) days prior written notice to the Company.
- B. The Franchise fees and any other costs or liquidated damages assessed shall be paid quarterly to the City, not later than thirty (30) days after the end of the quarterly period for which said payment is made. The payment shall be delivered to the Finance Director, along with a Franchise fee statement showing, in a form approved of by the City, the Gross Revenues in each category, and the calculations of the amount of the franchise fee payment. This statement shall be verified by a financial representative of the Company. In the event any payment is not made on the due date, interest on the amount due shall accrue from such due date at the rate established by Idaho Code for judgments outstanding.

- C. The Company shall file annually with the Finance Director of the City, no later than one hundred twenty (120) days after the end of the Company's fiscal year, a verified statement of Gross Revenues for that year attributable to the operations of the Company within the confines of the City. This statement shall present, in a form substantially similar to the form used for quarterly reporting of Gross Revenues and franchise fee calculations, a detailed breakdown of Gross Revenues from all sources for the year. A financial representative of the Company shall verify this statement.
- D. The City or its designee shall have the right to review and audit the Company's Franchise fee statements and statements of Gross Revenues and related books and records and to recompute any amounts determined to be payable under this Franchise. Any additional amount due to the City as a result of the City's review or audit shall be paid within thirty (30) days following written notice to the Company by the City. The reasonable cost of such audit shall be borne by the Company if the same results in increasing the Company's annual payments to the City by at least three percent (3%) provided, that if the amount due is less than five percent (5%) but more than three percent (3%) of the annual payment, the City shall only be entitled to its reasonable costs if the past-due amount recovered exceeds \$5,000 provided such reasonable costs shall not exceed \$5,000.
- E. Acceptance of money under this Section shall not in any way limit or impair any of the privileges or regulatory, condemnation, police powers or taxing rights of the City, whether under this Franchise or otherwise. No acceptance of any payment shall be constructed as an accord that the amount paid is the correct amount, nor shall such acceptance be construed as a release of any claim which the City may have for additional sums payable under the provisions of this Franchise.
- F. Adjustment at Termination. In the event the Franchise is revoked or otherwise terminated prior to its expiration date, the Company shall file with the City, within 90 days of the date of revocation or termination, a verified revenue statement showing the Gross Revenues received by it since the end of the previous year and shall make adjustments at that time for the Franchise fees due up to the date of revocation or termination.
- G. Franchise Fee Not a Tax. The Franchise fees shall be in addition to any and all special assessments and taxes that are now or hereafter required to be paid by any general law of the City, the State of Idaho, or the United States.
- H. Protection of Franchise Fees. If the Company bundles together Cable Services and non-cable services and sells them to customers in that form, the bundling shall be done in a manner that generates Gross Revenues in connection with Cable Services in substantially the same proportion to revenues for non-cable services as would be generated if the services were sold on a stand-alone basis.

SECTION 4. Rates.

- A. The City hereby expressly reserves the right, power and authority to fully regulate rates for service and equipment of the Company to the full extent permitted by applicable federal law.
- B. Non-Discrimination. The Company shall not discriminate, as to rates, charges, services, service Facilities, rules, and regulations or in any other respect.

SECTION 5. Transfer of Ownership or Control.

- A. This Franchise shall not be assigned or transferred, leased or disposed of either in whole or in part by voluntary sale or involuntary sale, merger or consolidation, either legal or equitable or any right, interest or property therein, pass to or vest in any Person, or entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld. No consent will be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.
- B. The Company shall promptly notify the City of any actual or proposed change in, or transfer of, or disposition of or acquisition by any other party of, control of the Company. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Company shall make the Franchise subject to cancellation unless and until the City Council shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, disposition, or acquisition of control, the City Council may inquire into the qualifications of the prospective controlling party, and the Company shall assist the City Council in any such inquiry.
- C. The proposed assignee must show its legal and technical qualifications and its financial responsibility as determined by the City Council and must agree to comply with all the provisions of the Franchise. Unless the Company and the City Council otherwise agree on an extension of time, the City Council shall be deemed to have consented to a proposed transfer or assignment in the event it has not acted within one hundred twenty (120) days following receipt of a completed FCC Form 394, or other replacement form in the future that fulfills the same requirements, and any information required by the terms of the Franchise or applicable federal, state or local law.
- D. The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the right of the City in and to the Rights-of-Way, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this Franchise.
- E. By its acceptance of this Franchise, the Company specifically agrees that any such transfers occurring without prior approval of the City Council shall constitute a violation of this Franchise by the Company. In no event shall a transfer of ownership or change of control be approved without the successor in interest becoming a signatory to this Franchise.

- F. For the purpose of this Section, a change of control of the Company shall be defined as any acquisition of the Company or the Company's parent's voting stock by a Person or group of Persons acting in concert which results in that Person or group of Persons owning more than fifty percent (50%) of the voting stock of the Company or Company's parent.
- G. Within 30 days of any transfer or sale and upon request, if approved or deemed granted by the City, the Company shall file with the City a copy of the deed, agreement, or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by the Company.
- H. Standards. The City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Company shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by the Company.
- I. Common Control Exemption. Notwithstanding anything to the contrary in this Section, the prior written approval of the City Council shall not be required for any sale, assignment or transfer of the Franchise, Cable System or ownership to an entity controlling, controlled by, or under the same common control as the Company.

SECTION 6. Renewal of Franchise.

The City and the Company agree that any proceedings undertaken by the parties relating to the renewal of the Company's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended (47 U.S.C. Section 546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

SECTION 7. Rights to Purchase.

If a renewal of the Company's Franchise is denied or the Franchise is revoked, and the City either acquires ownership of the Cable System or by its actions effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be done pursuant to the provisions set forth in Section 627 of the Cable Act (47 U.S.C.- Section 547).

SECTION 8. Records, Reports and Investigations.

- A. The Company shall keep complete and accurate books of account and records of its business and operations in accordance with FCC regulations.
- B. The City or its designee shall have the right at reasonable times and for reasonable purposes to examine, audit, review, and/or obtain copies of the papers, books, accounts, contracts,

documents, maps, plans, and other records of the Company kept pursuant to FCC regulations necessary to demonstrate compliance with this Franchise. The Company shall fully cooperate in making available its records and otherwise assisting in these activities. For any City investigation, all records requested by the City shall be provided to the City directly, or made available in Post Falls. If this cannot be done for any reason, then the Company will pay the travel-related expenses for an agent of the City to travel to the location of the records. To the extent permitted by federal and state law, the City agrees to treat any information disclosed by the Company as confidential and only to disclose such information to the City's employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. This provision is subject to the confidentiality provisions of Article VII, Section 15.

- C. Copies of all petitions, applications, communications and test results sent to or exchanged between the Company and the FCC in relation to this Franchise, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting the Cable System operations of this Franchise, so far as the same pertains to any aspect of the service or operations of the Company in the City, shall be made available to the City upon request.
- D. The Company shall provide an annual report to the City, no later than four months following the close of the Company's fiscal year, which contains the following information:
- The annual report of the Company's parent company, containing complete audited financial statements
 - The complete Gross Revenue report required in accordance with Article V, Section 3 (C)
 - A report of the number of Subscribers in all categories at the end of the previous fiscal year
 - A description of any construction or extension of the Cable System during the previous year, with the location of the new construction clearly indicated; and any plans for future construction during the new year
 - A description of any programming changes, and changes in rates, that have taken place during the year
 - A description of any changes in customer service policies or practices during the year
 - A summary of outages and customer complaints during the year, and the manner of their resolution.

Upon specific written request by the City, any item listed above for inclusion in the annual report shall be provided on a quarterly basis, with the exception of the parent company annual financial report.

ARTICLE VI. FINANCIAL AND INSURANCE REQUIREMENTS

SECTION 1. Surety

- A. Within sixty 60 days of the effective date of this agreement, Company shall obtain and maintain at its cost and expense, and file with the City, a performance bond or letter of credit issued by a company authorized to do business in the State of Idaho and found acceptable by the attorney for the City in the amount of Fifty Thousand Dollars (\$50,000). The performance bond or letter of credit shall be conditioned upon and insure the faithful performance of all material terms and conditions of the Franchise. Nothing in the performance bond or letter of credit shall alter the conditions of this Agreement.
- B. The performance bond or letter of credit shall remain in full force and effect throughout the term of this agreement.
- C. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City, whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of a right with respect to such bond shall affect any other rights the City may have.
- D. The performance bond shall contain the following endorsement:

It is hereby understood and agreed that this instrument may not be canceled by the surety nor the intention not to renew be exercised by the surety until thirty (30) days after receipt by the City by registered mail, of a written notice of such intent to cancel or not to renew.

The performance bond shall be used to insure the Company's faithful compliance with all of the terms and provisions of this Franchise.

- E. Maintenance. The Company shall restore the performance bond to its full amount if a claim is made. The Company's maintenance of the performance bond shall not be construed to excuse unfaithful performance by the Company, or to limit the liability of the Company to the amount of the performance bond, or otherwise to limit the City's recourse to any other remedy available at law or equity.
- F. Additional Security. In addition to the general performance bond or letter of credit required in this section, the Company shall provide, within thirty (30) days following the effective date of the Franchise, as a liquid security more suitable for immediately remedying violations of financial obligations under the Franchise, a letter of credit, made available in a financial institution approved by the City, in the amount of \$30,000. The security fund may be drawn upon by the City to remedy, among other violations of a similar nature:
- Failure of the Company to pay the City sums due under the terms of this Agreement.
 - Reimbursement of costs borne by the City to correct violations of this Agreement not corrected by the Company.
 - Liquidated damages or other financial penalties assessed against the Company due to violations of the requirements of this Agreement.

The terms of the letter of credit shall be subject to approval by the City. If the City draws down the security fund, the Company shall replenish it so that it remains at \$30,000.

SECTION 2. Liability Insurance.

- A. General Requirement. The Company must have adequate insurance during the entire term of the Franchise to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Franchise or involve the Company, its agents, representatives, contractors, subcontractors and their employees.
- B. Initial Insurance Limits. The Company must keep insurance in effect in accordance with the insurance limits herein. The Company shall obtain policies for the following insurance limits:
1. Commercial General Liability: One-million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, Personal injury, and property damage, and for those policies with aggregate limits, a one-million dollar (\$1,000,000) aggregate limit;
 2. Automobile Liability: One-million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage; and
 3. Employer's Liability: Worker's Compensation as required by the State of Idaho.
- C. Deductibles and Self-Insured Retentions. If the Company changes its policy to include a self-insured retention, the Company shall give notice of such change to the City. The City's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Company's liability to the City.
- D. Endorsements.
1. All policies shall contain, or shall be endorsed so that: (i) the City, its officers, officials, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of the Company under this Franchise or applicable law, or in the construction, operation or repair, or ownership of its Cable System; (ii) the Company's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees, and agents shall be in excess of the Company's insurance and shall not contribute to it; and (iii) the Company's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.
 2. All policies shall contain, or shall be endorsed so that the policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after thirty (30)

days prior written notice, return receipt requested, has been given to the City Finance Director.

- E. Acceptability of Insurers. The insurance obtained by the Company shall be placed with insurers with a Best's rating of no less than "A-VII."
- F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices. The Company hereby represents that its insurance policies satisfy the requirements of this Franchise.
- G. Other Insurance. The Company shall also provide Workers Compensation Insurance as required by Idaho law.
- H. Insurance – No Limitation. The Company's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by the Company or to limit the liability of the Company to the coverage provided in the insurance policies, or otherwise to limit the City's recourse to any other remedy available at law or in equity.

SECTION 3. Indemnity.

The Company shall, at its sole cost and expense, defend, indemnify and hold harmless the City, City Council, and any officers, employees and agents who have acted in their official capacities, boards and commissions, (collectively referred to as the "City" in this Section) and shall pay all damages and penalties which the City may be legally required to pay as a result of any negligent act or omission by the Company in the operation of the Cable System throughout the term of this agreement. Such damages and penalties shall include, without limitation, damages arising out of copyright infringements, and the construction, erection, operation, maintenance and repair of the Cable System. If legal action is filed against the City, to recover for any claim or damages as a result of any negligent act or omission by the Company in the operation of the Cable System, the Company, upon timely written notice to it by the City, shall defend the City against the action. The Company shall have the right to defend, settle or compromise any claims arising hereunder. In the event of a final judgment being obtained against the City as a result of any negligent act or omission by the Company in the operation of the Cable System, the Company shall pay the judgment and all costs and hold the City harmless therefrom. If the City, in its reasonable discretion determines that its interests cannot be fully represented by the Company, then the City may participate in the defense of such claims at the City's sole cost and expense. Notwithstanding the foregoing, the Company shall have the sole authority to settle, compromise, or otherwise resolve such claims, provided it does not result in any liability to the City.

The Company will not be required to indemnify the City for the negligent acts of the City or its officials, boards, commissions, agents or employees. The City will indemnify and hold the

Company harmless from any claims or causes of action arising from any acts by the City involving the City's use of the Access Channel(s) or the emergency alert system.

ARTICLE VII. ENFORCEMENT AND TERMINATION

SECTION 1. Liquidated Damages.

For violation of any of the following provisions of this Franchise, regarding noncompliance, which is not remedied after notice and thirty (30) days to cure, except as excused by Force Majeure, liquidated damages shall be chargeable to the performance bond or to the Company as delineated below. In the event that the nature of the default cannot be cured within such thirty- (30) day period, the Company shall take reasonable steps to cure said default within a reasonable period. The payment of liquidated damages in no way excuses the Company from any performance of its obligations under the Franchise.

- A. For failure to provide data, documents, reports, and information or to cooperate with the City-within ten (10) working days of such request, the Company shall pay to the City one-hundred dollars (\$100) per day for each day the violation occurs or continues.
- B. For failure to test, analyze and report on the performance of the Cable System following a request in accordance with the terms and conditions herein within ten (10) working days of such request, the Company shall pay to the City one-hundred dollars (\$100) per day for each day, or part thereof, that such noncompliance continues.
- C. For failure of the Company to comply with operational or maintenance standards, the Company shall pay to the City one hundred dollars (\$100) per day for each day, or part, thereof that such noncompliance continues.
- D. For failure to provide PEG Access Channel(s) or any portion of the PEG Access Grant on schedule, the Company shall pay to the City three hundred dollars (\$300) per day for each day or part thereof, that such noncompliance continues.
- E. For failure to provide Cable Service when initially requested to any household within the Franchise Area as required by this Franchise, the Company shall pay to the City fifteen cents (\$0.15) per affected household, for each day that such failure continues (not to exceed one thousand dollars (\$1,000) per day).
- F. For failure to comply with lawful City requirements concerning construction in the Rights-of Way, the Company shall pay to the City one hundred dollars (\$100) per day for each day such failure continues.
- G. For failure to substantially comply with a material requirement of the Customer Service Standards, the Company shall pay to the City one-hundred dollars (\$100) per day for each day such failure continues.

- H. For failure to comply with the Emergency Alert System requirements of the Franchise, the Company shall pay to the City one hundred dollars (\$100) per day for each day such failure continues.
- I. For repeated and material departure from the FCC technical performance standards, the Company shall pay to the City two hundred dollars (\$200) per day for each day such failure continues.
- J. For failure to comply with any other material provision of this Franchise, the Company shall pay to the City one hundred dollars (\$100) per day for each day such failure continues.
- K. The Company agrees that each of the foregoing failures shall result in injuries to the City and its citizens and institutions, the compensation for which would be difficult to ascertain and prove. Accordingly, the Company agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture, and are not to be deducted from franchise fees.
- L. Other Remedies. Neither the right to, nor the payment of, assessments shall bar or otherwise limit the right of the City in a proper case to:
 - 1. Obtain judicial enforcement of the Company's obligations by means of specific performance, injunctive relief, mandate, or other remedies at law or in equity;
 - 2. Consider any material violation as grounds for forfeiture and termination of the Franchise; or
 - 3. Consider any material violation as grounds for nonrenewal or nonextension of the Franchise.

SECTION 2. Forfeiture and Termination.

- A. In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right (after notice and the opportunity to cure as provided by Subsection C, below) to forfeit and terminate the Franchise and all rights and privileges of the Company hereunder in the event of a material breach of this Franchise's terms and conditions. A material breach by Company shall include, but shall not be limited to the following:
 - 1. Violation of any material provision of the Franchise;
 - 2. Attempt to evade any material provision of the Franchise or practice any fraud or deceit upon the City or Subscribers;
 - 3. Material misrepresentation of facts in the application for or negotiation of the Franchise;
 - 4. The Company abandons the System or terminates the System's operations.

- B. The foregoing shall not constitute a breach if the violation occurs but it is without fault of the Company or occurs as a result of circumstances beyond the Company's control. The Company shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees.
- C. The City shall make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City Council may appoint a hearing examiner to take under consideration the issue of termination of the Franchise. The City shall cause to be served upon the Company, at least twenty (20) days prior to the date of such hearing, a written notice of intent to request such termination and the time and place of the hearing. Public notice shall be given of the hearing and issue(s), which the City Council or hearing examiner is to consider.
- D. The City Council or hearing examiner, if appointed, shall hear and consider the issue(s) and hear any Person interested therein, and determine in its discretion, whether or not any violation by the Company has occurred. The Company shall be entitled to participate fully in the hearing process, including a presentation of evidence and questioning of witnesses, so that the record will include all information pertaining to the alleged violation.
- E. If the City Council or hearing examiner, if appointed, shall determine the violation by the Company was the fault of the Company and within its control, the City Council or hearing examiner, if appointed, may declare that the Franchise of the Company should be forfeited and terminated. The City Council or hearing examiner, if appointed, may stay its recommendation for a period of time to ensure compliance. Should the recommendation not be stayed or if there is no compliance within the period stated, then the City Council shall terminate the Franchise. Such determination shall be subject to judicial review.

SECTION 3. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the Cable System, the Company shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of this Franchise governing the consent of the City Council to such change in control of the Company shall apply.

SECTION 4. Removal of Cable System.

At the expiration of the term for which this Franchise has been granted, or upon its lawful termination or revocation as provided herein, the Company shall forthwith, upon notice by the City, remove at the Company's own expense all designated portions of the Cable System from all Rights-of-Way within the City, and shall restore said Rights-of-Way to their former condition. However, the Company shall have the right to sell its physical plant to a subsequent franchisee, subject to City approval as provided in Article V, Section 5, in which case said plant need not be removed and the

Company shall continue to operate the Cable System during such interim period prior to the sale, provided during any such period of operation Company shall have the same requirements, and obligations including the payment of franchise fees to City. If the Company fails to commence removing or operating its Facilities within thirty (30) days of request and proceeds diligently with the removal, the City may perform the work at the Company's expense. Any property of the Company remaining in place in any Right of Way three hundred and sixty-five (365) days after the termination or revocation of this Franchise shall be considered permanently abandoned and may become the property of the City at the City's discretion. The City will provide the Company reasonable notice of its intent to take control of any property of the Company.

ARTICLE VIII. MISCELLANEOUS PROVISIONS

SECTION 1. Notices.

All notices from the Company to the City pursuant to this Franchise shall be to the City Administrator, City of Post Falls, 408 N. Spokane St., Post Falls, ID 83854, or to another Person as designated by the City. All notices to the Company pursuant to this Franchise shall be sent to:

Kootenai Cable Co., Inc.
2305 W. Kathleen Ave.
Coeur d'Alene, ID 83815
Attn: General Manager

With a copy to:
Adelphia Communications Corporation
Att: Legal Department
5619 DTC Parkway
Greenwood Village, CO 80111

Or to such other officer or address designated by the Company. The Company shall maintain with the Finance Director, throughout the term of the Franchise, an address for service of notices by mail. The Company shall also maintain with the City, an office address and telephone number for the conduct of matters related to this Franchise during normal business hours. A new address and telephone number of the office shall be furnished to the Finance Director within fifteen (15) days after any change thereof.

SECTION 2. Time Limits Strictly Construed.

Whenever this Franchise sets forth a time for any act to be performed by the Company, such time shall be deemed to be of the essence, and any failure of the Company to perform within the allotted time may be considered a material violation of this Franchise and sufficient grounds for the City to invoke any relevant remedy. However, in the event that the Company is prevented or delayed in the performance of any of its obligations under this Franchise by reason of *Force Majeure*, the Company's performance shall be excused during the Force Majeure occurrence and the Company thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise or procure a substitute which is satisfactory to the City.

SECTION 3. Cooperation.

The parties recognize that it is in their mutual best interests for the Cable System to be operated as efficiently as possible and for the upgrade of the System to occur in accordance with the requirements and schedule set forth in this Franchise. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Franchise.

SECTION 4. Cumulative Provision.

The rights and remedies reserved to the City and the Company by this Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City and the Company may have with respect to the subject matter of this Franchise, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time. Further, either the City or the Company may seek any legal or equitable relief allowed by law provided that, if both parties agree in writing, the City and the Company may seek methods of alternative dispute resolution.

SECTION 5. Compliance with Federal, State, and Local Laws.

The Company, its contractors, subcontractors, employees, and agents shall comply with all applicable federal, state, and local laws, rules, and regulations issued pursuant thereto.

SECTION 6. Captions.

The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

SECTION 7. Construction of Agreement.

This Franchise shall be governed, construed, and enforced in accordance with applicable local, state and federal law.

SECTION 8. No Joint Venture.

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

SECTION 9. Entire Agreement.

This Franchise and all attachments represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties. This Franchise can be amended, supplemented, modified, or changed only by an agreement in writing which makes specific reference to this Franchise or to the appropriate attachment and which is signed on behalf of both parties.

SECTION 10. Actions of The City or The Company.

In any action by the City or the Company mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

SECTION 11. Severability, Preemption, and Precedence.

- A. If any section, subsection, sentence, clause, phrase, provision, or portion of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or any state or federal regulatory agency having jurisdiction thereof, the remainder of this Franchise shall not be affected thereby, and each remaining section, subsection sentence, clause, phrase, provision, and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.
- B. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Company, and any amendments to this Franchise negotiated as a result of such provision being preempted shall no longer be of any force or effect with respect to that provision.
- C. To the extent any provision of this Franchise is inconsistent the Post Falls City Code, as amended, this Franchise shall take precedence and supercede such inconsistent provision.

SECTION 12. Venue. Any action concerning a dispute arising under this Franchise shall be convened in a court of competent jurisdiction in Kootenai County.

SECTION 13. Interpretation. As a further condition of this Franchise, the parties acknowledge that this Franchise shall be deemed and construed to have been prepared mutually by both parties.

SECTION 14. Confidentiality. The City agrees to treat as confidential any books or records that constitute confidential commercial, financial or proprietary information under applicable federal or state law, to the extent the Company makes the City aware of such confidentiality and to the extent that the City concludes that such information comes within an exception to nondisclosure under applicable federal or state law. The Company shall be responsible for clearly and conspicuously stamping the work "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise the Company in advance so that the Company may take appropriate steps to protect its interests. If the

City receives a demand from any Person for disclosure of any information designated by the Company as confidential, the City shall, so far as consistent with applicable law, advise the Company and provide the Company with a copy of any written request by the party demanding access to such information within a reasonable time. The City agrees that, to the extent permitted by applicable state and federal law, it shall deny access to any of the Company's books and records marked confidential as set forth above to any Person, provided that the Company shall indemnify the City for any of the City's losses, costs, damages, attorney fees, or other expenses in connection therewith. The information required to be submitted under Article III relating to construction plans shall not be treated as confidential under this Section.

Any materials may be designated as proprietary if the company believes in good faith that the materials fall within the exemption to disclosure contained in the Chapter 3, Title 9, Idaho Code as now enacted or hereafter amended.

When asserting confidentiality, the company shall so indicate by clearly marking each page or portion thereof for which a proprietary designation is claimed. If a proprietary designation is challenged, the company will have the burden of demonstrating that the material designated as proprietary falls within the standards for nondisclosure enunciated in the Act. Further, the company agrees to indemnify and hold harmless the City, its officers, representatives, and employees from any cost or expense, including reasonable attorney fees incurred or adjudged against such Persons or entity.

SECTION 15. Effective Date.


This Franchise shall be in full force and effect five (5) days after publication as required by law, and acceptance by the Company.

SECTION 16. Costs

Unless otherwise provided for in the Franchise, the cost of performing the Company's obligations under the Franchise shall be borne by the Company.

PASSED BY THE CITY COUNCIL OF THE CITY OF POST FALLS, this 2 day of November, 2004.

CITY OF POST FALLS
Kootenai County, Idaho



Mayor, Clay Larkin

ATTEST:

Christene Pappas

City Clerk, Christene Pappas



Accepted this 9th day of November, 2004 subject to applicable federal, state and local law.

KOOTENAI CABLE, INC.

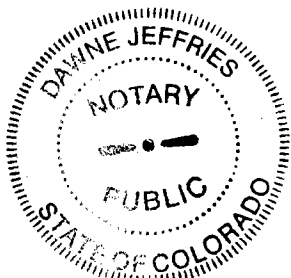
Thomas Larsen

By: Thomas Larsen
Title: VP of Law & Public Policy

STATE OF Colorado)
IDAHO)
COUNTY OF El Paso) ss

On November 9, 2004, before me, a Notary Public in and for said State, Personally appeared Thomas Larsen, known to me to be the VP of Law & Public Policy of the corporation that executed the within Instrument, known to me to be the Person who executed the within Instrument on behalf of the corporation therein named as Company and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its directors.

WITNESS my hand and official seal.



Davine Jeffries
Notary Public in and for the State of ~~Idaho~~ Colorado
Residing at: Colorado Springs ~~Idaho~~ Colorado
My Commission Expires: _____

MY COMMISSION EXPIRES
08/21/2007

ADELPHIA FRANCHISE ATTACHMENT 1

PUBLIC COURTESY ACCOUNTS

CITY OF POST FALLS
THE GRAND PAVILLION
POST FALLS STREET AND FLEET
POST FALLS LIBRARY
OASIS SHELTER
POST FALLS POLICE
OASIS HOUSE
POST FALLS HIGH SCHOOL
POST FALLS MIDDLE SCHOOL
POST FALLS RIVER CITY MIDDLE SCHOOL
SELTICE ELEMENTARY
PONDEROSA SCHOOL
NEW VISION ALTERNATIVE
POST FALLS HIGH SCHOOL
POST FALLS KINDERCENTER
MULLAN TRAIL ELEMENTARY
POST FALLS FIRE DEPT/KOOTENAI FIRE AND RESCUE
POST FALLS SENIOR CENTER