

CABLE TELEVISION FRANCHISE AGREEMENT

between

CLACKAMAS COUNTY, OREGON

and

DIRECTLINK OF OREGON, INC.

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1. **PURPOSE AND INTENT.**

- 1.1 Clackamas County, Oregon (hereafter Grantor) is authorized to and by this franchise agreement does grant to DirectLink (hereafter Grantee) a non-exclusive twelve (12) year franchise, revocable as provided herein, to construct, operate and maintain a cable communications system in the franchise area comprised of a portion of the area within the unincorporated territory of the Grantor, as described in Exhibit A.
- 1.2 The purpose of this franchise agreement is to create a binding, enforceable contract between Grantor and Grantee.

2. **DEFINITIONS.**

For the purposes of this franchise agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used in this franchise which are not defined hereunder but defined in the Cable Communications Policy Act of 1984, as amended by the Cable Communications Policy Act of 1992, (Cable Act), and the Telecommunications Act of 1996 shall have the meaning specified in the Cable Act definition.

- a. "Community Access Services" means services provided on any public, educational or government access channel.
- b. "Access Channel" or "Public, Educational or Government Access (PEG) Channel" means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any non-commercial organization may be a programmer, without charge by the Grantee, on a non-discriminatory basis.
- i. "Educational Access Channel" means any channel or portion of a channel available for educational programming by individuals or institutions.
- ii. "Government Access Channel" means any channel or portion of a channel available for programming by government agencies.
- iii. "Public Access Channel" means any channel or portion of a channel where any member of the general public or any non-commercial organization may be a programmer on a non-discriminatory basis, subject to operating rules formulated by the Grantor or its designee. Such rules shall not be designed to control the content of public access programming.
- c. "Addressability" means the capability of the cable communications system to provide programming to specific subscribers on a per program, program package, and premium channel basis without the need for a major system upgrade to activate the capability. An upgrade that requires only the installation of a piece or pieces of equipment between the point at which a subscriber's drop line connects to the system and the point at which the drop connects to the subscriber's

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television receiver shall not be considered a major system upgrade.

- d. "Affiliate" When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- e. "Availability of Service" means the ability of a subscriber to obtain a service within sixty days (60) by requesting the service and paying applicable installation and/or usage charges.
- f. "Basic Cable Service" means that tier of cable service which is required as a condition of access to all other video services and which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels.
- g. "Broadcast Signal" means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system off-the-air, whether by microwave link, by satellite receiver, or by other means.
- h. "Cablecast Signal" means a non-broadcast signal that originates within the facilities of the cable communications system.
- i. "Cable Communications System" or "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act. In every case of its use in this franchise, unless otherwise specified, the term shall refer to the cable system constructed and operated by the Grantee in Clackamas County under this franchise.
- j. "DirectLink" shall mean DirectLink of Oregon, Inc., its agents and assignees.
- k. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation). "Standard Video Channel" means a 6 MHz portion of the frequency spectrum, capable of carrying one video channel prior to any signal compression.
- l. "City" means Clackamas County and all the territory within its corporate boundaries within Clackamas County as these may change from time to time.
- m. "Commercial Subscriber" means a subscriber receiving cable services in a business or other commercial enterprise, where the services are to be used primarily in conjunction with the enterprise and the rates for services are individually negotiated with the subscriber.
- n. "Converter" means a device for changing the frequency of a television signal. A set-top converter changes the frequency of the mid-band, superband, or hyperband signals to a suitable channel which the television receiver is able to tune.

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- o. "County" means Clackamas County and all the territory within its corporate boundaries within Clackamas County as these may change from time to time.
- p. "FCC" means the Federal Communications Commission.
- q. "Franchise" or "Franchise Agreement" means an initial authorization, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, 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, "Franchise" shall designate this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.
- r. "Franchise Area" means those portions of the unincorporated area of Clackamas County which are designated in Exhibit A.
- s. "Grantee" or "Franchisee" means DirectLink of Oregon, Inc., an Oregon Corporation, and the lawful successors, transferees, or assignees thereof.
- t. "Grantor" means Clackamas County, a political subdivision of the State of Oregon.
- u. "Gross Receipts" means gross revenues less any bad debts.
- v. "Gross Revenues" means all amounts earned by the Grantee, or any entity that constitutes a "cable operator" under the Cable Act definition, in whatever form and from all sources, derived from the operation of Grantee's Cable System within the Clackamas County franchise area. "Gross Revenues" shall include, without limitation, amounts for all Cable Services, premium services, advertising, commissions on sales of goods or services by third (3rd) parties utilizing the Cable System (e.g., home shopping networks), installations, leasing, renting or selling of system capacity, and all other revenues derived from the operation of Grantee's Cable System regardless of whether initially recorded to another entity and however characterized.

Gross revenues shall also include any amounts received or earned by any Affiliate of the Grantee in whatever form and from all sources, derived from the operation of Grantee's Cable System within the franchise area, including amounts for Cable services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g. home shopping networks), installations, leasing, renting, or selling of system capacity and all other revenues derived from the operation of Grantee's Cable System.

In the event that Federal or State law permits the Grantee to provide non-video services to subscribers (such as telephone communications) through the facilities of the Cable System, and the Grantor has the regulatory authority to collect a franchise fee on such services, then the franchise fee on revenues derived by the Grantee from such services shall be at the same rate as paid to the Grantor by other providers of the same services using the public rights-of-way, not to exceed five percent (5%).

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However, any sales, excise or other taxes or fees levied directly upon subscribers by a local, state or federal government and collected by the Grantee for direct pass-through to such government shall not be included in "Gross Revenues".

"Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues.

- w. "Institutional Service" means video, audio, data and other services provided to institutional subscribers on an individual application, private channel basis. These services may include, but are not limited to, two-way video, audio or digital signals among institutions, or between institutions and residential subscribers.
- x. "Institutional Network" means that part of a cable communications network designed principally for the provision of non-entertainment, interactive services to businesses, schools, public agencies or other non-profit agencies for use in connection with the ongoing operations of such institutions, excluding privately designated networks.
- y. "Institutional Subscriber" means a place of business, public agency, school or non-profit corporation receiving institutional services on the institutional subscriber network.
- z. "Interactive Services" means services provided to subscribers where the subscriber either (1) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under the subscriber's control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (2) transmits signals to any other location for any purpose.
- aa. "Leased Channel" means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- ab. "Monitoring" means observing a one way communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- ac. "Non-Broadcast Signal" means a signal that is transmitted by the cable communications system and that is not involved in an over-the-air broadcast transmission path.
- ad. "Open Channel" means any channel that can be received by all subscribers having cable-ready television sets, without the necessity of special descrambling equipment.
- ae. "Pay Channel" or "Premium Channel" means a channel on which television signals

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are delivered to subscribers for a special fee or charge over and above the regular charges for standard subscriber service, on a per program, per channel, or other subscription basis.

- af. "Person" means any corporation, partnership, proprietorship, individual, organization, or other entity authorized to do business in the State of Oregon, or any natural person.
- ag. "Programmer" means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to subscribers, by means of the cable communications system.
- ah. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, magnetic and laser disk files, and photographs, to the extent related to the enforcement or administration of this Franchise.
- ai. "Resident" means any natural person residing within the franchise area.
- aj. "Residential Service" means services delivered on the residential subscriber network.
- ak. "Residential Subscriber" means a resident who receives services on the residential subscriber network.
- al. "Residential Network" means a cable communications network designed principally for the delivery of entertainment, community access or interactive services to individual dwelling units.
- am. "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies and which serve a minimum of twenty (20) students.
- an. "Section" means any Section, Subsection or provision of this franchise agreement.
- ao. "Streets and Public Ways" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the franchise area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them.
- ap. "Subscriber" means any person who elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the cable

communications system whether or not a fee is paid for such service.

aq. "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.

ar. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year".

3. GRANT OF FRANCHISE.

3.1 Grant.

Grantor hereby grants to the Grantee a non-exclusive, revocable franchise for a twelve (12) year period from and after the effective date hereof, revocable as provided herein, and subject to early termination at the end of seven (7) years after the effective date hereof under conditions described in Sections 4.1, 11, and 13.12 to construct, operate and maintain a cable communications system within the franchise area. This franchise constitutes the authority, right, privilege and obligation to provide the services of a cable communications system as required by the provisions of this franchise agreement.

This franchise is subject to the laws of the United States and the State of Oregon, and to the general ordinances of Clackamas County enacted pursuant thereto affecting matters of general county concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted.

3.2 Use of Public Streets and Ways.

For the purpose of constructing, operating and maintaining a cable communications system in the franchise area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the cable communications system. Prior to construction or alteration, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable fees, and receive approval as necessary before proceeding.

3.3 Duration and Effective Date of Franchise.

Except as otherwise provided herein for revocation, or early termination in accordance with Sections 4.1, 11, and 13.12 the term of this franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be twelve (12) years from the effective date of this agreement, at which time the franchise shall expire and be of no force and effect. The effective date of the franchise shall be the date of the signed Board of County Commissioners Board Order.

3.4 Franchise Area.

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The franchise area shall be that area designated in Exhibit A. Any future extensions of franchise area must be approved by the Board of Commissioners, as an amendment to this franchise. Any expansion area beyond that shown in Exhibit A, as granted must include terms for initiation of construction within twelve (12) months and coverage of area with full service by eighteen (18) months after initial construction.

3.5 Franchise Not Exclusive.

The franchise granted herein is not exclusive. This franchise shall not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways or public places by franchise, permit or otherwise.

3.6 Franchise Non-Transferable.

This franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

If the Grantee wishes to transfer this franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rule makings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this franchise agreement. The Grantee shall assist Grantor in any such inquiry, and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed transfer.

In cases where the Grantor finds it inappropriate to give unconditional consent to the proposed transfer, the Grantor may offer its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this franchise. Consent to the transfer shall not be unreasonably withheld. Any transfer of ownership affected without the written consent of the Grantor shall render this franchise subject to revocation. The Grantor shall have one hundred twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within said one hundred twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within sixty (60) days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer,

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certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall within sixty (60) days after the same shall have been made, file such certified copy as is required.

The requirements of this Section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a cable communications system of the Grantee or any affiliate of the Grantee. However, the cable communications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this franchise.

The requirements of this Section shall not be deemed to prohibit sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this Section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is cable system operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

3.7 Change in Control.

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee. If beneficial ownership of 25% percent of the stock of the Grantee, or of the majority of the stock of any parent company of the Grantee immediate or otherwise, or of any entity now owning or later acquiring such a beneficial interest is acquired by a single entity or by several entities under common control, if such entity or agent of common control is other than an organization with a majority of its beneficial ownership held by the Grantee or a parent of the Grantee, then a change in control will be deemed to have taken place unless the Grantor, upon request of the Grantee, finds otherwise. Such change in control shall make this franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

If the Grantee wishes to operate the franchise under a change of control, the Grantee shall give the Grantor written notice of the proposed change, and shall request approval of the change by the Grantor. The Grantor shall have one hundred twenty (120) days to act upon the request, following the receipt of the request and of all information required in accordance with FCC regulations, as well as all information required in writing by the Grantor prior to or subsequent to the request for approval. If the Grantor fails to render a final decision on the request within said one hundred twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective controlling party to perform the obligations of the Grantee under this franchise agreement. The Grantee shall assist Grantor in any such inquiry. Consent to the change of control shall not be unreasonably withheld.

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4. CONSTRUCTION AND SERVICE REQUIREMENTS.

4.1 General.

The Grantee shall maintain on its cable system a minimum practical capacity of forty-two (42) activated channels, defined under the Cable Act of 1992 as those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system. Not later than five (5) years from the effective date of the franchise, Grantee shall submit a plan to Grantor and increase service to not less than sixty (60) activated channels, if justified by community need, technology, and overall market conditions. The Grantee shall make available public access and institutional network capability for government and educational use as provided for in Section 6.6. In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension and service requirements set forth in this franchise agreement.

4.2 Right of Inspection of Construction.

Grantor, upon request, shall have the right to inspect all construction or installation work performed within the franchise area and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise agreement and other pertinent provisions of law. Grantor shall notify Grantee of times and location of inspection with the intent Grantee representative shall have the opportunity to accompany Grantor during any inspection.

4.3 Availability of Residential Service.

4.3.1 Density for Normal Extension of Service.

1. The Grantee shall make service available to every potential subscriber:
 - a. whose dwelling is one of a minimum of twenty-five (25) dwelling units per linear cable mile, or six (6) dwelling units per 1/4 mile, from the nearest existing cable plant; or
 - b. whose dwelling is situated such that cable constructed from the nearest existing cable plant would pass an average of twenty (20) homes per linear mile.
2. Service made available to the potential subscribers indicated in (1) above, shall have a system capacity as follows:
 - a. System capacity shall, at a minimum, be equal to or greater than the capacity of the nearest existing cable plant from which the extension is made.
 - b. In cases where the system capacity of the nearest existing cable plant is less than 750 MHz, but the cost of a system extension utilizing 750 MHz or better equipment is no greater than the cost of using equipment that meets the system capacity of the nearest existing cable

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plant, then extensions in this area shall be built utilizing 750 MHz or better equipment.

- c. In cases where utilization of equipment and spacing at 750 MHz or better is no greater than the cost of a system extension utilizing equipment meeting the capacity of the nearest existing cable plant, then system extensions shall be built and spaced utilizing 750 MHz or better equipment.
 - d. Where grantee utilizes equipment and spacing for system extensions at less than 750 MHz or better, and such extensions later meet the requirements within this franchise such that an upgrade or rebuild to 750 MHz or better system capacity is required, then the cost of upgrading or rebuilding the system plant at that time to provide 750 MHz or better capacity for that extension shall not be included as a component for determining whether such an upgrade or rebuild is economically feasible.
3. No charge shall be made by the Grantee to subscribers for: the extension of the cable system under this Section; nor the provision of a cable drop to the premises of any subscriber requesting service, so long as the drop does not exceed one hundred twenty-five (125) feet in length. However, nothing in this Section shall prevent the Grantee from imposing the normal, published installation charge to any subscriber.

4.3.2 Isolated Areas.

Potential subscribers requesting service but not entitled to availability of service under Section 4.3.1 shall be provided service under the following circumstances, through contractual agreement between the Grantee and the person requesting service for payment of line extension construction costs:

1. Grantee shall provide service at its normal, published installation charge for the initial one hundred twenty-five (125) feet of extension.
2. The subscriber and the Grantee shall share equally the actual cost of the extension for the distance over one hundred twenty-five (125) feet but less than five hundred (500) feet.
3. The subscriber shall pay all costs for the extension for the distance greater than five hundred (500) feet.
4. The amount of cable extension as measured in feet, which is the basis for the cost sharing, will be computed as follows:

The starting point shall be a point at the nearest reasonably usable existing cable plant using public right-of-way, exclusive of a street crossing; provided that the Grantee shall make a reasonable effort to secure and use private rights-of-way if the use of such rights of way reduces the cost of the line extension to the subscriber. The actual length of cable needed from the starting point to the subscriber's home shall be the total number of

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feet. The total cost of the project from the starting point to the home shall be divided by the total number of feet. The total actual cost of the project will be used to compute each party's share. Street bores or crossings needed to bring the existing cable plant to the requesting subscriber's side of the street shall be included as part of any line extension greater than one hundred twenty-five (125) feet, otherwise these costs shall not be charged to the subscriber.

4.3.3 New Subdivisions.

1. Subject to Sections 4.3.1 and 4.3.2, Grantee will be required to build, activate, proof and sell cable in new subdivisions within ninety (90) days of the time when fifty percent (50%) of the subdivision's potential dwelling units have been issued building permits and construction has started, or twenty-five percent (25%) of the subdivision's potential dwelling units have contracted for cable television service. The Grantee shall install a system of at least the system capacity as indicated below, in any new subdivision with a minimum of twenty-five (25) dwelling units per linear cable mile, or six (6) dwelling units per 1/4 mile, from the nearest existing cable plant.
 - a. System capacity shall, at a minimum, be equal to or greater than the capacity of the nearest existing cable plant from which the new subdivision is served.
 - b. In cases where the system capacity of the nearest existing cable plant is less than 750 MHz, but the cost of system plant to serve the new subdivision utilizing 750 MHz or better equipment is no greater than the cost of using equipment that meets the system capacity of the nearest existing cable plant, then new subdivisions in this area shall be built utilizing 750 MHz or better equipment.
 - c. In cases where utilization of equipment and spacing at 750 MHz or better is no greater than the cost of constructing plant for a new subdivision utilizing equipment meeting the capacity of the nearest existing cable plant, then new subdivisions shall be built and spaced utilizing 750 MHz or better equipment.
 - d. Where Grantee utilizes equipment and spacing for new subdivisions at less than 750 MHz or better and such new subdivisions later meet the requirements within this franchise such that an upgrade or rebuild to 750 MHz or better system capacity is required, then the cost of upgrading or rebuilding the system plant at that time to provide 750 MHz or better capacity for that new subdivision shall not be included as a component for determining whether such an upgrade or rebuild is economically feasible.
2. Grantee shall be responsible for ascertaining building permit activity in new subdivisions.
3. Where jurisdictional approval of a subdivision includes provision for the

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construction of separate phases of the subdivision each phase will be considered a separate subdivision for the purpose of this Section.

4.3.4 Annexation.

In the event any portion of the franchise area is annexed by a city, resulting in that portion having two (2) or more cable communications franchises, then to the extent permitted by law the Grantee's rights hereunder shall continue in effect but the Grantee shall not be required to construct a cable system passing the same homes as are passed by an existing cable system operating under the authority of an existing city franchise. Franchise fees shall be directed to the franchising authority controlling the streets and public way in the annexed Section.

4.4 Erection of Poles.

If additional poles in an existing aerial utility system route are required, Grantee shall negotiate with the utility company or provider for the installation of the needed poles. Grantee shall not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor. The Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions, and shall comply with all applicable ordinances, resolutions, rules and regulations of the Grantor.

4.5 Trimming of Trees or other Vegetation.

In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Tree or vegetation trimming shall be done only in accordance with the ordinances and other rules and regulations of Grantor and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands. Nothing contained in this franchise agreement shall be deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

4.6 Repair and Restoration of Streets, Public Ways and Grounds.

Whenever the Grantee shall disturb the surface or otherwise damage any street, alley, public highway, other public way or ground for any purpose mentioned herein, it shall repair and restore the same to the condition in which it was prior to the opening or other damage thereof. And when any opening is made by the Grantee in any hard surface pavement, in any street, alley, public highway or other way, the Grantee shall promptly refill the opening and restore the pavement to its original condition. The Grantor shall provide written notification of any deficiencies to Grantee. The Grantee shall have thirty (30) days to correct deficiency. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street damage following notification, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee. All excavations made by the Grantee in the streets, alleys, public highways or other ways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the rules, regulations and ordinances of Grantor as now or hereafter in effect.

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4.7 Construction Codes.

The Grantee shall strictly adhere to all applicable building, zoning or other laws and codes currently or hereafter in force in Grantor's jurisdiction. The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the removal of Grantee's lines, cables and appurtenances from the property in question following thirty (30) day notification to the Grantee.

4.8 Reservations of Street Rights.

Nothing in this franchise agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on reasonable notice from the Grantor all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee, to remove and replace Grantee's facilities, following notification, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.9 Street Vacation and Abandonment.

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street damage, following thirty (30) day notification, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.10 Movement of Facilities.

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon thirty (30) day notice shall move at the expense, paid in advance, of the person requesting the temporary removal, such of its facilities.

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4.11 Easements.

When Grantee secures easements in its own name, as in the case of construction in multiple dwelling units, it shall use a standard easement form that has been provided to the Grantor upon request or, if not a standard form, shall provide a copy of the easement document to the Grantor, upon request.

4.12 Undergrounding.

- A. Cable must be installed underground where (1) all existing utilities are placed underground, (2) statute, ordinance, policy or other regulation of Grantor requires utilities to be placed underground, (3) overhead utility lines are placed underground (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case), (4) Grantee is unable to get pole clearance, (5) underground easements are obtained from developers of new residential areas, or (6) utilities are overhead but residents prefer underground (service to be provided at cost to resident).

- B. Grantee shall use conduit or its functional equivalent including direct buried cable if it is rated by the manufacturer and National Electric Code for that use, on one hundred percent (100%) of undergrounding, except for drops from pedestals to subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards and shall meet or exceed all requirements of the National Electrical Code (N.E.C.) for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

4.13 As Builts.

Grantee shall maintain "as built" drawings of the system, and make them available to the Grantor for inspection upon request. "As builts" shall be updated as changes occur in the system. The Grantee shall provide to the Grantor, on request, a copy of drawings showing the location of the Grantee's facilities in the streets and public ways.

4.14 Emergency.

In the event of an emergency, or when the cable equipment creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's cable equipment without prior notice. Subject to the limits of the Oregon Tort Claims Act, Grantor will accept responsibility for any negligent actions of its employees taken pursuant to this Subsection.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS.

5.1 Equal and Uniform Service.

Grantee shall provide no less than forty-two (42) activated channels in the franchise area currently served as well as those areas newly activated during the term of this

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Agreement. Reasonable efforts shall be made to provide equal and uniform access and rates to customers within the franchised area.

5.2 Channel Capacity.

The residential cable system shall be installed with a minimum channel capacity of forty-two (42) activated standard television channels. In the event an upgrade is warranted at the end of the fifth (5th) year of the franchise under conditions described in Section 4.1, the residential cable system shall be installed with a minimum top frequency of 750 MHz, including at least sixty (60) activated standard television channels.

5.3 Satellite Earth Stations.

Grantee shall provide a sufficient number of earth stations to receive signals from enough operational communications satellites that carry cable television services accessible to the Grantee throughout the life of the franchise to enable Grantee to carry out its obligations under this Franchise.

5.4 Interconnection.

With respect to installing the capacity required under this Section, the Grantor understands that interconnection requires cooperation from other cable system operators as to engineering, design, and technical operation issues. In addition, Grantee's interconnection obligation, so far as equipment and construction is concerned, shall be limited to providing equipment needed, performing construction work required, and transmitting and receiving signals, within Grantee's franchise area in order to enable the required interconnections to occur. In order to actually establish the interconnections, it may be necessary for the operators of cable systems interconnecting with the Grantee's system to provide equipment needed, perform construction work required, and transmit and receive signals, within their respective franchise areas; and the provision of such equipment and performance of such construction work shall be the obligation of Grantee only within its own franchise area. Grantee shall not charge for any public, educational, or government signals transmitted or received on the interconnect if such signals are provided to Grantee at no charge. Grantor shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable system operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder, outside its franchise area, shall be subject to such cooperation being obtained. Grantee must fully cooperate with other operators in establishing such interconnection in order to have met its obligations hereunder.

All interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this franchise on all interconnected channels.

- A. Grantee shall continue without limitation all Interconnections in effect on the effective date of this Franchise.
- B. Grantee shall interconnect the Cable System at its Headend with other contiguous cable systems based on County telecommunications infrastructure needs and conditions described under Section 4.1 herein. The infrastructure utilized for the interconnect shall include, at a minimum, four (4) strands of single mode fiber and

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associated transmission equipment per interconnection and shall always provide the capability to transmit video channels in each direction together with data, telemetry, audio and other non-video signals.

- C. The interconnections referenced above shall be further interconnected with Grantee's residential network in order to provide PEG channels to subscribers as described in Section 6.6.
- D. Grantee shall make every effort to interconnect with educational networks.

5.5 Emergency Alert Capability.

Subject to FCC regulations, Grantee shall provide the system capability for the Grantor to transmit an emergency alert signal from locations designated by the Grantor to all subscribers and shall provide an emergency audio override capability to permit the Grantor to interrupt programming and cablecast from locations designated by the Grantor an audio message on all channels simultaneously in the event of disaster or public emergency. Emergency alert capability as required in this Section shall be operational throughout the term of the franchise. Subject to the limits of the Oregon Tort Claims Act, the Grantor shall indemnify, defend, and hold harmless the Grantee and its officers, agents and employees from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any injury to person or property arising out of or by reason of the sole act or conduct of the Grantor or its officers, agents, or employees in the exercise of the Grantor's emergency alert capability under this Section.

5.6 Standby Power.

Grantee shall provide standby power generating capacity at the cable communications system control center. Grantee shall maintain standby power system supplies, rated at least at two (2) hours duration. In addition, Grantee shall have in place and have filed with the Grantor throughout the franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours. In the event excessive power outages occur in the distribution networks, standby power may be required on the distribution networks to maintain system performance.

5.7 Parental Control Lock.

Grantee shall provide subscribers (by sale or lease or otherwise), upon request, with a parental control locking device or digital code that permits inhibiting the viewing of premium channels or designated PEG programming.

5.8 Technical Standards.

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply, and may be enforced by the Grantor. The Grantor may establish and enforce higher or additional reasonable technical standards, following consultation with the Grantee, to the extent that applicable law allows the Grantor to do so without the consent of the Grantee.

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- A. Residential Network, Forward Signals. The residential network shall be capable of carrying a minimum of forty-two (42) standard video television channels. Channels shall be activated for the duration of the franchise and expanded to sixty (60) channels not later than seven (7) years from effective date of franchise if justified by community need. The combined forward trunk and distribution system shall deliver signals to each subscriber's television receiver that meet or exceed applicable FCC specifications on each and every video channel at the mean system temperature +70 degrees Fahrenheit. This shall include the effects of drop cables, all links to the television set supplied and installed by Grantee or reasonably determined to be of a good technical quality and properly installed, such as interior splits and any terminal equipment.
- B. Reverse Signals. Reverse signals shall be included in the upgrade design under Section 4.1, should upgrade occur. The reverse channels of the residential network shall have the capability of providing return signals from any subscriber tap to the extreme end of any area of the system which is intended to receive the return signals. The system will be sufficient if it delivers such signals so as to meet or exceed the following specifications:
1. The system capability includes transmission of audio, color video, black and white video, and both low and high speed data, whether analog or digital.
 2. If necessary to prevent the build-up of noise and distortion products, the area is divided into Sections, and subtrunks run to a central hub within the areas, or equivalent alternatives such as fiber-optic return paths are used.
 3. No more than +54 dBmV output level is required out of any customer modem to meet the system specifications.
 4. Where applicable, the end of the system specifications includes the effects of any signal reprocessing equipment necessary to achieve forward transmission.
 5. For all video signals originating within the system, the signal delivered to the subscriber's television receiver, after being transmitted down a forward channel, meets the specifications of (1) above.

5.9 Performance Testing.

Grantee shall perform all system tests required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this franchise. These tests shall include, at a minimum:

- Initial proof of performance for any construction
- Compliance tests
- Tests in response to subscriber complaints
- Tests requested by the Grantor to demonstrate franchise compliance.

Written records of all system test results performed by or for the Grantee shall be

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maintained, and shall be available for Grantor inspection upon request.

System tests shall be performed at intervals as required by FCC guidelines. Grantor, upon request, shall be given the opportunity to review test sites in advance. At least two (2) of the test locations shall be the far end of the distribution trunk cables. The tests may be witnessed by representatives of the Grantor, and Grantee, upon request, shall inform the Grantor of the time and place of each test no less than three (3) weeks prior to the test. Written test reports shall be submitted to the Grantor. The Grantor may conduct independent tests of the system for which the Grantee shall give its fullest cooperation. If one or more of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the normal test point locations which failed, and at least five (5) additional randomly chosen locations provided by the Grantor. If results of a second (2nd) test indicate failure of the system to meet the technical performance requirements of this franchise, then the Grantor may apply such remedy or remedies as it deems appropriate, unless the circumstances of the failure are caused by conditions which are beyond the Grantee's control, as determined, acknowledged and verified by the Grantor.

6. SERVICES AND PROGRAMMING.

6.1 Programming Categories.

The Grantee shall provide broad categories of video programming in at least the number and of the type offered at the time the franchise is granted. The Grantee can ascertain community need and shall provide video programming services in at least the following broad categories:

1. News & Info. (Local, Public, Distant Broadcast)
2. Sports
3. General Entertainment
4. Arts, Culture, Performing Arts
5. Children / Family
6. Science
7. Travel Information
8. Weather Information
9. Governmental and Educational Programming
10. Movies
11. Religious Programming

The identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable Communications Systems.

6.2 Changes in Video Programming Services.

Subject to the provisions of the Cable Act, no category of services as referred to in Section 6.1 may be deleted, or so limited as effectively to be deleted by the Grantee without Grantor approval, which approval shall not be unreasonably withheld. In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories described in

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Section 6.1, then the Grantee shall be obligated to carry such programming only upon reasonable terms and conditions.

Grantee shall provide written notice to the County and to subscribers for any proposed deletions, additions, or rearrangements of individual programming service at least thirty (30) days in advance. The County reserves the right to regulate to the fullest extent permitted by law to ensure maintenance of the mix, level and quality of service.

6.3 Interactive Residential Services.

The Grantee shall make interactive services available to residential subscribers in any upgrade, pending justification of community need, market and economic viability, and negotiated amendment.

6.4 Leased Channel Service.

The Grantee shall offer leased channel service to the extent required by 47 U.S.C. Section 532 (Section 612 of the Cable Act), or regulations adopted thereunder.

6.5 Obscenity.

DirectLink of Oregon, Inc. shall not transmit over the cable system programming which is obscene or otherwise unprotected by the Constitution of the United States, or the State of Oregon, provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational and governmental access programming.

6.6 Public, Educational and Government Use of System.

6.6.1 Channels.

Grantee shall, upon demand, within one hundred twenty (120) days from the effective date of program notification, provide to the Grantor, for independent administration by the Grantor or its designee throughout the term of the Franchise, one Government channel and one Education channel. The Government channel may be used for Government and/or Public programming based on policy or need. The Educational channel may be used for general educational programming, such as Mind Extension University, Community College programming and/or K-12 programming.

In addition, within five (5) years during the term of the franchise, the Grantor may require Grantee to provide additional activated Downstream Channel capacity for a particular type of PEG Access under this Section, when a Channel for a particular type of PEG Access programming meets the criteria set forth below. Upon Grantee's request, a public hearing will be conducted regarding the need for additional capacity, to a maximum total of three (3) Access Channels. The Grantor shall give Grantee at least one hundred twenty (120) days prior notice of required additional Access Channels.

1. Grantor must show that during any eight (8) consecutive weeks, the Public

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Access Channel is in use for Locally Produced, Locally Scheduled Original Programming eighty percent (80%) of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or

2. Educational Access Channels: During any eight (8) consecutive weeks, the Educational Access Channel is in use for Locally Scheduled Original Programming eighty percent (80%) of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 AM to 11:00 PM, or

Governmental Access Channels: During any eight (8) consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming eighty percent (80%) of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 AM to 11:00 PM; and,

The applicable PEG Access Channel capacity expansion criteria as set forth in Subsections 1, 2, or 3, has been met, or exceeded, by the Grantor or the Designated Access Provider with responsibility for programming the PEG Access Channel. For the purpose of Section 6.6:

1. "Locally Produced" means programming produced in the Clackamas, Multnomah, or Washington Counties, or the Vancouver/Clark County, Washington metropolitan areas; and
2. "Original Programming" means Programming in its initial cablecast on the Cable System or in its first or second repeat; and
3. "Locally Scheduled" means that the scheduling, selection, and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received over the Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as part of its Basic or Expanded Basic Cable Services shall not be considered "Locally Scheduled."

The Grantor may agree to share the Clackamas County Government channel in the 330 MHz spectrum with OCTS (Our Community Television System) until such time as utilization requires an additional channel or an upgrade to that area of the system is completed as required under Sections 4.1 or 4.3. In the event the channel sharing arrangement with OCTS fails, then the Grantee will provide the Clackamas County Government Channel to subscribers in the 330 MHz spectrum. The Grantee will dedicate one channel for broadcast of the Clackamas County Government channel to subscribers within its area who are served by more than 330 MHz spectrum capacity. The Education channel may be shared between educational resources until such time as utilization justifies the need for separate college and K-12 usage.

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6.6.2 Grantee Support.

The Grantee agrees that the obligations arising from or relating from the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the Grantor. Grantee agrees that provision of the channels, indirect support, or other commitments to the community access channels are not to be offset or otherwise credited in any way against the franchise fees under this Franchise.

6.6.3 Access Interconnections.

In addition to the interconnection requirement in Section 5.4.B, and subject to Section 6.3, Grantee shall include in any upgrade design proposal, an access interconnection of at least one (1) channel shall be accomplished in a manner that assures the ability to switch programming from at least one (1) access channel in both directions between the interconnected residential systems.

6.6.4 Support for Access Costs.

Grantee shall provide \$.50 per month, per Residential Subscriber for Public, Educational and Governmental Access, or such lesser amount if authorized by Grantor. The contribution shall be payable by the Grantee to the grantor after (1) the approval of Grantor, if required, to the inclusion of the contribution on the bills of Residential Subscribers, including any requirements for approval pursuant to 47 C.F.R. Section 76.922, (2) notice, approved by the Grantor, to the Grantee's Residential Subscribers of such inclusion, and (3) the collection of the contribution from such Residential Subscribers. The Grantee shall make such payments quarterly, following the effective date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter.

6.6.5 Access Support Not Franchise Fees.

1. The Grantee agrees that financial support for Access arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect the Grantee's obligations to pay franchise fees to the Grantor. The Grantee agrees that although the sum of Franchise Fees and the payments set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Agreement.
2. The Grantor recognizes franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Agreement and the Grantee has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

6.6.6 Upstream Capability for Access.

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In addition to the interconnection requirement in Subsection 5.3 (B), and subject to Section 6.3, Grantee shall include in any upgrade design proposal, at least upstream signal capability for the transmission of at least one (1) standard video channel be activated from Clackamas Community College or designated source of educational programming.

7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS

7.1 Intent.

It is the intent of the Grantor to administer and enforce the provisions of this franchise. Grantor may delegate all or a part of its administrative and regulatory authority under this franchise to an agency designated by the Grantor. It is the intent of the County to administer and regulate activities under the Franchise up to the full extent permitted by applicable law.

7.2 Areas of Regulation and Administration.

The Grantor (or its designee) has authority within the franchise area for regulation in the following areas:

- A. Administering and enforcing the provisions of this franchise agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- B. Coordination of the operation of public, government and educational access channels.
- C. Formulating and recommending long-range cable communications policy for the franchise area.
- D. Disbursing and utilizing franchise revenues paid to the Grantor.
- E. Regulating rates, to the extent permitted by law.
- F. Customer service, to the extent permitted by law.
- G. Planning and facilitating development of public uses of the cable system on the residential and institutional networks, both within the County and through interconnection with adjacent systems, excluding private networks.

7.3 Rate regulation.

- A. Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the franchise; and to establish rate regulation policies and guidelines for carrying out its authority.
- B. Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give all subscribers within the unincorporated area at least (thirty (30)) days notice, as required by FCC. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of arbitrating subscribers or users.
- C. Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges to all subscribers purchasing similar services, regardless of race, color,

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creed, sex, marital or economic status, age, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; provided that nothing in this franchise shall prevent the Grantee from establishing discounted rates and charges for low-income subscribers, elderly subscribers, or multifamily subscribers as permitted by FCC regulations, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.

- D. The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Act of 1992), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this franchise that purports to expand or diminish such rights shall be deemed superseded by those provisions of the Act.

7.4 Remedies for Franchise Violations.

- A. Grantor has the right to and may impose liquidated damages not to exceed one hundred dollars (\$100) per day or per incident, in the event Grantee violates any material provision of this franchise agreement, subject to Section (C), below:
- B. In determining which remedy or remedies for Grantee's violation are appropriate, the Grantor shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. In the application of remedies for franchise violations, whether committed by the Grantee or any other cable franchisee regulated by the Grantor or its designee, the Grantor shall apply similar remedies for similar violations.
- C. If within thirty (30) days after receipt of written notice of any asserted violation from the Grantor the Grantee corrects the asserted violation, or if correction is not reasonably possible within the thirty (30) day period, the Grantee initiates good faith efforts satisfactory to the Grantor within the thirty (30) day period to cure the asserted violation and the efforts continue in good faith, then no liquidated damages or other remedy shall be imposed.
- D. In the event the Grantor asserts that Grantee has violated a provision of this franchise, the Grantor shall give the Grantee written notice of the alleged violation. Within thirty (30) days after receipt of the written notice, Grantee may request in writing a hearing before Grantor or its designee on the alleged violation. If the Grantee requests a hearing, then the Grantor or its designee shall provide the Grantee written notice of the time, date, and place of the hearing. The hearing shall be conducted as a contested case proceeding under procedures substantially similar to those established for such proceedings under ORS Chapter 183. Following the hearing, in the event a material violation occurred, the Grantor may assess the appropriate remedy against the Grantee, except as otherwise provided by Subsection (C) of this Section. Any determination of violation or assessment of a remedy shall be subject to such review in a court of competent jurisdiction as is authorized by law.

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- E. Monetary remedies provided for in this franchise shall be regarded as liquidated damages. Grantee acknowledges that monetary damages may be an inadequate remedy for violations of the franchise. Grantor's assessment of monetary damages as provided herein is not intended to be an exclusive remedy for any violations of this franchise, and the Grantor reserves the right to pursue equitable relief. Monetary and equitable relief shall be considered cumulative.
- F. Liquidated damages under this Section shall accrue for a maximum of one hundred eighty (180) days and shall be in addition to any to any other right the County may have under this franchise, under law or in equity, to enforce the franchise.

7.5 Public Disclosure.

Subject to the Oregon Public Records Law, whenever, pursuant to this franchise agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's prior written consent.

7.6 Remedies Not Exclusive.

The Grantor has the right to apply any one or any combination of the remedies provided for in this franchise, including without limitation all remedies provided for in this Section, and without exclusion to pursue any rights it may have at law or equity.

7.7 Consumer Protection Standards.

The Grantee shall meet minimum FCC Consumer Protection Standards, and

7.7.1. Customer Service and Telephone Responsiveness.

1. The Grantee shall maintain an office within the Canby area. The office must be adequately staffed and able to respond to subscribers and the public not less than forty-five (45) hours per week, with a minimum of nine (9) hours per day on weekdays. However, Grantee must make available, as per FCC minimum Customer Service Standards, provisions for customer bill payment and equipment drop off for Saturday business hours. If it is deemed community standard, and need requires less hours per week, the cable office can grant a written waiver outlining minimum hours.
2. As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.
3. Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational twenty-four (24)

*Postal Annex
998 by
C. [unclear]*

hours a day, including weekends and holidays.

4. The Grantee shall maintain, on average as verifiable by statistical data:
 - a. Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 - b. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

7.7.2 Service and Repair Calls.

1. Under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, requests from subscribers for repair and maintenance service must be acknowledged by the Grantee within twenty-four (24) hours or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises work must be completed within twenty-four (24) hours under normal circumstances. All other repairs should be completed within seventy-two (72) hours under normal circumstances.
2. Under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, as a normal operating procedure, upon subscriber request the Grantee shall offer either a specific appointment time or else a pre-designated block of time (not to exceed four [4] hours) for subscriber service appointments to be scheduled Monday through Friday.

The Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

3. As a normal operating procedure, and with particular regard to the needs of working or mobility-limited customers, upon subscriber request the Grantee shall arrange for pickup and/or replacement of converters or other company equipment at the subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).
4. Under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, where the service requested is

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installation of service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed. "Standard" installations, for the purposes of this Section, shall mean those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

7.7.3 Disconnection.

1. The Grantee may disconnect a subscriber if:
 - a. at least twenty (20) days have elapsed without payment after the due date for payment of the bill of the affected subscriber; and
 - b. the Grantee has provided at least five (5) days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.
2. Regardless of Subsection 1 hereof, the Grantee may disconnect a subscriber for cause at any time if the Grantee in good faith determines that the subscriber has tampered with or abused company equipment, or is or may be engaged unlawfully in theft of cable services, or is causing a system violation of FCC rules or regulations.
3. The Grantee shall promptly disconnect any subscriber who so requests from the Grantee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by the Grantee. No charge may be imposed by the Grantee for any cable services delivered after the disconnect date. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, within thirty (30) days return to such subscriber the amount of the deposit, if any, collected by Grantee from such subscriber, less any disputed amounts owed to Grantee for cable services or charges prior to the date of disconnection.

7.7.4 Credits Upon Outage.

Except for planned outages where subscribers are provided reasonable notification in advance, or under normal operating conditions as defined in the Grantor's Cable Ordinance (as now or hereafter constituted), upon a subscriber's request the Grantee shall provide a pro-rated twenty-four (24) hour credit to the subscriber's account for any period of four (4) hours or more during which that subscriber experienced the effective loss or substantial impairment of video or audio service on the system.

7.7.5 Downgrade Charges.

Grantee may impose Downgrade Charges only if:

1. the Subscriber has been notified, at the time of initiating Cable Services, of

Grantee's Downgrade Charges; and

2. the Downgrade Charge does not exceed the Grantee's costs of performing the downgrade as determined under FCC rate regulation rules, subject to applicable law.

7.7.6 Billing Information Required.

The Grantee bill to subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge thereof. The Grantee shall make its best effort to inform subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

7.7.7 Information to Subscribers.

1. Upon installing initial service to or reconnecting each customer, and upon request thereafter, the Grantee shall advise the customer, in writing, of:
 - a. the equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
 - b. the amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;
 - c. the Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
 - d. the toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
 - e. the company's practices and procedures for protecting against invasions of subscriber privacy; and
 - f. service termination policy;
 - g. billing procedures. Billing procedures shall be clearly explained in the manual and in addition, the company's phone number for information and requesting the manual shall be placed on the part of the bill retained by customers;
 - h. the notice and referral information, as set forth in Subsection 2 hereof;
 - i. liability specifications;
 - j. converter/subscriber terminal policy;
 - k. breach of agreement policy.
2. Notice to Subscribers.

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- a. The Grantee shall inform the Grantor and subscribers within thirty (30) days, prior to any changes in programming or increases in rates, costs, or charges to subscribers, or any channel repositioning within the control of Grantee.
- b. All Grantee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential customers in advance of taking the order.

3. **Written Complaint Acknowledgment.**

Within ten (10) days following receipt of a written complaint, received at the Grantee's principal business office by first class mail, from a subscriber, the Grantee shall provide an acknowledgment to the subscriber of receipt of the complaint and of any action the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than the County, such as the FCC.

7.7.8 Complaint Resolution.

1. The Grantor may take all necessary steps to ensure that all subscribers and members of the general public have recourse to a satisfactory hearing of any complaints, where there is evidence that the Grantee has not settled the complaint to the satisfaction of the person initiating the complaint.
2. For purposes of this Section, a "complaint" is a grievance related to the service of the cable communications system within the franchise area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services other than grievances regarding broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the customer's problem satisfactorily to the customer.

7.7.9 Failure to Resolve Complaints.

If Grantee fails to resolve a complaint within thirty (30) days following the date on which a complaint was made to DirectLink of Oregon, Inc. and the County, then Grantee shall be deemed in violation of the Franchise, and the County may assert any of the remedies set out in Section 11.1 and other applicable Subsections.

8. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

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8.1 Compensation.

- A. Franchise Fee. As compensation for the franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a cable communications system within the franchise area and to defray the costs of franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of the gross receipts generated in any manner through the operation of the cable system under this franchise. In the event any law or valid rule or regulation applicable to this franchise limits franchise fees below the five percent (5%) of gross receipts required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%). During any period in which the Grantor is regulating the Grantee's rates, the Grantee's obligation to pay franchise fees under this Section, with respect to the rates regulated by the Grantor, shall begin sixty (60) days after approval has been provided by the Grantor for the increase in subscriber rates directly related to the pass-through of these franchise fees as external costs, to the extent such increase and pass-through are permitted under federal law.

Any bad debts or other accrued amounts deducted from Gross Revenues in the calculation of Gross Receipts shall be included in Gross Receipts at such time as they are actually collected.

B. Payment of Franchise Fees.

1. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary for the Grantor to verify the amounts of franchise fee payments.
2. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this franchise. All amounts paid shall be subject to audit and recomputation by Grantor.

8.2 Faithful Performance Bond.

- A. Upon the effective date of the franchise, the Grantee shall furnish proof of the posting of a faithful performance bond (as reflected in Exhibit B) for the benefit of the Grantor, with good and sufficient surety approved by the Grantor in the penal sum of ten thousand dollars, (\$10,000.00), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise.

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- B. Grantee shall pay all premiums charged for any bond required under Section 8.2 (A), and unless the County Board specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:
1. the remaining term of the franchise; or
 2. if required by the Grantor, the removal of all of Grantee's system installed in Grantor's streets and rights of way.
- C. In lieu of the bond, the Grantee may provide an irrevocable letter of credit or similar arrangement to be established giving the Grantor rights substantially the same as the rights of the Grantor in relation to the bond, the provisions of which letter of credit or other arrangement shall be subject to the approval of legal counsel for the Grantor.

8.3 Damages and Defense.

- A. The Grantee shall defend, indemnify and hold harmless Clackamas County, and its officers, agents, and employees, from and against all claims, damages and penalties, including but not limited to attorney fees, arising as a result of any actions of the Grantee under this Franchise. These claims, damages and penalties shall include, but shall not be limited to: damages arising out of copyright infringement; defamation or anti-trust actions; and all other damages arising out of the Grantee's actions under the franchise or the construction, operation, maintenance or reconstruction of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this franchise.
- B. If the Grantee fails to defend as required in Section (a), above, then the Grantee agrees to and shall pay all expenses incurred by Clackamas County, and their officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in Section (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Grantor.

8.4 Liability Insurance and Indemnification.

- A. The Grantee shall maintain, throughout the term of the franchise, liability insurance covering any and all claims for damages or injury arising from operations under this franchise, insuring the Grantee in the minimum amounts of:

\$1,000,000 for personal injury or death to any one person;
\$1,000,000 for personal injury or death resulting from any one accident;
\$500,000 for property damage resulting from any one accident; and
\$1,000,000 for all other types of liability.

Such insurance shall name as additional insureds Clackamas County, and its officers, agents, and employees, and shall further provide that the policy shall not be modified or canceled during the life of this franchise without giving thirty (30) days written notice to the Grantor.

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- B. Grantee shall file with the Grantor certificates of insurance showing up-to-date coverage's, additional insured coverage's, and evidence of payment of premiums as set forth above. The grantor may review the certificates for compliance of the insurance with Section (a). The required coverage shall not be canceled without approval of the Grantor, and failure to maintain required insurance may be considered a breach of this franchise. All insurance shall provide thirty (30) days prior written notice to the Grantor in the event of reduction or cancellation. The minimum amounts of insurance set out in Subsection (a) shall be increased from time to time to the extent necessary to provide coverage at least as great as the limits on the Grantor's liability under the Oregon Tort Claims Act.
- C. The Grantee is an insured employer for purposes of the Oregon Workers Compensation Law (ORS Chapter 656) and is solely liable for any workers' compensation coverage as to work performed by Grantee under this agreement. Grantee agrees that Grantee and other persons retained by Grantee to perform work under this agreement shall be insured according to ORS 656.407 prior to commencement of work under this agreement, and that Grantee and such persons shall remain so insured during the term of this agreement. The Grantee shall also comply with the Unemployment Compensation Act of the State of Oregon. The Grantee shall provide the Grantor, prior to the effective date of this agreement, with evidence showing protection for its workers under the Workers' Compensation Act and registration with the State Unemployment Compensation Commission.

9. **RIGHTS RESERVED TO GRANTOR.**

9.1 **Right to Purchase the System.**

- A. In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this franchise agreement as provided in Section 11 or 11.2 herein, or in the event of expiration of the initial term of this franchise agreement without the franchise being renewed or extended as provided in Section 11.3:
1. The Grantee shall continue its operations for a period of two hundred seventy (270) days under the terms and conditions of this franchise agreement and as required by Section 11.4 herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor;
 2. During the two hundred seventy (270) day period identified in (1) above, Grantee shall have the right to sell to a buyer of its choosing who is acceptable to the Grantor at a price that is to be negotiated between Grantee and buyer. Should Grantee fail to reach sale agreement in two hundred seventy (270) day period, Grantor or its designee shall proceed as set forth below.
 3. The Grantor may give notice within ninety (90) days following expiration period of two hundred seventy (270) days identified in (1) and (2) above that it or its designee desires to purchase for its fair value all or a portion of

the system used by Grantee in its operation, within the County franchise area exclusive of parts of the system essential to Grantee's operation of other systems not to be acquired. During the ninety (90) day period Grantee shall continue its operations under the terms and conditions of this franchise agreement.

The fair value of the system for purposes of this Section shall be determined by mutual agreement between Grantor and the Grantee. If such mutual agreement cannot be reached by the deadline above following Grantee's deadline to conclude a sale to a buyer of its choosing, then Grantor and Grantee shall submit to a mandatory mediation procedure, as provided below.

For purposes of revocation or forfeiture under this Subsection (a), the fair value of all or part of the system shall be an equitable price for the system or part of the system being acquired, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor may assume.

For any other purpose under this Section, the fair value of all or part of this system shall be its fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor may assume.

During any period of continued operation under this Section, except as provided in Section 3.6 and Section 3.7 of this franchise, the Grantee shall not sell, assign, transfer, or lease to any other persons, firm or corporation, any portion of the system used by it in its operations without the prior written consent of the Grantor.

In the event of the Grantor's acquisition of all or portions of Grantee's cable system, as provided herein, Grantee shall use all best efforts to obtain any needed consent to assignment, to the extent any existing and future rental, lease, and lease-purchase arrangements for Grantee's cable system or any facilities to be acquired require any consent to assignment by third parties; and Grantee shall not unreasonably withhold any consent to assignment of any rental, lease, and lease-purchase arrangements for grantee's cable system or any facilities to be acquired.

- B. If mandatory mediation is initiated pursuant to Section 9.1 (a), both the Grantor and the Grantee shall participate in good faith in the mediation, in a manner determined by the mediator chosen for the process. The mediator shall be chosen from a list of five (5) qualified persons obtained from the American Arbitration Association. The choice of a mediator shall if possible be made by mutual agreement by the Grantor and Grantee; however, if such agreement is not possible, then the mediator shall be chosen by having the Grantor and Grantee alternately eliminate one (1) member of the list of qualified mediators until only one (1) name is left, with the party to be first to eliminate a name determined by a coin toss. The cost of mediation under this Section shall be shared equally by the Grantor and the Grantee.

If agreement regarding the valuation of the system cannot be reached through the mediation process described in this Section, then either the Grantor or the Grantee may file such proceeding as is appropriate in an Oregon court of competent jurisdiction to exercise any rights it may have.

Any final determination of system valuation for the purposes of a proposed purchase of the system by the Grantor, whether proceeding pursuant to Subsection 9.1 (a) or by any other lawful process, shall be subject to: (1) the Grantor's right within sixty (60) days of final determination of valuation to decide by appropriate resolution or other writing not to acquire all or any part of the system subject to the valuation proceeding; and (2) the Grantor's right to decide to acquire through use of proceeds from the sale of bonds, but subject to and conditioned upon any necessary voter approval of the bond funding and, if applicable, the successful sale of the bonds.

- C. In the event Grantor purchases, acquires, takes over, or holds all or parts of the system pursuant to Subsection (a) or through any other lawful process, Grantor shall have the right without limitation to assign, sell, lease, or otherwise transfer its interest in all or parts of the system to any other persons, including any other grantee of a cable communications franchise, on whatever terms Grantor deems appropriate.
- D. The provisions of this Section shall be subject to the provisions 47 U.S.C. 627 (Section 547 of the Cable Act), as amended from time to time. It is not intended that this Section diminish the rights of either the Grantor or the Grantee under the Act, and any provision of this Section that purports to diminish such rights shall be deemed superseded by the Act.

9.2 Right of Inspection of Records.

In order to assist the Grantor in keeping adequate records of the activities of the Grantee under this franchise, the Grantee shall provide the following information in such form as may be required by the Grantor for its records:

- A. With respect to the cable system and its operation authorized under this franchise, and to the extent necessary for the enforcement of this franchise, information pertaining to the operations of the Grantee, and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, the operations of any parent company, and any affiliate or cable operator, including but not limited to: the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this franchise, and of the maintenance and of the administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in; the number and par value of shares; the amount and character of indebtedness, if any; interest on debt; wear and tear or depreciation; and all amounts and sources of income;
- B. The amount collected by the Grantee or any parent or affiliate of the Grantee from users of services of the Grantee's cable communications system under this franchise and the character and extent of the service rendered therefor to them.

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The information, along with any further data which may be required by the Grantor to adequately understand the information, shall be furnished by the Grantee to the Grantor upon request, and at the Grantee's own cost and expense.

9.3 Right to Perform Franchise Fee Audit.

In addition to all rights granted under Section 9.2, the Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, the books and records of any parent or affiliate company, for the purpose of determining the gross receipts of the Grantee generated in any manner through the operation of the cable system under this franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit must be commenced not later than three (3) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of two percent (2%) or more in franchise fees than required by this franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit.

9.4 Right of Inspection of Construction.

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this franchise agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law.

9.5 Intervention.

The Grantee shall not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the system.

9.6 Right to Require Removal of Property.

At the expiration of the term for which the franchise is granted providing no renewal is granted, or upon its forfeiture or revocation, as provided for herein, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the cable communications system from all streets and public ways within the franchise area. If the Grantee fails to do so, the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Grantee effective upon placement in the lien books of the Grantor. Notwithstanding the other provisions of this Section, the Grantee, by written notice to the Grantor, may elect to abandon underground cable in place, in which event the Grantee shall have no further obligation hereunder as to the abandoned cable; except that the Grantor may nevertheless, by written notice, require the Grantee to remove cable as deemed necessary by the Grantor to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

10. **RIGHTS OF INDIVIDUALS PROTECTED.**

10.1 **Discriminatory Practices Prohibited.**

- A. The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, programmers, or persons on the basis of race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to nondiscrimination.
- B. The Grantee shall use best efforts to assure maximum practical availability of Grantee services and facilities to all subscribers.
- C. For hearing impaired customers, the Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired and comply with all federal legislation regarding hearing impaired customers.
- D. Upon request by a subscriber or potential subscriber, the Grantee shall make a reasonable effort as determined by the Grantee, to provide information required under Section 7.7.7, or otherwise provided in the normal course of business, in both English and the primary language of the requestor.

10.2 **Unauthorized Monitoring or Cable Tapping Prohibited.**

The Grantee shall not, nor shall Grantee allow any other person, agency, or entity to tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, without the subscriber's written consent or a valid court order permitting the tapping.

10.3 **Privacy and Other Rights.**

The Grantee and the Grantor shall maintain constant vigilance with regard to possible abuses of the right of privacy and any other civil right of any subscriber, programmer, or person resulting from any device or signal associated with the cable communications system. The Grantee shall not place in the building, structure or any facility of any subscriber any equipment capable of two-way communications, without the written consent of the subscriber, or tenant occupying premises of the subscriber, revocable at the discretion of the subscriber or tenant and shall not utilize the two-way communications capability of the system for unauthorized or illegal subscriber surveillance of any kind. Written consent, as required herein, shall not be required of any subscriber by Grantee as a condition of receiving any other cable service.

10.4 **Permission of Property Owner Required.**

No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee shall be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved except where there is an existing utility

easement or other easement reserved by plat or other conveyance. If such permission or easement is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee shall remove forthwith on request of the owner or tenant any of its equipment. The Grantee shall perform all installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

10.5 Sale of Subscriber Lists and Personalized Data Prohibited.

The Grantee shall be subject to 47 U.S.C Section 631 (Section 551 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of subscriber privacy.

The Grantee shall inform each subscriber, at intervals of no more than one (1) year, that certain information is supplied to the Grantor as needed to ensure compliance with the franchise.

10.6 Landlord - Tenant.

Grantee shall provide to individual units of a multiple housing facility, such as a duplex, apartment or condominium unit, all services offered to other dwelling units within the franchise area, providing the owner of the facility consents in writing, if requested by Grantee, as follows:

- A. To Grantee's providing of the services to units of the facility;
- B. To reasonable conditions and times for installation, maintenance and inspection of the system on facility premises;
- C. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and
- D. To not demand payment from Grantee for permitting Grantee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.
- E. However, Grantee shall have no obligation to provide service if the cost of installation exceeds one hundred ninety-seven (\$197.00) per unit. To determine unit costs, the total project cost is divided by the number of units. The total project cost shall include only the costs of cable installed on the property including line extension and pre/post wiring of the units.

This figure shall be adjusted each year on July 1 to reflect the annual change in the consumer price for the Portland Metropolitan Region.

11. TERMINATION AND EXPIRATION

11.1 Revocation.

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In addition to any rights set out elsewhere in this document, the Grantor reserves the right to declare a forfeiture or otherwise revoke this franchise, and all rights and privileges pertaining thereto, in the event that:

- A. the Grantee is in violation of any material provision of the franchise agreement after application by the Grantor of a remedy lesser than franchise revocation pursuant to this franchise agreement, and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation;
- B. the Grantee or the Guarantor becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;
- C. the Grantee is found to have engaged in fraud or deceit upon the Grantor, persons or subscribers;
- D. the Grantee fails to obtain and maintain any permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; provided, however, that the Grantee shall be allowed a reasonable time to cure failure to obtain any permit; or
- E. the Grantee fails to maintain the full amount of its insurance or to post a performance bond as required under the terms of this franchise.

Upon the occurrence of one of the events set out above, following thirty (30) days written notice to Grantee of the occurrence and the proposed forfeiture and an opportunity for Grantee to be heard, Grantor may by ordinance declare a forfeiture. In a hearing of the Grantee, the Grantee shall be afforded due process rights as if the hearing were a contested case hearing subject to ORS Chapter 183, including the right to subpoena and cross-examine witnesses, to subpoena documents, and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the Grantor's decision. In the event that the Grantee believes that the Grantor improperly has declared a forfeiture, the Grantee may file such proceeding as is appropriate in a court of competent jurisdiction to determine whether the Grantor properly has declared a forfeiture. If a forfeiture is lawfully declared, all rights of the Grantee shall immediately be divested without a further act upon the part of the Grantor.

11.2 Receivership.

The Grantor shall have the right, subject to federal law, to declare a forfeiture or otherwise revoke this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless;

- A. within one hundred twenty (120) days after his or her election or appointment, such receiver or trustee shall have been approved by Grantor and shall fully have complied with all the provisions of the franchise and remedied all defaults thereunder; and,

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- B. such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by Grantor, as well as the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the franchise, and agrees to accept responsibility for and to correct all past defects known and unknown if discovered in performance of franchise obligations.

11.3 Expiration.

Upon expiration of the franchise, Grantor shall have the obligation to abide by the renewal provisions of the Cable Communications Policy Act of 1984, the Cable Act of 1992, and the Telecommunications Act of 1996, as amended from time to time. It is not intended that this Section diminish the rights of either the Grantor or the Grantee under the Act, and any provisions of this Section that purports to diminish such rights shall be deemed superseded by the Act.

11.4 Continuity of Service Mandatory.

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or Grantor revokes or fails to renew the franchise, the Grantee shall make its best effort to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstances, during the lifetime of the franchise.

In the event of purchase, lease-purchase, condemnation, acquisition, taking over and holding of plant and equipment, sale, lease or other transfer to any other person, including any other grantee of a cable communications franchise, the Grantee shall continue its operations for a period of two hundred seventy (270) days under the terms and conditions of this franchise agreement following the date of the transfer, if such continuation of operations is ordered by the Grantor with a view to maintaining continuity of service to all subscribers.

12. OPERATION AND MAINTENANCE

12.1 Open Books and Records.

The Grantee shall maintain a business office within the metropolitan area which includes the franchise area, for managing the cable system and, subject to the provisions of Section 10 of this franchise and, to such privileges as may be established under Oregon law, shall manage all of its operations in accordance with a policy of accessible open books and records to the Grantor. The Grantor shall have the right as necessary or desirable for effectively administering and enforcing the franchise, to inspect at any time during normal business hours upon reasonable notice, all records of the Grantee, and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, also of any affiliate or any cable operator, which relate to the operation of the franchise. Access to the aforementioned records shall not be denied by the Grantee to

representatives of the Grantor on the basis that said records contain "proprietary information", nor on the basis that they contain trade secrets unless the Grantor cannot protect the trade secrets from disclosure under Oregon law. To the extent allowed under Oregon law, the Grantor shall protect proprietary information including trade secrets of the grantee from disclosure.

Upon ten (10) days written notice from the Grantor, Grantee shall provide the Grantor access to computer files specifically requested by name, approximate date or content and related to compliance with obligations contained in the Franchise. Such access shall be carried out in a manner that does not violate requirements regarding personally identifiable subscriber information, as referenced in Section 631 of the Cable Act, and shall not include access to computer files containing no information related to Grantee's franchise obligations. Computer record access shall be provided in the following manner: (1) Grantee's employee shall access requested computer file from file server or hard drive storage for Grantor to view. (2) Once accessed, Grantee's employee shall move slowly through the file while the Grantor views it on the computer monitor. (3) Grantee's employee shall facilitate the printing of requested file to paper.

12.2 Communications with Regulatory Agencies.

A list and copies of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any affiliate or any cable operator of the system authorized by this Franchise, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to this franchise agreement, shall be submitted to the Grantor upon request. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting operations within the franchise area, shall be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an affiliate or cable operator of the cable system authorized by this franchise.

12.3 Reports.

- A. **Quarterly Reports.** Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, upon request of the Grantor, submit to the Grantor a report of all trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the name, address, and telephone number of the complaining party, the specific nature of the complaint, remedial action taken if any, and the current status of the complaint. Upon request by the Grantor, Grantee shall also provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee.

Within forty-five (45) days after the end of each of the Grantee's fiscal quarters, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all gross revenues earned

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and gross receipts collected by the Grantee or any cable operator, related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments.

B. Annual Report. No later than three-and-one-half (3 ½) months following the end of the Grantee's fiscal year each year, Grantee shall present a written report upon request to the Grantor which shall include:

1. Audited financial reports for the Grantee, for the previous fiscal year, including gross revenues from all sources, gross subscriber revenues from each category of service, as well as an income statement, statement of cash flow, and a balance sheet; a financial report for the area system of which the franchise is a part with reviewed gross revenues and receipts as well as statements of expenses, balance sheet and capital expenditures reviewed by an independent certified public accountant; and a financial report for the franchise area with audited gross revenues and receipts. In the event any audited financial report has not been published by the date due under this Section, then the audited financial report shall be deemed presented on time if presented within thirty (30) days after publication.

All financial reports required under this Section shall be presented to the Grantor accompanied by such notes and explanations as are required to fully understand the reports. Such notes and explanations shall include, but not be limited to, an explanation of any and all deductions made from Gross Revenues in order to arrive at Gross Receipts for the calculation of franchise fees to be paid to the Grantor.

2. A summary of the previous year's activities including, but not limited to, subscriber totals in each category and new services.

C. Monitoring and Compliance Reports. Upon request, the Grantee shall provide a written report of any FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall upon request provide reports of the test and compliance procedures established by this franchise agreement, no later than thirty (30) days after the completion of each series of tests.

D. Additional Reports. The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Grantor in connection with this franchise.

12.4 Safety.

A. The Grantee shall, at all times, employ the standard of care attendant to the risks involved 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 nuisance to the public or to employees of the Grantor.

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- B. The Grantee shall install and maintain its wires, cable, fixtures, and other equipment in accordance with the requirements of the National Electric Safety Code, and in such manner that they shall not interfere with the installations of any public utility.
- C. All lines, equipment and connections in, over, under, and upon either the streets and public ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

13. MISCELLANEOUS PROVISIONS.

13.1 Compliance with Laws.

The Grantee shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder.

13.2 Separability.

Subject to the provisions of Sections below, if any Section, Subsection, sentence, clause, phrase or word of the franchise agreement is held to be invalid or unconstitutional by any court of competent jurisdiction or pre-empted by federal or state regulations or law, such Section, Subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

13.3 Captions.

The captions to Sections throughout this franchise agreement are intended solely to facilitate reading and reference to the Sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this franchise agreement.

13.4 No Recourse Against the Grantor.

The Grantee shall have no recourse whatsoever against the Grantor or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this franchise agreement or any part thereof is determined to be invalid.

13.5 Nonenforcement by Grantor.

The Grantee shall not be relieved of its obligations to comply with any of the provisions of this franchise agreement by reason of any failure of the Grantor to enforce prompt compliance.

13.6 Force Majeure.

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If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this franchise agreement.

13.7 Entire Agreement.

This franchise agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

13.8 Consent.

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

13.9 Time Limit for Grantee Communications.

Grantee shall provide any written communication required by this franchise within sixty (60) days of being requested to do so by the Grantor, in each case in which no other specific minimum time limit for a communication is identified in the franchise.

13.10 Consistency of Franchise with Cable Act.

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Communications Policy Act of 1984, the Cable Act of 1992, and the Telecommunications Act of 1996.

13.11 Comparability of Other Cable Franchises.

- A. If the Grantor issues a franchise to a cable operator to enter upon the streets and public rights-of-way for the purpose of operating a Cable System to provide Cable Service to any part of the franchise area, the Grantor shall ensure that, considering all the circumstances, including any limitations on its regulatory authority, the material provisions of such other franchise are, taken together, reasonably comparable to the material provisions of this Franchise.
- B. The Grantee agrees that its sole remedy under this provision is to seek injunctive relief to prevent the issuance of a franchise which would violate the first paragraph.

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C. No provisions of this Section shall be enforceable unless all are enforceable.

13.12 Franchise Review.

During the six (6) month period beginning five (5) years after the effective date of this franchise, the Grantor and Grantee shall undertake a review of Grantee's system and performance to date, in order to determine whether Grantee must upgrade the system as described in Section 4.1 of the franchise. Criteria for upgrade will be based on general parity of overall cable service with other contiguous cable operators providing cable service in the area, community need, market and economic viability. System review and plan for upgrade, if needed, must be submitted to the Grantor by the seventh (7th) year from the date of the contract.

13.13 Notice.

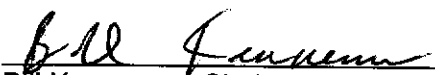
Any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

If to the County: Cable Communications Manager
 Clackamas County
 621 High Street
 Oregon City, OR 97045

If to the Grantee: President
 DirectLink of Oregon, Inc.
 PO Box 850
 Canby, OR 97013


IN WITNESS WHEREOF, the COUNTY has caused these presents to be executed by its Board of County Commissioners and DIRECTLINK OF OREGON, INC. has caused these presents to be signed by its President.

BOARD OF COUNTY COMMISSIONERS



Bill Kennemer, Chair

DIRECTLINK OF OREGON, INC.



Richard Ares, President

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Millicent Morrison
Millicent Morrison, Recording Secretary

July 20, 2000
Date

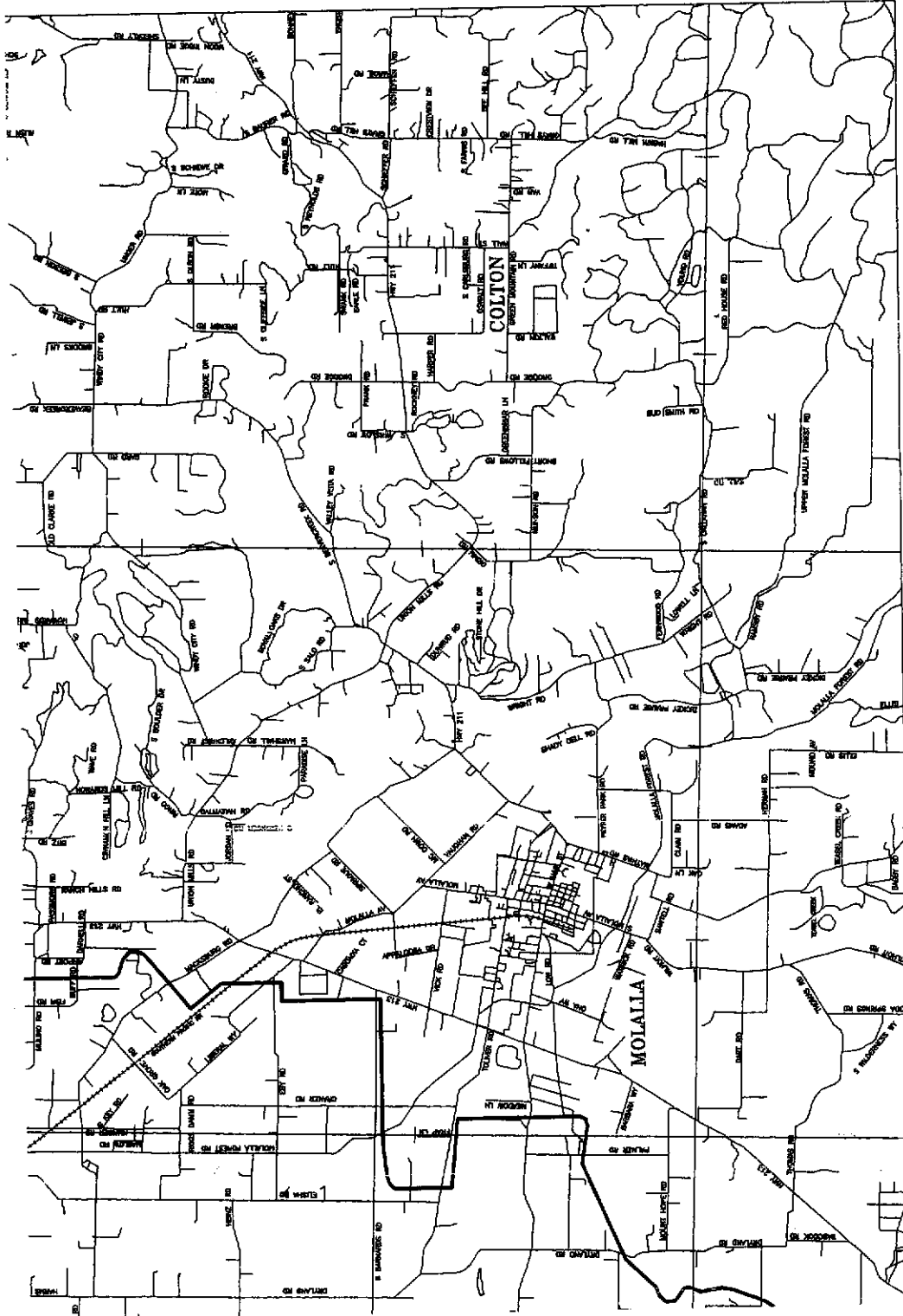
8/10/00
Date

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**EXHIBIT A
FRANCHISE AREA MAP**

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DirectLink™
OF OREGON

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TOLL FREE: 1-800-451-1111
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