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AGENDA COVER MEMORANDUM

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AGENDA DATE: March 10, 2004

TO: LANE COUNTY BOARD OF COMMISSIONERS

PRESENTED BY: Peter Thurston, Community and Economic Development Coordinator

AGENDA ITEM: ORDER/IN THE MATTER OF AUTHORIZING THE METROPOLITAN POLICY COMMITTEE TO INITIATE ARBITRATION PROCEDURES JOINTLY WITH THE CITIES OF EUGENE AND SPRINGFIELD TO SETTLE FRANCHISE PAYMENT DISPUTES WITH COMCAST CABLE COMMUNICATIONS, INC., IN ACCORDANCE WITH ORDINANCE 6-91

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I. MOTION: IT IS MOVED THAT THE ORDER BE ADOPTED IN THE MATTER OF AUTHORIZING THE METROPOLITAN POLICY COMMITTEE TO INITIATE ARBITRATION PROCEDURES JOINTLY WITH THE CITIES OF EUGENE AND SPRINGFIELD TO SETTLE FRANCHISE PAYMENT DISPUTES WITH COMCAST CABLE COMMUNICATIONS, INC., IN ACCORDANCE WITH ORDINANCE 6-91

II. ISSUE OR PROBLEM Shall Lane County direct that the Metropolitan Policy Committee proceed with binding arbitration proceedings with the cities of Springfield and Eugene to settle franchise fee payment disputes with Comcast Cable Communications, in accordance with Lane County Ordinance 6-91? Are there other telecommunications issues the Board of Commissioners would like to address in 2004?

III. DISCUSSION

A. Background. In 1991 Lane County and the cities of Eugene and Springfield individually executed ordinances similar to the Lane County Ordinance 6-91 (attached) with TCI Cablevision of Oregon, Inc. establishing franchise rights and responsibilities for operation of cable communications system(s). Through subsequent ownership transfers, Comcast Cable Communications, Inc. became the franchise operator under these ordinances. Among the definitions of terms in the ordinance is the description of "Gross Annual Revenues" (on page 2 of the ordinance), which is the basis of franchise fees paid to Lane County. Determination of what constitutes gross revenues is in dispute. Comcast is withholding payment of franchise fees that are derived from certain specific categories of revenues. This dispute has been going on for a couple years. Based on Metropolitan Policy Committee authority to conduct a limited audit of these issues, in early 2003, LCOG, acting on behalf of Springfield, Eugene, and Lane County, requested that Public Knowledge, an auditing firm, conduct an audit of Comcast records. Technically this is not a full audit, rather it is a "special examination" of Comcast accounts. In accordance with the franchise, Comcast paid for this special examination. Exhibit B, attached, describes the results of the audit/examination.

During the past year staff from the three jurisdictions have met with Comcast representatives to find a solution to the disputed definition of gross revenues and the franchise fees due the cities and county. There was no resolution. Comcast changed its position on the examination results and currently does not agree it owes the franchise authorities any back-payments. Comcast requested that we wait for resolution of similar litigation in southern California. This may occur in mid-2004. It may or may not apply directly to the issues in our dispute with Comcast. Such findings will not be binding on Lane County's franchise. The following analysis is aimed at review of the options for proceeding to binding arbitration, the consequences, and potential benefits. Provisions for binding arbitration are described on page 18 of the ordinance. Attachment C is Comcast's most recent response to the demand for payment of delinquent franchise fees, based on the gross revenue definition in the franchise.

Additionally, for the board's consideration, discussion of changes in the telecommunications industry are presented in the analysis section. The telecommunications industry is converging in a way that franchise cable providers (such as Comcast) are now supplying services that as recently as a few years ago were available only through telephone companies or local Internet service providers. For example, cable modem service, which is in dispute under the Comcast franchise, is now capable of providing bandwidth for video, data, and voice communications. The question is: what role should Lane County play in coming years to address facility and service gaps in communities across Lane County that develop as a result of continuing technology leaps. Financial impacts already are showing up in the disputed franchise authority, as indicated in Exhibit B, and federal legislation may cause Lane County to lose more revenues. Analysis, below, of other telecommunication issues provides a list of the various issues that impact economic development, county services delivery, and franchise revenues. The board may choose to indicate the highest priorities for county involvement in these telecommunications issues.

- B. Analysis. Lane County government is the smallest participant among the three jurisdictions that franchise Comcast in the metropolitan area of Lane County. Additionally, Lane County receives franchise revenues only from unincorporated areas. The result is that, as properties are annexed to the cities, Lane County loses franchise revenues. Lane County currently receives between \$300 and \$400,000 dollars per year from all cable franchise fees. According to accounting records, Comcast payments for the past few years are: FY03 - \$280,376; FY02 - \$283,435; FY01 - \$260,000; FY00 - \$244,161. Annually, the cities of Springfield and Eugene receive about \$390,000 and \$1.3 million, respectively, from Comcast. Page 6 of the auditor's letter (Exhibit B) lists the disputed fees, which total about \$20,000. Additionally, estimated cable modem fees for Lane County of about \$25,000 annually (in 2003) are not included in the special examination of accounts.

The pros and cons of arbitration are lengthy, complex, and intertwined with variables and unknowns. The benefits of taking this issue on, with our neighboring local franchise authorities, is the sharing of costs. The Ordinance sets up a structure for this

to be managed through the Metropolitan Policy Committee, if the jurisdictions agree. Settlement of the issues in dispute will provide some certainty during the term of the franchise (2008). Resolution may result in more annual revenue for Lane County. While much of the cable franchise arena is controlled at the federal and state levels, taking action gives the franchise authorities the initiative of seeking resolution of a long-standing dispute. On the negative side of the argument for arbitration, the result may involve voiding some of the provisions of the franchise. The term "Gross Revenue" may be redefined by the arbitration process. Payment of legal fees may result and county legal costs may be incurred. Lane County Community and Economic Development staff costs will be incurred. Some of these staff costs will result whether arbitration is initiated or not.

**Estimated Costs of Arbitration.** The length of the arbitration, need for outside counsel, and many other factors will affect the final cost. Winning or losing key points in the arbitration, federal legislation, litigation in other states, will all make a huge difference in costs, or benefits. The current estimated range for staff time and contract legal counsel is \$50,000 to \$100,000. Lane County's prorated share (15 percent) would be between \$10,000 and \$20,000.

**Staff time.** C& ED staff currently spend 5 to 10 percent of an FTE on cable franchise issues, coordination, monitoring, response to complaints, and training. There is no specific assignment for franchise work by county counsel. Assuming most of the arbitration activity will be undertaken by MPC staff and outside counsel, staff time may not increase more than 50 percent. County counsel will need to evaluate the cost of the appropriate level of services to advise the board of legal issues.

**Summary.** Comcast refuses to pay certain franchise fees due to their interpretation of contract language. The time appears right, after due diligence and multiple efforts to resolve this dispute, to take action in accordance with provisions for the franchise agreement for binding arbitration.

**Other Telecommunications Issues.** The action proposed in the Order attached to this memorandum addresses a very specific subject in the expanding field of telecommunications. The role of Lane County and other franchise authorities is described in the franchise with the cable service provider, in this case Comcast. Part of the dispute that is submitted for arbitration derives from the fact that Internet cable modem services were not specifically described in the franchise and other federal laws have subsequently influenced telecommunications of this type.

Additionally, new developments in telecommunications services such as voice over Internet protocol (VoIP) stretch cable service to include all types of voice, video, and data transfer that is typically part of the revolution in telecommunications. County governments in Oregon do not benefit from traditional voice (telephonic) services, however, cities in Lane County rely heavily on franchise, business, and right-of-way fees. Counties are directly involved in VoIP issues to the degree that adding voice

communications to the array of digital services provided over cable systems will only complicate this fast changing sector of the telecommunications industry.

Cable communications companies are one of the service providers competing for all types of telecommunications customers: business, commercial, industrial, residential, medical, educational, governmental. Traditional telephone companies provide similar services. Satellite systems deliver high bandwidth signals and are cooperating with telephone companies to develop hybrid systems to deliver video, data, and voice communications. Local and national Internet service providers are expanding service deliver where high bandwidth capacity exists. Local governments are also stepping into the telecommunications arena to meet organization and community needs where the private sector has not responded to their needs. Lane County has contributed to such a system that was recently lit between Eugene and Oakridge. Lane County Board of Commissioners recently went live on the Internet and regular meetings of the Board can now be received by citizens when they have DSL broadband capacity.

The question for the board's consideration is: what role should Lane County government play in developing and facilitating telecommunications services throughout the county? The delivery of county services, public safety communications, economic development and many other issues have an impact when answering this question. Economic development, for example, is reliant on competitive prices for telecommunications services. Rural communities need comparable service to develop business and create jobs. One option in discussion of these telecommunications issues is to select the highest interest subjects and direct staff to gather information about current and developing practices. These can then be returned at a future date for further consideration by the board. A partial list includes the following subjects: Fees and revenues from rights of way uses by telecommunications companies; Delivery of public agency services to Lane County residents; Infrastructure improvements for public agency services; Coordination of telecommunications services between public agencies; Cost efficiencies from combined telecommunications services; Telecommunications tower issues; Emergency preparedness, Promotion of business development opportunities in all Lane County communities.

C. Alternatives/Options. The Board may:

- 1) Approve the ORDER authorizing arbitration with specific cost limits, or
- 2) Schedule final action on the arbitration Order, and coordinate this action more closely with Springfield and Eugene, or
- 3) Decide not to authorize arbitration.
- 4) With any of the above alternatives the Board may choose to direct that more information be developed around certain telecommunications issues and options identified in this memorandum.

D. Recommendations. Number 1 is recommended, authorizing the MPC to proceed with arbitration after may 1, 2004, when all three franchise authorities have authorized MPC to initiate a formal arbitration process with Comcast. Additionally, number 4 is

recommended for any issues the Board determines require further consideration and development to improve service delivery, economic development, public safety, or other aspects determined to be in the public interest.

E. Timing. Disputed franchise payments have been a matter of discussion for more two years. It is estimated that arbitration will take a year or more to complete. The three franchise authorities a planning to take similar actions in the next couple months to authorize MPC to move forward with arbitration if no resolution is reached by May 1, 2004.

IV. **IMPLEMENTATION/FOLLOW-UP** Upon approval of the Board, the Order will be transmitted to MPC, with copies to the cities of Springfield and Eugene, authorizing binding arbitration with Comcast if resolution is not reached by May 1, 2004, and upon similar action by the two cities.

#### ATTACHMENTS

##### ORDER

Exhibit A – ORDINANCE 6-91

Exhibit B – Auditor's letter report on franchise payment deficiencies

Exhibit C – Comcast response – 1/27/04

Exhibit D – Reply to Comcast letter - 2-20-04

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IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

**ORDER NO.** ) **IN THE MATTER OF AUTHORIZING THE**  
) **METROPOLITAN POLICY COMMITTEE TO**  
) **INITIATE ARBITRATION PROCEDURES**  
) **JOINTLY WITH THE CITIES OF EUGENE AND**  
) **SPRINGFIELD TO SETTLE FRANCHISE**  
) **PAYMENT DISPUTES WITH COMCAST CABLE**  
) **COMMUNICATIONS, INC., IN ACCORDANCE**  
) **WITH ORDINANCE 6-91**

WHEREAS, In 1991 Lane County government entered into a non-exclusive franchise agreement for the operation of a cable communication system that serves residents in unincorporated areas adjacent to the metropolitan area of Lane County, and

WHEREAS, Comcast Cable Communications, Inc. has operated the cable system under the franchise established by Ordinance 6-91 since 2000, and

WHEREAS, by Ordinance 6-91 the Metropolitan Policy Committee is authorized as the joint cable commission authority on behalf of Lane County and the cities of Eugene and Springfield, and

WHEREAS, Comcast is delinquent in payment of certain franchise fees after many communications over the past two years, NOW, THEREFORE, IT IS HEREBY

ORDERED that the Metropolitan Policy Committee is authorized, in conjunction with similar actions by the cities of Springfield and Eugene, to initiate arbitration in accordance with provision of Ordinance 6-91, to resolve with Comcast Cable Communication, Inc. disputed fees, including, cable modem service, unapplied cash, refunds, FCC fees, bad debt recovery, advertising commissions, advertising sales, marketing reimbursements and marketing coop receipts, as described in special examination findings by Public Knowledge, dated March 14, 2003; and it is

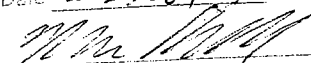
FURTHER ORDERED that Lane County hereby demands payment in full of franchise fees by Comcast, as provided for in Ordinance 6-91; and it is

FURTHER ORDERED that after May 1, 2003, if the issues subject to arbitration are not satisfactorily resolved, the County Administrator is hereby authorized to sign documents on behalf of Lane County deemed necessary to implement the arbitration process, in accordance with this Order.

Signed this 10<sup>th</sup> day of March, 2004.

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Bobby Green Sr., Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 2-27-04 lane county.  
  
OFFICE OF LEGAL COUNSEL

AN ORDINANCE GRANTING TO TCI CABLEVISION OF OREGON, INC. A RENEWAL OF ITS NON-EXCLUSIVE FRANCHISE FOR THE OPERATION OF A CABLE COMMUNICATIONS SYSTEM; AND REPEALING ORDINANCE NOS. 23-78, 4-82 AND 6-85.

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:

Section 1. Purpose. A non-exclusive franchise is hereby granted to TCI Cablevision of Oregon, Inc., hereinafter referred to as "Grantee," to install, construct, operate, maintain, reconstruct, and expand a cable communications system within the public streets, ways, alleys, public utility easements, and places of the County of Lane, hereinafter referred to as "Grantor." This franchise shall constitute both a right and an obligation to provide the service of a cable communications system as required by the provisions of this ordinance.

Section 2. Short Title. This ordinance shall be known as the "Metropolitan Cable TV Franchise Ordinance."

Section 3. Definitions. Except when the word or phrase is defined in this ordinance, the definitions in the Federal Act shall apply. The following words and phrases as used in this ordinance shall mean:

"Access Center" means the studio, facilities, and equipment provided for cable casting non-commercial public, educational, and local government programming.

"Access Channels" means those channels required by this ordinance to be kept available by the Grantee for partial or total dedication to public access, educational access, and local government access.

"Basic Service" means any service tier which includes the retransmission of local television broadcast signals including those services described in subsection 5(2) provided by the Grantee for standard installation charge and a regular monthly charge paid by all subscribers.

"Cable Communications System" or "system" means a system of antennas, cable, amplifiers, towers, microwave links, waveguides, laser beams, earth stations, or any other conductors, converters, equipment, or facilities, designed and constructed for the purpose of producing, receiving, amplifying, storing, processing or distributing audio, video, digital, or other forms of electronic or electrical signals.

"Commission" or "Committee" means the Metropolitan Policy Committee established by Lane County, the City of Eugene, and the City of Springfield or its successor as designated by Lane County, the City of Eugene and the City of Springfield.

"Comparable Systems" means those systems with similar facilities,

equipment, channel capacity, age of franchise and system, number of subscribers and population served and competitive environment.

"Federal Act" means the Cable Communications Policy Act of 1984, Public Law 98-549, October 30, 1984.

"Franchise Territory" (Eugene-Springfield) means the area within the legal boundaries of the Grantor, including any areas annexed during the term of the franchise.

"Franchise Territory" (Lane County) means the unincorporated area of the Grantor within the urban growth boundary as designated by the Metropolitan Area General Plan currently adopted by Lane County, the City of Eugene and the City of Springfield; any other areas actually served by the Grantee in Lane County; and any other areas mutually agreed to by the Grantee and the commission.

"Gross Annual Revenues" means any and all compensation in whatever form, grant, subsidy, exchange, or otherwise, directly or indirectly received by Grantee for services provided to subscribers within the franchise territory but excludes taxes Grantee is required to separately state and collect from Subscribers.

"Monitoring" means observing a one-way communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, where the signal is observed by visual or electronic means for any purpose whatsoever.

"Premium Programming Service". Any programming service other than basic service.

"Rate Schedule" means the charges for all subscriber services.

"Standard Installation Charge" means the cost to the subscriber for connection to the cable communication system in the amount specified in the current rate schedule.

"Streets" means the surface of and the space above and below any public street, sidewalk, alley, easement, or other dedicated public way of any type whatsoever, now or hereafter existing as such within the jurisdiction of the Grantor.

"Subscriber" means any person, firm, corporation, or other entity legally receiving electronic signals by means of the Grantee's cable communications system.

"Plan Submitted by Grantee" means the service development plan submitted by Grantee to Grantor as part of the negotiations between Grantor and Grantee which preceded the adoption of the ordinance and the plans submitted in compliance with Sections 7 and 13 of this ordinance.

Section 4. Commission Authority. The Commission shall represent the



Grantor in administration of the franchise, and advise the Grantor in accordance with the agreement between Lane County, City of Eugene, and City of Springfield which established the commission. Upon enactment of this ordinance, Grantors Lane County, City of Eugene, and City of Springfield shall continue the life of the commission for the duration of the franchise. The form, organization, and powers of the commission shall be determined jointly by Lane County, City of Eugene, and City of Springfield, but the commission shall have at least those powers referred to in this ordinance. Grantee may rely upon notices and communications from the commission. In the event that the Grantee receives contrary or contradictory communications from the commission and the Grantor, Grantee in its sole discretion may either rely upon the communications from the commission, or seek a declaratory judgment or other appropriate relief from a court of competent jurisdiction. In either case as to the matter in question, Grantee shall be relieved of any liability under the terms of this ordinance during the pendency of such proceeding or because of reliance upon the communications from the commission.

#### Section 5. Services Provided.

(1) Channel Capacity. The cable communication system operated by Grantee at the time this franchise was adopted provides 35 channels of capacity. Before Grantee further increases the channel capacity of its cable system, it shall submit to the commission reports containing relevant information identified in Section 13 of this ordinance no later than 60 days before undertaking installation of equipment to allow the commission to review and comment on the proposal. The obligations of the Grantee and the commission as provided in Section 13 of this ordinance shall apply to these reports and the Grantee's submissions under Section 13 of this ordinance may be in lieu of this requirement if submitted more than 60 days before Grantee undertakes installation of equipment.

(2) Basic Service. (a) Basic service shall include programming of local, regional and national interest providing in the aggregate a variety of video programming and shall include the access channels. Signals that are part of the basic service shall not be encoded except upon Commission approval, which approval shall not be unreasonably withheld.

(b) At least 30 days before Grantee rearranges, replaces, removes or otherwise offers a particular cable service it shall notify the commission. Such actions by Grantee shall be consistent with sections 624 and 625 of the Federal Act and other applicable law.

(c) Nothing contained in this section shall be deemed or construed to grant any programmer or third party any entitlement to or expectation in a specific channel assignment or location.

(d) In no event shall subscribers be required to subscribe to any other service as a condition for obtaining basic service.

(3) Control Devices. Subscribers to any premium programming service shall, upon request, be supplied with control devices at a reasonable

charge to limit viewing of the premium programming service on individual television receivers.

(4) Service to Institutions. Upon request of the commission, the Grantee shall provide single installations of basic service to each fire and police station, public school, City Hall, County Courthouse, and all public libraries within the Grantee's service area on the terms provided in Section 7(2) of this ordinance, except no standard installation fee shall be imposed for such installation. No monthly service charge shall be made for distribution of the services described in this section to these locations.

(5) Access Facilities and Equipment. Commission may equip, maintain, and operate an access center on premises within Grantee's service area selected by the commission after conferring with Grantee and taking into consideration the cost thereof. Grantee shall provide at its expense and upon reasonable notice the necessary connection(s) between its cable communications system and the access center, The Hult Center, The University of Oregon, Lane Community College, Eugene Public School District 4-J, Eugene City Hall, Springfield City Hall and Lane County Courthouse to allow the simultaneous live cablecast of programs on the access channels. These connections do not require Grantee to provide simultaneous communication over a single access channel between the named locations. The commission's access center channel connections to Grantee's cable communication system shall not damage the system nor impair or denigrate the quality of the signal or services provided Grantee's subscribers.

(6) Access Channels. (a) Grantee shall provide three channels dedicated for public, educational, and local government access programming within the basic service. Within 120 days of written notice to the Grantee by the commission, Grantee shall provide a fourth access channel within basic service when the other three channels are scheduled with new programming 80 percent of prime time (daily 6 p.m. to 11 p.m.) and the balance of the cablecast day (daily 8 a.m. to 6 p.m.) is scheduled 60 percent of the time. The percentages will be measured over a 90-day period.

(b) When local programming is not scheduled on the access channels, at the commission's request Grantee shall provide such programming as may be available through use of Grantee's facilities at no cost to the commission or Grantee. Grantee shall not be responsible for providing any local programming.

(7) Emergency Use. In the case of any emergency or disaster, the Grantee shall, upon request of the Grantor, make available its facilities for emergency use during the emergency or disaster period at no cost to the Grantor. The system shall be designed so that viewers on all channels can receive immediate notice of the emergency by way of an emergency override audio or written message or both. To the extent allowed by law, Grantor shall indemnify Grantee from any physical damage to Grantee's system caused by Grantor's use of the system during any emergency cablecast.

#### Section 6. Rates for Installation and Services.

(1) Schedule of Rates. Grantor and the commission shall not regu-

late Grantee's rates and charges. However, Grantee shall keep on file with the commission a current schedule of subscriber rates and charges.

(2) Advance Charges. Grantee may require subscribers to pay for each month of basic service in advance at the beginning of each month.

(3) Prohibition of Discriminatory or Preferential Practices. The Grantee shall not, in its rates or charges, or in making available the services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant discriminatory preference or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system; and shall not subject any such persons to any prejudice or disadvantage; provided nothing herein shall prevent Grantee from establishing different rates for uniform classes of subscribers or adjusting rates for marketing purposes.

(4) Disconnections, Failure to Pay. The authority given the commission in this subsection does not give the commission authority to regulate rates in a manner prohibited by the Federal Act. Upon Grantee's request the commission may approve different notice and procedures for subscriber disconnection than are provided in this subsection. In considering Grantee's request the commission shall not unreasonably withhold its consent. If a subscriber has failed to pay a properly due monthly subscriber fee within 15 days after the due date of the fee, Grantee may cause disconnection of the subscriber's cable installation after 10 days of prior written notice; however, upon payment in full of the delinquent monthly subscriber fee, and the reconnection charge, the Grantee shall promptly reinstate the subscriber's service.

(5) Subscriber Refunds.

(a) If any subscriber terminates, for personal reasons, Grantee shall refund to subscriber the prepayments that are for the period(s) beyond the billing month in which service is terminated.

(b) If a subscriber's cable service is interrupted because of a failure in Grantee's cable communication system which is continuous for more than 48 hours, affected subscribers' monthly charges shall be reduced on a prorated basis by crediting subscriber's account. The percentage of reduction shall be created by dividing the total number of hours of interruption by the number of hours in the month when the interruption occurred. This paragraph shall apply:

(i) To a loss of basic service when all of the signals on basic service are interrupted, and

(ii) When the affected subscriber notifies Grantee within four days of when the interruption was discovered, or

(iii) When Grantee has reasonable grounds to believe that the interruption has occurred.

This subsection shall not apply for the time Grantor uses Grantee's system

when authorized by subsection 5(7).

### Section 7. Extension of Service.

(1) Service Availability and Request Record. The Grantee shall provide cable communications service throughout the franchise territory pursuant to provisions of this section and shall keep a record for at least three years of all requests for service received by the Grantee. This record shall be available for inspection by the commission or its designee at the local office of the Grantee during regular office hours. If in the judgment of the commission Grantee's regular business records showing such requests is inadequate, Grantee shall comply with the commission's reasonable request to correct the deficiencies in future records.

(2) Service to Individual Subscribers from Existing System. Where a subscriber can be served from the Grantee's existing system, without extension of the trunk distribution cable, the Grantee shall serve the potential subscriber upon request on the following terms and conditions:

(a) The dwelling unit shall be connected to cable at the standard installation charge if the connection can be made with an aerial drop and does not exceed 150 feet.

(b) If the aerial connection drop exceeds 150 feet, the potential subscriber may be charged the actual cost for the distance exceeding 150 feet plus standard installation charge, and Grantee may request advance payment for such installation.

(c) If the requested installation is to be placed underground, the potential subscriber must pay for furnishing open trench, as specified by the Grantee, backfilling and restoring to original conditions and Grantee may request advance payment for such work.

(d) The potential subscriber shall arrange for all necessary easements over or under private property.

### (3) Plan for Extension and Reconstruction of the Cable System.

(a) Attached to this franchise (Appendix A) is a map of the franchise territory clearly delineating 1) the areas within the territory where the cable communications system is now available to subscribers, and 2) the areas within the territory where the system is not presently available, together with a plan for extension which will show when each residential area will have access to the system.

(b) If there are areas within the franchise territory where extension of the cable communications system cannot reasonable be extended because of lack of planned development, or other reasons, then the areas, and the reasons for not serving them, must be clearly identified in the plan report and on the map. All reports and maps shall be made available for public inspection at Eugene City Hall, Springfield City Hall, Lane County Courthouse, and the main local office of Grantee.

(c) The plan for extension shall be reviewed at the meetings authorized in Section 16(2) or modified if necessary as agreed by the Grantee and commission. Whenever changes are made as provided in this section, copies of the revised plan report and map shall be made available for public inspection as provided in this section for the original plan report and map.

(d) Nothing in this section shall prevent the Grantee extending the system earlier than planned. However, any postponement of system extension beyond the times specified in the plan report timetable shall require consent of the commission, which shall not be unreasonably withheld. For any extension or reconstruction projects of Grantee's system the estimated cost of which exceeds \$50,000 the commission may require a performance bond or other security acceptable to the commission not to exceed the cost of the project to ensure its completion.

(4) Additional Extension of System. Extension of the system into any areas not specifically treated in the plan submitted pursuant to subparagraph (3) herein shall be as required by subparagraphs (5) and (6) herein. In areas not meeting the requirements for mandatory extension of service, Grantee shall provide, upon request of five or more potential subscribers desiring service, an estimate of costs required to extend service to said subscribers, and the amount by which said costs exceed what would be the cost of mandatory extension under this section. Grantee shall extend service to any such dwelling units upon advance payment (or assurance of payment satisfactory to the Grantee) of the additional cost. Such payments shall be non-refundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated in full or in part as consideration for early extension of service.

(5) Underground Extension of System.

(a) Installation of System. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of such construction or development, including a copy of any final plat, and of the particular date on which open trenching will be available for Grantee's installation of conduit pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

(b) Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner, except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within 2 working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the two-day period, the cost of new trenching is to be borne by Grantee.

(c) Activation of Service. Grantee shall promptly provide service upon request at the standard installation rate where the potential subscriber can be served by extension of distribution cable past occupied dwelling units equivalent to a density of 25 dwelling units per quarter mile of cable contiguous to the already-activated system. Such density shall be

computed on the basis of dwelling units which can be served on either side of the cable.

(6) Aerial Extension of System. In any area where utility lines are permitted above ground, Grantee shall extend its system and provide service upon request pursuant to Section 7(2) herein, where the potential subscriber can be served by extension of distribution cable past occupied dwelling units equivalent to a density of 25 dwelling units per quarter mile of cable contiguous to the activated system. Such density shall be computed on the basis of dwelling units which can be served on either side of the cable.

(7) Extension of Service by Agreement. Nothing herein shall be construed to prevent Grantee from serving areas not covered under this section upon agreement with developers, property owners, or residents. Any such agreement shall be in writing and filed with the commission.

#### Section 8. Compliance with Construction and Technical Standards.

(1) Grantee shall construct, install, operate and maintain its system in a manner consistent with applicable local construction standards, governmental requirements, the National Electrical Code, FCC technical guidelines and the construction and technical practices for Grantee. Grantee shall maintain on file with the commission a current copy of its construction and technical practices.

(2) Grantee shall install its cable, pedestals, and equipment only in streets, public utility easements and private easements and shall maintain such cable, pedestals and equipment in a safe and serviceable condition.

(3) Grantee shall provide the commission with a complete copy or a written summary of the results of Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements. Grantee shall provide to the commission a complete copy of the annual proof of performance tests upon request by the commission.

#### Section 9. Use of Public Ways.

(1) Street Openings or Obstructions. Any opening or obstruction in or disturbance of the streets made by the Grantee in the exercise of its rights under this franchise agreement shall be done in compliance with the standard specifications of the Grantor which relate to any party opening or obstructing in or disturbing of any street and all other applicable Federal, State, and local laws, ordinances, traffic manuals, and regulations. No hard surface pavement shall be cut or street broken by the Grantee without first obtaining a permit from the Grantor, which requires a plan submittal and approval before installation begins.

(2) Undergrounding and Pole Use. The cable communications system cables, wires, and associated equipment or facilities shall be placed underground in areas of the franchise territory where telephone and electric util-

ity lines are underground. At no time shall the cable system be the only aerial facility. Undergrounding of Grantee's equipment and facilities shall be done in compliance with code provisions of the Grantor, and in cooperation with the telephone company and electric utility board operating in the area. In all matters relating to undergrounding, Grantor shall not discriminate against Grantee with respect to any requirements imposed or benefits conferred upon telephone or electric utilities, except as such benefits to telephone or electric utilities are required by State law and the same benefits to Grantee are not required by State law. Arrangements shall be made by the Grantee with the telephone company or utility board for the use of existing poles in areas where the utilities are above ground, and no poles shall be erected by the Grantee without prior approval of the Grantor. Before placing equipment or facilities underground, or above ground, it shall be the responsibility of Grantee to determine whether necessary easements exist, and except as otherwise provided in this ordinance, to secure easements, if needed, and to show said easements on each plan submitted for proposed construction.

(3) Restoration and Repair of Streets. Whenever the Grantee disturbs any of the streets, it shall restore them according to the adopted standard specifications of the Grantor. The Grantor shall have the right to fix a reasonable time within which such restoration and repair of streets shall be completed, and upon failure of Grantee to make the restoration and repair within the allotted time, the Grantor may cause such restoration and repair to be made at the expense of Grantee.

(4) Grantor's Use of Streets. Nothing in this franchise shall be construed in any way to prevent the proper authorities of the Grantor from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, easements, avenues, thoroughfares, and public ways within the franchise territory in or upon which the poles, wires, or other equipment of said Grantee shall be placed. All such work or improvements shall be done, if possible, so as not to obstruct or prevent the free use of said poles, wires, conduits, or other equipment.

(5) Tree Trimming. Where tree trimming is necessary on public streets for the operation of the lines, wires, cables, and antennas or other appurtenances of the Grantee, the trimmings shall be done by competent employees, agents, or contractors of the Grantee after application for and granting of a written permit by the Grantor, and it shall be done without cost or expense to the Grantor.

(6) Grantor's Use of Poles. Grantor reserves to itself the right at any time to use the poles and other installations of Grantee erected or installed under the authority granted in this ordinance for any Grantor-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere or compete with Grantee's present or future use thereof. Grantor shall hold Grantee harmless from any and all liability which may arise as a result of its use of Grantee's poles or other installation.

(7) Equipment Maintenance. Grantee shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in a good state of repair and shall indemnify and save harmless the Grantor of and from any and all damages of any kind or character growing out of or

arising by reason of Grantee's failure to so maintain the cable communications system.

(8) Temporary Removal of Facilities.

(a) Grantee shall at its expense protect, support, temporarily disconnect, or relocate any of its equipment when required to do so by Grantor by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks, or any other type of structures or improvements by the Grantor or such duly established utility boards as the Eugene Water & Electric Board or the Springfield Utility Board.

(b) Grantee shall, within 7 days of written request of any person holding an appropriate permit issued by the Grantor, temporarily raise or lower its lines or other equipment to permit the moving of any building or other structure, machinery, or object, and the actual expense of the same shall be paid by the person making the request. The person making the request will indemnify and save harmless said Grantee of any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the equipment of the Grantee and, if required by Grantee, shall provide a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by Grantee.

(c) All installations, rearrangements, removals, and lowering or raising of aerial cables or wiring or other apparatus shall be done in conformance with the requirements of the National Electrical Code, and the laws of the State of Oregon and the ordinances of the Grantor.

(9) Maps and Records. The Grantee shall file with the Grantor a system "as-built" map drawn to accurate scale, and shall amend the map annually or as often as necessary to keep the Grantor informed as to the location of all facilities installed in the franchise territory. The map shall clearly indicate the location of trunks, distribution of lines, and amplifiers within the public rights-of-way. Location of subscriber service drops in a specified area shall be provided promptly by Grantee upon Grantor's request in connection with activities set forth in Subsections (4) and (8) of this section.

(10) Emergency Removal of Facilities. Subject to applicable law, if, because of fire, disaster or conditions creating an imminent threat to life or property, it becomes necessary in the reasonable judgment of the Grantor to cut or move any of Grantee's cable communication system, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by Grantee, at its sole expense. Nothing in this subsection shall give third-parties a basis for avoiding Grantee's claim against such third parties.

(11) Alternate Routing of Facilities. In the event the public interest requires continued use of a street be denied to the Grantee by Grantor, the Grantee shall provide service to affected subscribers over such alternate routes as shall be determined by Grantee within a reasonable period of time.



Section 10. Payment to Grantor.

(1) Franchise Fee. As compensation for the franchise granted herein for the construction, operation, maintenance and reconstruction of a cable communications system within the franchise territory, the Grantee shall pay to the Grantor an annual amount equal to five percent (5%) of the Grantee's gross annual revenues as defined in section 3 herein.

(2) Payment Schedule. Payments due the Grantor under this provision shall be computed 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 60 days after the dates listed in the previous sentence.

(3) Late Penalty. The Grantee shall furnish to Grantor, with each payment of compensation required by this section, a written statement under oath, executed by an authorized agent of the Grantee, showing the amount of gross annual revenues of the Grantee within the franchise territory for the period covered by the payment computed on the basis set out in Subsection (1) of this section. The compensation for the period covered by the statement shall be computed on the basis of the gross annual revenues so reported. If the Grantee fails to pay the entire amount of compensation due the Grantor, through error or otherwise, within the times allotted for payment in Subsection (2) above, the amount of the fee due for that quarter and not timely paid shall be subject to a late penalty of an additional ten percent (10%) plus interest of one percent (1%) per month on the amount of fee due and unpaid from the date due until it is paid together with the late penalty.

(4) Verification of Amount Due. No acceptance of any payment shall be construed as an 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 the Grantor may have for further or additional sums payable under the provisions of this franchise. All amounts paid shall be subject to audit and re-computation by the Grantor and all records required to conduct such an audit shall be made available to Grantor at the expense of the Grantee.

(5) In addition to the fees required by this section, Grantee shall pay to the commission on or about March 1 of 1991, 1992 and 1993, \$75,000 per year. Thereafter on March 1 of each year, Grantee shall pay to the commission a minimum of \$25,000 per year. Based on the commission's reasonable documented request, Grantee shall increase the payments commencing March 1, 1994 up to an amount not to exceed \$50,000 per year. Money received by the commission under this subsection shall be used only for capital costs related to public, educational and governmental access facilities including but not limited to access center equipment acquisition or replacement.

(6) The commission's and Grantor's reasonable costs including but not limited to technical, financial and legal fees, for franchise review, renewal, transfer and assignment shall be paid by Grantee upon conclusion of the matter.

(7) Compensation Not a Credit Against Certain Taxes and Fees. Subject to applicable law, nothing contained in this franchise shall give the

Grantee any credit against any nondiscriminatory utility tax or nondiscriminatory business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the franchise territory, or against any local improvement assessment imposed on Grantee's property or against any permit fees or inspection fees required by the construction codes or other ordinances of the Grantor which are or may hereafter be adopted.

Section 11. Performance Bond and Liability Insurance.

(1) Performance Bond. Upon being granted a franchise, and upon the filing of the acceptance required under Section 16(1) hereof, Grantee shall file with Grantor and shall thereafter, annually, during the entire term of such franchise, maintain in full force and effect a corporate surety bond or other adequate surety agreement in the amount of \$25,000. The bond or agreement shall be so conditioned that in the event that Grantee shall fail to substantially comply with one or more of the provisions of such franchise, then there shall be recoverable jointly and severally from the principal and surety any damages or loss, or costs suffered or incurred by the Grantor as a result thereof, including reasonable attorneys' fees and costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property, or other costs which may be in default, up to the full principal amount of such bond. Such condition shall be a continuing obligation during the entire term of such franchise and thereafter until Grantee shall have satisfied in full any and all obligations to the Grantor which arise out of or pertain to said franchise. In lieu of the bond agreement, Grantee may deposit cash with the Grantor or in a Federal or State of Oregon bank or savings and loan association on terms and conditions approved by the Grantor and the Grantee. Neither the provisions of this section, and any bond accepted by the Grantor pursuant thereto, nor any damages recovered by Grantor thereunder, nor any withdrawal from any cash deposit shall be construed to excuse faithful performance by Grantee or to limit the liability of Grantee under this ordinance for damages, either to the full amount of the bond or otherwise.

(2) Proof of Performance Bond. Upon the effective date of this franchise, Grantee shall furnish to Grantor proof of a cash deposit as provided in Subsection (1), or shall furnish a bond, as required in Subsection (1), containing the following endorsement:

It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be submitted until 30 days after receipt by the Finance Director of the City of Eugene, City of Springfield and Lane County by registered mail of a written notice of such intent to cancel or not renew.

(3) Indemnification. Grantee shall indemnify, defend and save harmless the Grantor, its elective and appointed boards, commissions, officers, agents and employees from and against any and all claims, actions, suits, liability, loss, cost, expense, or damage of any kind or description which may accrue to or be suffered by the Grantor by reason of the exercise of the rights and privileges herein including but not limited to the erection, construction, reconstruction, relocation, replacing, readjustment, repair, maintenance, or operation of the cable communications system, or by reason

of anything that has been done or may be done by the Grantee hereunder which may in any way cause liability by reason thereof.

(4) Reimbursement of Costs. The Grantee shall pay all reasonable expenses incurred by the Grantor in defending itself with regard to all damages and penalties mentioned in Subsection (3) above. These expenses shall include all reasonable out-of-pocket expenses, such as consultant or attorney fees.

(5) Insurance. (a) The Grantee shall provide and maintain general liability and automobile liability insurance in the following minimum amounts:

(i) General liability, including comprehensive form, personal injury, broad form property damage, contractual, and premises/operation coverage in limits of One Million Dollars (\$1,000,000) aggregate, bodily injury and property damage combined; and

(ii) Automobile liability in limits of One Million (\$1,000,000) bodily injury and property damage combined.

(iii) Additionally, Workers' Compensation Insurance in at least the minimum statutory amounts shall be maintained.

All liability insurance policies shall specify Grantor, its elective and appointive boards, commissions, officers, agents and employees as additional insureds. A Certificate of Insurance shall be provided to the Grantor prior to performance pursuant to this ordinance.

(b) All insurance carriers providing the coverage described in this section shall be fully licensed to offer insurance in the state of Oregon.

(6) Notice of Cancellation or Reduction in Coverage. The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this ordinance and shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until 30 days after receipt by the Finance Director of the City of Eugene, City of Springfield and Lane County by registered mail of a written notice of such intent to cancel or reduce the coverage.

(7) Evidence of Insurance Filed with Grantor. Certificates evidencing all policies of insurance shall be filed and maintained with the Grantor during the term of the franchise.

(8) No Waiver of Performance Bond. Neither the provisions of this franchise nor any insurance accepted by the Grantor pursuant hereto, nor any damages recovered by the Grantor thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of Grantee under the franchise for damages, either to the full amount of the bond or otherwise.

Nor shall maintenance of insurance pursuant to this section be construed to impose liability to third parties on Grantee for loss expense or damages otherwise allocated under provisions of this ordinance.

Section 12. Responsibilities to Public.

(1) Repair. Any damage caused to the property of building owners or users or any other person, by the Grantee, shall be repaired fully and promptly by the Grantee.

(2) Removal of Facilities Upon Request. Upon termination of services to any subscriber, the Grantee shall remove promptly all its above ground external facilities and equipment from the premises of the subscriber at the owner's written request.

(3) Complaint Procedures and Inquiries.

(a) Grantee shall maintain an office in the city of Eugene and the city of Springfield which shall be open during all the usual business hours with its telephone listed in directories of the telephone company serving the franchise territory, and be so operated that complaints and requests for repairs or adjustments may be received at any time, day or night, seven days a week. The phone number and address of this office shall be furnished to each subscriber by the Grantee.

(b) Grantee shall equip and staff so as to assure that subscribers calling the office do not encounter, on the average, unreasonably high percentages of busy signals or unreasonably long hold times before reaching a customer service representative. If the commission feels that the busy times or average hold times over a period of three to six months has been unreasonable, the commission will notify the Grantee. The Grantee will have an opportunity to meet with the Commission to outline the corrective measures it will take or to explain why it believes that busy times or hold times have not been unreasonable. If the commission feels, after repeated notification, that the Grantee's telephone service is unreasonable and unacceptable, the commission and Grantee shall meet and establish phone standards and procedures for monitoring said standards.

(c) Except as provided in paragraph (d) of this subsection, original records including service records pertaining to complaints received by the Grantee, and of the office procedures followed to satisfy those complaints, shall be maintained by the Grantee for a period of not less than 3 years in Lane County, Oregon, and made available for inspection by the commission on reasonable notice to the Grantee. This record shall be considered by the commission in evaluating Grantee's system.

(d) Grantee may annually summarize complaints received regarding programming and then destroy the original records regarding these complaints if it files a written copy of the summary with the commission.

(4) Maintenance of Service.

(a) Grantee shall maintain a repair and troubleshooting force

capable of responding to subscriber complaints within 2 working days after receipt of the complaint, other than as may be due to circumstances beyond the reasonable control of the Grantee. No charge shall be made to the subscriber for maintenance of Grantee's system unless the subscriber has negligently or intentionally caused the damage.

(b) Grantee shall put, keep, and maintain all parts of the cable communications system in good condition throughout the entire period of this permit.

(c) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

(d) In the event that a subscriber complaint regarding Grantee's performance of this franchise is not resolved to the mutual satisfaction of the subscriber and the Grantee, either the subscriber or the Grantee may request that the matter be presented to the commission for resolution by the commission or its designee. Nothing in this paragraph 12(4)(d) or in a decision of the commission under this paragraph shall limit a subscriber's or the Grantee's rights to seek judicial resolution of the matter.

(e) When there have been similar complaints made or where there exists other evidence, which in the judgment of the commission casts doubt on the reliability or quality of cable service, the commission shall have the right and authority to compel the Grantee to test, analyze, and report on the performance of the system. Such test or tests shall be made, and the reports of such test or tests shall be delivered to the commission, within 14 days after the same have been requested by the commission. Such report(s) shall include the following information: the nature of the complaint(s) which precipitated the special tests, the system component(s) tested and the equipment used and procedures employed in said testing, the results of such tests, and the method in which such complaints were resolved. Any other information pertinent to the special test(s) shall be recorded and reported.

At the commission's option, said tests and analyses shall be supervised at the Grantee's expense by a professional engineer not on the permanent staff of the Grantee. The aforesaid engineer shall sign all records of special tests and forward the same to the commission within the time prescribed, with a report interpreting the results of the tests and recommending actions to be taken by the commission and/or Grantee.

The commission's right under this provision shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on complaints or other evidence which afford reasonable grounds to believe substandard cable service is being provided.

(f) In addition to testing under 12(4)(e), the commission may at any time employ at its own expense a registered qualified engineer to test, analyze, and report on the performance of the system. To the extent that it will not materially impair the ability of the Grantee to construct, operate

and maintain the system, to provide quality cable service or otherwise comply with the ordinance, Grantee agrees to make all of its testing equipment available at no charge or cost to the engineers selected by the commission to perform these tests; provided, however, that the Grantor indemnify the Grantee for any damages relating to the use of the equipment by the engineer.

(5) Monitoring and Cable Tapping Prevention. Grantee shall not monitor or tap any subscriber terminals unless such procedures are authorized by federal or state law, or unless prior written authorization from the subscribers affected is first obtained.

(6) Subscriber Privacy. Except as provided otherwise in Section 631 of the Federal Act and this Ordinance, without the consent of the subscriber Grantee shall not sell, or otherwise make available a subscriber's name or address, or any list which identifies a subscriber's viewing habits by name or address, to any person, agency, or entity.

(7) Grantee Rules and Regulations. The Grantee shall have the authority, consistent with applicable laws and FCC rules and regulations, to promulgate from time to time such rules, regulations, terms, and conditions governing the conduct of its business with subscribers as shall be reasonable and necessary to enable the Grantee to exercise its rights and perform its obligations under this franchise. Two (2) copies of all rules, regulations, terms, and conditions, including subscriber agreements promulgated under this section, together with any amendments, additions, or deletions thereto, shall be kept current on file with the commission. An additional copy thereof shall be maintained for public inspection during normal business hours at Grantee's offices in Eugene and in Springfield and no such rules, regulations, terms, conditions, or amendments, additions, or deletions thereto shall take effect unless and until so filed.

(8) Equal Employment Requirements. Grantee shall adhere strictly to the equal employment opportunity requirements of the Federal Act and the regulations of the Federal Communications Commission, as expressed in Section 76.13(a)(8) and 76.311 of Chapter I of Title 47 of the Code of Federal Regulations. Grantee shall comply at all times with all other valid and applicable Federal, State, City and County laws relating to nondiscrimination.

(9) Subscriber Satisfaction Survey. At least once a year, Grantee shall conduct a survey of its subscribers for the purpose of determining satisfaction with the services provided by Grantee. The content, form and method of survey shall be agreed upon by the commission and Grantee before the survey is conducted. Grantee shall submit the results of such survey to the commission upon request and shall maintain for six months after reporting the survey results to the commission the individual responses to the survey.

### Section 13. Reports and Records.

(1) Annually, within 150 days after the close of the fiscal year for which the financial records of the Grantee are maintained, Grantee shall

file with the commission the following reports:

- (a) Total number of subscribers at the end of the fiscal year.
- (b) Number of subscribers added during the year.
- (c) Number of subscribers lost during the year.
- (d) Number of miles of cable added to the system during the year.
- (e) Number of miles of cable equipment rebuilt or replaced during the year.
- (f) Summary of other additions to the system in terms of increased channel capacity or technological improvements made during the year.
- (g) Outline of plans for expansion and improvement of the system in the next fiscal year.
- (h) The financial status of the cable communications system, using the format agreed upon by Grantee and the commission, or such uniform format as may be provided by the FCC. Financial information shall include those reports which the commission reasonably determines are necessary for franchise administration and reflect the operation of the Eugene/Springfield/Lane County cable communications system. Each report shall be signed by an authorized agent of the corporation and an accountant who participated in its preparation or review.
- (i) An annual report prepared by an independent certified public accountant substantiating the franchise fee required by subsection 10(1) as paid by Grantor for the previous year.

(2) Copies of Reports. Copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission or any other Federal or State regulator, commission, or agency having jurisdiction in respect to any matters relating specifically to operation of the cable communications system authorized pursuant to this franchise and having a significant impact thereon shall also be submitted to the commission or Grantor upon request.

(3) Cost of Reports. The cost of preparing and furnishing to the commission the records and reports required by this section shall be borne by the Grantee.

(4) Documentation. Documentation for the financial report required by Subsection (1)(h) above shall be made available for inspection by Grantor without delay and at Grantee's expense.

Section 14. Solicitation by Grantee. Grantee may solicit subscribers for any of Grantee's services through house-to-house or place-to-place solicitation without the necessity of obtaining a license, permit, or other form of

approval from the Grantor, provided Grantee shall maintain an up-to-date list of solicitors on file with the commission and local law enforcement agencies.

### Section 15. Resolution of Disputes.

(1) Intent. It is the intent of the Grantor to provide for orderly resolution of disputes arising out of the enforcement or interpretation of provisions of this franchise, or any rule, regulation, or procedure relating to cable communications matters. To this end, the procedures set forth in Subsections (2) and (3) below may be implemented upon the election of either the Grantee or Grantor where agreement has not been reached after a reasonable time and good faith negotiation. In addition, any controversy or dispute may be submitted to binding arbitration as set forth in Subsection (4) below, but only upon agreement of both Grantee and Grantor.

(2) Fact-Finding. Any controversy or dispute, upon the election of either the Grantee or Grantor, shall be submitted to an expert individual acceptable to both parties for an investigation of the facts and a report thereof. Such fact-finding shall be for the purpose of developing better information for the use of both parties and shall not be binding on either party.

(3) Mediation. Any controversy or dispute, upon the election of either the Grantee or Grantor, shall be submitted to an expert individual acceptable to both parties for the purpose of facilitating discussion and receiving new perspectives on the issues and new proposals for compromise. Such mediation shall not be binding on either party.

(4) Arbitration. Upon agreement of Grantee and Grantor, any controversy or dispute may be submitted for arbitration to a single expert individual if both parties agree, or to a three-member expert panel. In rendering a decision the arbitrator(s) may not impinge on any right given Grantor or Grantee by federal law unless the party whose right is impinged upon has consented thereto in writing or expressly waived pursuant to the terms of this ordinance. On matters that are arbitrated or within the discretion of either party, the arbitrator(s) shall decide taking into account:

(a) The limits on Grantor's authority under state and federal law.

(b) The historic relationship of the parties as evidenced by the existing franchise and its predecessor franchises.

(c) The provisions of other franchises governing comparable systems.

(d) The provisions of other franchises Grantee has entered into since the last review of the existing franchise.

(e) The future cable-related community needs and interests as then defined by the commission and by the Grantee taking into consideration the costs associated therewith.



Arbitration shall be binding on both parties and shall be held to have been finally adjudicated and settled in accordance with ORS 33.210-33.340.

(5) Selection Procedures.

(a) In the case of fact-finding or mediation, both parties shall present a maximum total of three names each for possible service as experts. If there is no agreement on any of the names, the presiding judge of the Circuit Court of the State of Oregon, for the County of Lane, or his/her designee shall select a person to fulfill the function of expert.

(b) In the case of arbitration, if both parties agree within 20 days of the notice to arbitrate, one person may serve as arbitrator. In the absence of agreement, there shall be an arbitration panel of three members designated within 30 days of the notice to arbitrate. If a single-member panel is agreed upon, the selection procedures established for fact-finding and mediation shall be used to select the single arbitrator. If a three-member panel is to be used, one person shall be named by the Grantee, one person shall be named by the commission and a third person shall be named by agreement between the Grantee's and the commission's representative on the panel. The third person shall serve as the presiding officer of the panel. If there is no agreement on the single arbitrator or the presiding officer of a three-member panel, the selection shall be made by the presiding judge of the Circuit Court of the State of Oregon, for the County of Lane, or his/her designee. Except upon agreement of the Grantee and the commission, the hearing before the arbitrator(s) shall occur in Eugene or Springfield, Oregon and the decision of the arbitrator(s) shall be rendered within 60 days of the selection of the arbitrator(s).

Section 16. Duration, Renewal, and Renegotiation.

(1) Duration and Renewal. This franchise and the rights and privileges granted herein shall take effect 45 days after the date this ordinance is passed by the Grantor and remain in effect until July 1, 2008 unless terminated sooner under provisions of Subsection (4) of this section; provided, however, that the terms of the franchise must be accepted by the Grantee as provided in section 26 of this ordinance.

(2) Franchise Review.

(a) A review of the franchise performance may be undertaken upon agreement of the Grantee and the commission.

(b) A limited review of the franchise may be initiated by the Grantee, the Grantor or the commission anytime at least 36 months after the completion of a prior review of the franchise. The limited review may consider any or all of the following matters:

(i) The need for additional channels;

(ii) Service extension policies set forth in Section 7,

including, but not limited to, changes in urban service boundaries affecting areas to be served by Grantee;

(iii) Technical adequacy of the system, including, but not limited to, picture quality, two-way transmission capacity, and compliance with standards set forth in Section 8;

(iv) Changes in the Federal Act or FCC authority, rules, or regulations which affect the franchise;

(v) The franchise fee and payments set forth in Section 10 and financial support for public, education, and governmental access; and

(vi) The franchise term extension.

(c) Any additions to or modifications of services, or system design shall be conditioned upon their technical practicality and commercial feasibility.

(d) The grantee shall be represented during review negotiations by a representative of the corporation authorized to speak on behalf of the head office of the corporation on questions of corporate practice, policy, and plans.

(e) Any matters within the categories enumerated in Subsection 16(2)(b) above, on which agreement is not reached after good faith negotiation shall be submitted to binding arbitration pursuant to Section 15 herein, without need of further agreement to arbitrate, as otherwise required in Subsection 15(4). Upon decision of the arbitrator(s) or of the court on appeal, this ordinance shall be amended to the extent necessary to implement said decision.

(f) Any time between May 1, 2005 and October 31, 2005, upon reasonable demonstration by Grantee to commission that Grantee is in substantial compliance with the material terms of the franchise as it then exists, the commission shall renew the franchise for an additional ten year term commencing July 1, 2008. A denial of renewal by the commission shall be made if it reasonably initially determines that the Grantee has not substantially complied with the material terms of the franchise. In the event of such a denial, the commission shall also immediately proceed under Section 626 of the Federal Act. If the commission conducts the hearing required in subpart 626(c)(2) of the Federal Act, a decision by the commission to deny the renewal or Grantee's proposal shall be the final decision of the franchising authority.

### (3) Termination.

(a) The Grantor reserves the right to terminate this franchise and all rights and privileges pertaining thereto, in the event that:

(i) The Grantee violates any material provision of this franchise, except where such violation is without fault, or occurs by reason of excusable neglect;

(ii) The Grantee deliberately fails to operate the system without prior approval of the commission or without just cause; or

(iii) The Grantee intentionally evades any of the provisions of this franchise, or is found to have practiced any fraud or deceit upon the Grantor.

(b) Prior to any termination proceedings under this section, the Grantee shall be given 60 days of notice in writing, which notice shall state with particularity the grounds upon which the Grantor relies. If, at the end of the 60-day period, the Grantee has not cured the matter which provides grounds for termination, or if said default cannot be cured within 60 days and Grantee has failed to promptly notify Grantor of a date certain by which the default shall be cured or fails to initiate the remedy and proceed with all reasonable dispatch to cure the default, the franchise shall be subject to termination.

(c) Termination under this subsection shall be accomplished only by the passage of an ordinance after proceedings affording Grantee due process of law and a full opportunity to be heard consistent with the hearing procedures set forth in Eugene Code Sections 2.391-2.400 as such procedures exist at the time this ordinance is adopted. Any such ordinance shall not take effect sooner than 30 days after passage and shall be subject to judicial review.

## Section 17. Change of Ownership.

### (1) Transfers and Assignments.

(a) This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title hereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person without the prior written consent of the Grantor. However, without the commission's consent Grantee may transfer or assign the franchise to an affiliate of Grantee provided the transferee or assignee is wholly-owned by Grantee or by Grantee's owner. The proposed assignee must show financial responsibility as determined by the Grantor and must agree to comply with all provisions of the franchise. Grantor shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to Grantee within 60 days following receipt of written notice of the proposed transfer or assignment.

(b) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Grantor shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the Grantor may authorize

the commission to inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the commission in any such inquiry. If the Grantor does not authorize an inquiry by the commission within 30 days after notice of the change or proposed change is received from the Grantee, the Grantor shall be deemed to have consented.

(2) Grantor's Right to Purchase of System Upon Termination. In the event that the Grantor terminates the franchise prior to the end of the franchise term, the Grantor shall have the right to purchase the cable communications system at an equitable price as defined in subsection 627(b)(1) of the Federal Act. Under no circumstances shall any valuation be made for "good will" or any right or privilege granted by this franchise.

(3) Continuity of Service Mandatory.

(a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate this franchise, or if this franchise is not renewed, the Grantee shall use best efforts to ensure that all subscribers receive continuous, uninterrupted service. In the event of a change of Grantee; or in the event a new operator acquires the system, the current Grantee shall cooperate with the Grantor in maintaining continuity of service to all subscribers, and shall be entitled to the revenues for any period during which Grantee operates the system.

(b) In the event the Grantee fails to operate the system for 7 consecutive days without prior approval of the commission or without just cause, the commission shall operate the system until such time as a new operator is selected. If the commission is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the commission for any costs or damages that are the result of the Grantee's failure to perform.

(4) Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the equipment comprising the system, the Grantor shall have the right, at its discretion, to terminate the franchise, which termination shall be final and binding upon both parties; such option shall be exercised not later than 60 days following foreclosure, other judicial sale or termination of such lease, or Grantor shall be deemed to approve of such successor in interest to Grantee.

(5) Receivership. The Grantor shall have the right to terminate this franchise 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 120 days, or unless:

(a) Within 120 days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this franchise and remedied all defaults thereunder; and

(b) Such receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this franchise.

(6) Grantor Purchase of System Upon Expiration. The Grantor shall have the right to purchase the cable communications system upon expiration of this franchise. Should the Grantor decide to purchase the system, it shall do so at a price equal to its then fair market value as a going concern but with no value allocated to this franchise.

(7) Disposition of Facilities.

(a) Subject to federal, state and local law, upon expiration of the franchise, the Grantee, upon request of the Grantor, shall promptly remove all of its equipment above ground in the public right-of-way.

(b) In removing its equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires, or attachments. Such restoration of property shall not be considered completed until the Grantor has inspected and approved the condition of the public ways and places. The liability insurance and indemnity as provided under Section 11 herein shall continue in full force and effect during the period of removal.

(c) In the event of a failure by the Grantee to complete any work required by Subsection (a) above or any work required by law or ordinance within the time as may be established by the Grantor or to the satisfaction of Grantor, the Grantor may cause such work to be done and the Grantee shall reimburse the Grantor the costs thereof within 30 days after receipt of an itemized list of such costs, or the Grantor may recover such costs as provided in Section 11.

Section 18. Payment of Litigation Costs. In any judicial litigation or appeal, costs including filing fees, costs of depositions, discovery, expert witnesses, all other expenses of suit, and reasonable attorney fees shall be paid as determined by the courts.

Section 19. Penalties. Subject to the requirement of prior notice as set forth in (d) below, for violations of this ordinance occurring without just cause or excusable neglect, Grantor may, at its discretion, assess penalties against Grantee as follows:

(a) For failure to adhere to material representations made in the map and plan referred to in Section 7(3), \$200 per day for each representation not fulfilled.

(b) For failure to provide information or reports as required

by terms of the ordinance, \$50 per day for each failure to perform a specific requirement.

(c) For failure to make a good faith effort to correct a subscriber service problem after notice from the commission, \$50 per day for each such failure, except that should the penalty amount to more than \$1,000 for any continuous period during which a penalty(ies) under this section is being applied, Section 15 procedures may be invoked by either Grantor or Grantee regarding any continuing penalties over \$1,000 and the arbitration procedure of Section 15 shall apply without agreement of both Grantee and Grantor, but upon the request of either one. Should the arbitrator(s) determine that Grantee's effort was in good faith, Grantee shall be refunded the penalty amount previously paid.

(d) As a condition precedent to imposition of a penalty, Grantor shall give Grantee written notice specifying the nature of Grantee's violation of this ordinance with reasonable particularity. Notice shall be by certified United States mail with a return receipt requested, and shall be deemed given when actually delivered or as of 5 p.m. on the third day following the date actually mailed. Except for violations creating an imminent threat to life or property which shall be corrected within the time stated in Grantor's notice or Grantee shall be subject to penalty, Grantee shall be subject to a penalty if the violation of the ordinance is not cured within 30 days after notice is given or in the event the violation cannot be cured for reasons beyond the control of Grantee within 30 days, it shall be sufficient if Grantee initiates all reasonable measures to cure the violation within 30 days and continues thereafter with all reasonable dispatch to cure the violation; provided, in any event the violation must be cured not later than 60 days after notice is given. Notice shall be given pursuant to Section 24.

Section 20. Remedies Not Exclusive. All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive, and the Grantor reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of any term, condition, or obligation imposed upon the Grantee pursuant to this ordinance. A specific waiver of a particular term, condition, or obligation imposed upon Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation itself.

Section 21. Force Majeure. In the event that the Grantee's performance of any of the terms, conditions, obligations or requirements of this franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof for the period of time Grantee's performance is so prevented or impaired.

Section 22. Access Programming. The commission may operate and control the access center and the four access channels as provided in Section 5 of this ordinance when used for noncommercial purposes. The commission's use of the access channels shall have priority over other uses except upon prior approval by the commission. The commission shall adopt rules and regulations for the operation and control of the access center and use of the access channels, none of which shall be contrary to Grantee's obligations under the law. The rules and regulations shall a) prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of political candidates for office), lottery information, and obscene or indecent matter; b) require nondiscriminatory access and rates; c) require the maintenance of records regarding request for and use of the access center and access channels; and d) provide for public inspection of the records and further provide Grantee with copies thereof weekly.

Section 23. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Grantor hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any other consideration or obligation required by the Grantee.

Section 24. Notice. Unless expressly agreed between the parties, every notice or response to be served upon the commission, Grantor or Grantee shall be in writing and delivered by personal service as required by law or by mail. If by mail, notice shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Grantor shall be addressed as follows:

Lane County  
Attn: County Adm.  
125 E. 8th Avenue  
Eugene, Or 97401

with a copy to:

Lane Council of Governments  
Attn: Metropolitan Policy Committee  
125 East Eighth Avenue  
Eugene, Oregon 97401

The notices or responses to the Grantee shall be addressed as follows:

TCI Cablevision of Oregon, Inc.  
P. O. Box 2500  
Eugene, Oregon 97402-0369

with a copy to:

TCI Cablevision of Oregon, Inc.  
Attention: Legal Department  
Terminal Annex P. O. Box 5630, Denver, Colorado 80217

OR 4643 South Ulster, Denver, Colorado 80237

Grantor, the commission and the Grantee may each designate such other officer or address(es) from time to time by giving notice to the other.

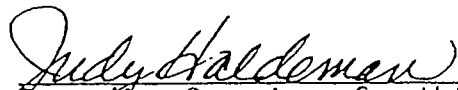
Section 25. Repealer. Ordinance Nos. 23-78, 4-82, and 6-85 and any other ordinance in conflict herewith are hereby repealed, effective upon the effective date of this Ordinance.

Section 26. Effective Date. This Ordinance shall be effective 45 days after its enactment. Subject to applicable federal, state and local law, Grantee must accept the provisions of this Ordinance and agree to be bound thereby. Such acceptance shall be in writing signed by an officer of the corporation which is delivered to Grantor within 30 days of enactment of this Ordinance. In the event Grantee fails to deliver its acceptance as provided herein, and notwithstanding any other provision of this Ordinance, Grantor may repeal this Ordinance without further notice to Grantee and without giving Grantee an opportunity to be heard.

Enacted this 7th day of May, 1991

  
Chair

Lane County Board of Commissioners

  
Recording Secretary for this  
meeting of the Board



# PUBLIC KNOWLEDGE®

3510 SUNRIDGE DR. S.  
SALEM, OR 97302  
(503) 581-0878  
FAX (503) 581-2026

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Exhibit B

APR 18 2003

March 14, 2003

Mr. Milo Mecham  
Lane Council of Governments  
99 E. Broadway – Suite 400  
Eugene, OR 97201

Dear Milo:

Based on your request, Public Knowledge, Inc., with the assistance of Merina & Company, performed agreed-upon procedures to review the cable television franchise fee payments of AT&T Broadband (AT&T) to the Cities of Eugene and Springfield and to Lane County (the franchising authorities). We covered the period of January 1, 1999 through September 30, 2002 and reviewed the following:

- Ordinance sections pertaining to the payment of franchise fees.
- Franchise fee payment reports submitted by AT&T to the franchising authorities.
- Worksheets prepared by AT&T to support the determination of franchise fee payments.
- AT&T billing system reports documenting billings and payments from subscribers.
- AT&T general ledger reports of selected accounts for the system serving these franchising authorities

Our principal objective was to determine whether AT&T reported all of the revenue it was obligated to report under its agreements with these franchising authorities. AT&T is required to pay five percent of gross revenues, with "gross annual revenues" defined as follows:<sup>1</sup>

"Gross Annual Revenues" means any and all compensation in whatever form, grant, subsidy, exchange, or otherwise, directly or indirectly received by the Grantee for services provided to subscribers within the franchise territory but excludes taxes Grantee is required to separately state and collect from Subscribers."

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<sup>1</sup> This definition appears in Section 3 of the Lane County Ordinance No. 6-91. It is our understanding that the definition is the same for the two cities as well.

We identified several underpayment issues, as described below.

**Unapplied cash.** In 1999 and 2000 AT&T was using a cash basis billing system report to determine the revenues to report to the franchising authorities. One item in this report was identified as "unapplied cash." In 1999 AT&T included the unapplied cash in the amounts reported, but in 2000 unapplied cash was excluded from the gross revenue reported to the franchising authorities. In 2001 AT&T switched to an accrual basis billing report to prepare its franchise fee calculations. The amounts inappropriately excluded and the associated franchise fee impacts (at five percent) are noted in the tables below:<sup>2</sup>

Unapplied Cash: Amount Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ -	\$ 85,005	\$ -	\$ -	\$ 85,005
Springfield	\$ -	\$ 25,237	\$ -	\$ -	\$ 25,237
Lane County	\$ -	\$ 15,070	\$ -	\$ -	\$ 15,070
<b>Total</b>	\$ -	\$ 125,312	\$ -	\$ -	\$ 125,312

Unapplied Cash: Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ -	\$ 4,250	\$ -	\$ -	\$ 4,250
Springfield	\$ -	\$ 1,262	\$ -	\$ -	\$ 1,262
Lane County	\$ -	\$ 754	\$ -	\$ -	\$ 754
<b>Total</b>	\$ -	\$ 6,266	\$ -	\$ -	\$ 6,266

**Refunds.** AT&T excluded refunds from the reported revenue, but did so inconsistently. In 2000 the refunds were effectively excluded twice. The tables below correct for this inconsistency.

Refunds: Amount Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ -	\$ 87,532	\$ -	\$ -	\$ 87,532
Springfield	\$ -	\$ 27,220	\$ -	\$ -	\$ 27,220
Lane County	\$ -	\$ 16,762	\$ -	\$ -	\$ 16,762
<b>Total</b>	\$ -	\$ 131,514	\$ -	\$ -	\$ 131,514

Refunds: Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ -	\$ 4,377	\$ -	\$ -	\$ 4,377
Springfield	\$ -	\$ 1,361	\$ -	\$ -	\$ 1,361
Lane County	\$ -	\$ 838	\$ -	\$ -	\$ 838
<b>Total</b>	\$ -	\$ 6,576	\$ -	\$ -	\$ 6,576

**FCC Fee.** In shifting its method of reporting AT&T excluded FCC fees from the amounts reported for certain months. AT&T later adjusted with a retroactive

<sup>2</sup> In these and all of the following tables the year 2002 includes only the nine months through September 30, 2002.

payment, but an additional adjustment is needed, as shown in the following tables.

FCC Fee: Amount Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ -	\$ 3,522	\$ -	\$ -	\$ 3,522
Springfield	\$ -	\$ 2,707	\$ -	\$ -	\$ 2,707
Lane County	\$ -	\$ 1,232	\$ -	\$ -	\$ 1,232
<b>Total</b>	\$ -	\$ 7,461	\$ -	\$ -	\$ 7,461

FCC Fee: Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ -	\$ 176	\$ -	\$ -	\$ 176
Springfield	\$ -	\$ 135	\$ -	\$ -	\$ 135
Lane County	\$ -	\$ 62	\$ -	\$ -	\$ 62
<b>Total</b>	\$ -	\$ 373	\$ -	\$ -	\$ 373

**Bad Debt Recovery.** AT&T was netting out bad debts from the amount of revenue reported, but treated bad debt recoveries inconsistently during this time period. The tables below reflect a corrected consistent treatment of bad debt recoveries:

Bad Debt Recovery: Amount Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ 95,682	\$ 5,661	\$ 6,986	\$ (21)	\$ 108,308
Springfield	\$ 47,421	\$ 6,535	\$ 3,901	\$ (11)	\$ 57,846
Lane County	\$ 22,528	\$ 2,921	\$ 760	\$ (6)	\$ 26,203
<b>Total</b>	\$ 165,631	\$ 15,117	\$ 11,647	\$ (38)	\$ 192,357

Bad Debt Recovery: Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ 4,784	\$ 283	\$ 349	\$ (1)	\$ 5,415
Springfield	\$ 2,371	\$ 327	\$ 195	\$ (1)	\$ 2,892
Lane County	\$ 1,126	\$ 146	\$ 38	\$ (0)	\$ 1,310
<b>Total</b>	\$ 8,282	\$ 756	\$ 582	\$ (2)	\$ 9,618

**Advertising Revenues.** Advertising revenues were reported net of commissions and agency fees; that is, they were reported on a *net* rather than a *gross* basis. The franchises require fees to be based on *gross* revenue. The following tables correct the under-reported advertising revenue:

Advertising Commissions and Fees: Amount Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ 108,103	\$ 129,089	\$ 123,731	\$ 104,233	\$ 465,157
Springfield	\$ 43,241	\$ 50,436	\$ 47,605	\$ 40,103	\$ 181,385
Lane County	\$ 36,661	\$ 42,660	\$ 38,377	\$ 32,330	\$ 150,028
<b>Total</b>	<b>\$ 188,006</b>	<b>\$ 222,185</b>	<b>\$ 209,713</b>	<b>\$ 176,666</b>	<b>\$ 796,570</b>

Advertising Commissions and Fees: Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ 5,405	\$ 6,454	\$ 6,187	\$ 5,212	\$ 23,258
Springfield	\$ 2,162	\$ 2,522	\$ 2,380	\$ 2,005	\$ 9,069
Lane County	\$ 1,833	\$ 2,133	\$ 1,919	\$ 1,616	\$ 7,501
<b>Total</b>	<b>\$ 9,400</b>	<b>\$ 11,109</b>	<b>\$ 10,486</b>	<b>\$ 8,833</b>	<b>\$ 39,829</b>

**Advertising Sales Reconciliation.** There was an additional issue relating to advertising revenue. The amounts included in the reports submitted to the franchising authorities did not reconcile to the amounts in the supporting general ledger accounts and were over-reported in three of the four years. The tables below make corrective adjustments, resulting in a net reduction in the applicable franchise fees.

Advertising Sales: Amount (Over) or Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ (18,251)	\$ 21,174	\$ (24,550)	\$ (4,574)	\$ (26,201)
Springfield	\$ (7,300)	\$ 8,273	\$ (9,445)	\$ (1,760)	\$ (10,233)
Lane County	\$ (6,189)	\$ 6,997	\$ (7,615)	\$ (1,419)	\$ (8,225)
<b>Total</b>	<b>\$ (31,740)</b>	<b>\$ 36,444</b>	<b>\$ (41,610)</b>	<b>\$ (7,753)</b>	<b>\$ (44,659)</b>

Advertising Sales: Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ (913)	\$ 1,059	\$ (1,227)	\$ (229)	\$ (1,310)
Springfield	\$ (365)	\$ 414	\$ (472)	\$ (88)	\$ (512)
Lane County	\$ (309)	\$ 350	\$ (381)	\$ (71)	\$ (411)
<b>Total</b>	<b>\$ (1,587)</b>	<b>\$ 1,822</b>	<b>\$ (2,081)</b>	<b>\$ (388)</b>	<b>\$ (2,233)</b>

**Marketing Reimbursements.** AT&T receives launch fees, carriage fees, marketing payments, and other consideration from certain programmers. AT&T booked some of this consideration as "contra expenses" to marketing expense accounts at either the system level or at higher organizational levels. We believe that the consideration should be treated as gross revenue under the definition applicable to the three franchising authorities. The tables below identify the unreported marketing reimbursements, excluding amounts that are addressed as part of the "marketing co-op receipts" issue that follows.

Marketing Reimbursements: Amount Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ 126,517	\$ 155,136	\$ 134,659	\$ 36,038	\$ 452,349
Springfield	\$ 50,607	\$ 60,612	\$ 51,809	\$ 13,866	\$ 176,894
Lane County	\$ 42,906	\$ 51,267	\$ 41,767	\$ 11,178	\$ 147,118
<b>Total</b>	<b>\$ 220,029</b>	<b>\$ 267,015</b>	<b>\$ 228,235</b>	<b>\$ 61,082</b>	<b>\$ 776,361</b>

Marketing Reimbursements: Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ 6,326	\$ 7,757	\$ 6,733	\$ 1,802	\$ 22,617
Springfield	\$ 2,530	\$ 3,031	\$ 2,590	\$ 693	\$ 8,845
Lane County	\$ 2,145	\$ 2,563	\$ 2,088	\$ 559	\$ 7,356
<b>Total</b>	<b>\$ 11,001</b>	<b>\$ 13,351</b>	<b>\$ 11,412</b>	<b>\$ 3,054</b>	<b>\$ 38,818</b>

**Marketing Co-op Receipts.** Another group of AT&T's general ledger accounts reflect "marketing co-op receipts," which are similar to the marketing reimbursements discussed above. An analysis of general ledger shows a wide variety of sources of the revenue: the amounts are variously labeled as "marketing incentives," "rebates," "reclassified launch support," and so on. Regardless of how AT&T classifies these receipts in its books, they all appear to be a form of incentive or subsidy that qualifies as "gross revenue" under the definition applicable to these franchising authorities. The omitted marketing co-op receipts are summarized in the following tables:

Marketing Co-op Receipts: Amount Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ 9,129	\$ 2,923	\$ 37,475	\$ 111,270	\$ 160,798
Springfield	\$ 3,652	\$ 1,142	\$ 14,418	\$ 42,811	\$ 62,023
Lane County	\$ 3,096	\$ 966	\$ 11,624	\$ 34,513	\$ 50,198
<b>Total</b>	<b>\$ 15,877</b>	<b>\$ 5,031</b>	<b>\$ 63,517</b>	<b>\$ 188,594</b>	<b>\$ 273,019</b>

Marketing Co-op Receipts: Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ 456	\$ 146	\$ 1,874	\$ 5,564	\$ 8,040
Springfield	\$ 183	\$ 57	\$ 721	\$ 2,141	\$ 3,101
Lane County	\$ 155	\$ 48	\$ 581	\$ 1,726	\$ 2,510
<b>Total</b>	<b>\$ 794</b>	<b>\$ 252</b>	<b>\$ 3,176</b>	<b>\$ 9,430</b>	<b>\$ 13,651</b>

**Summary of Underpayments.** The following tables summarize by franchising authority the revenues omitted from the franchise fee reports and the associated underpaid franchise fees:

Total Amount Under-Reported					
	1999	2000	2001	2002	Total
Eugene	\$ 321,181	\$ 490,042	\$ 278,300	\$ 246,947	\$ 1,336,470
Springfield	\$ 137,621	\$ 182,162	\$ 108,288	\$ 95,009	\$ 523,080
Lane County	\$ 99,002	\$ 137,875	\$ 84,913	\$ 76,596	\$ 398,385
<b>Total</b>	<b>\$ 557,803</b>	<b>\$ 810,079</b>	<b>\$ 471,502</b>	<b>\$ 418,551</b>	<b>\$ 2,257,935</b>

Total Franchise Fee Impact					
	1999	2000	2001	2002	Total
Eugene	\$ 16,059	\$ 24,502	\$ 13,915	\$ 12,347	\$ 66,824
Springfield	\$ 6,881	\$ 9,108	\$ 5,414	\$ 4,750	\$ 26,154
Lane County	\$ 4,950	\$ 6,894	\$ 4,246	\$ 3,830	\$ 19,919
<b>Total</b>	<b>\$ 27,890</b>	<b>\$ 40,504</b>	<b>\$ 23,575</b>	<b>\$ 20,928</b>	<b>\$ 112,897</b>

The ordinance establishes late penalties for underpaid franchise fees: ten percent of the underpaid amount, plus interest of one percent per month. We will compute the applicable amounts once you have directed us to do so after payment terms have been established with AT&T.

**Other Issues.** You requested that we review certain other related issues in the course of this engagement. A brief summary of the issues and the related findings appears below; we would be pleased to provide additional information to you on these matters at your request:

- You provided files of addresses annexed to the Cities of Eugene and Springfield during the review period. At our request, AT&T compared these addresses to addresses in its customer database. About 30 customers who should properly be included with the City of Eugene continued to be identified as Lane County customers in AT&T's database. A few Springfield addresses were also improperly coded to the County in the AT&T database, although there were not current customers at these addresses. We recommend that you request AT&T to adjust the "agent" codes for the relevant customer addresses found to be miscoded, but that there be no retroactive adjustment to re-assign the franchise fee revenues by jurisdiction. The amounts would be very small in any case, and determining the retroactive period and adjustment amount for each address could be unnecessarily complicated given the relative immateriality of the amounts. In the future, the Cities should provide AT&T with notices in writing of any addresses annexed, to better facilitate the assignment of the correct jurisdictional codes by AT&T.
- It is our understanding that AT&T has agreed to provide reports to the Cities of Springfield and Eugene of the cable modem services revenues now excluded from reported franchise fee revenue (based on a federal court decision). You provided us with sample reports to the City of Springfield. We found the revenue amounts shown in the recent Springfield reports to be reasonable, reflecting some growth from the amounts we observed for earlier periods.



Comcast Cable Communications, Inc.  
2897 Chad Drive  
Eugene, OR 97408

Exhibit  
C

January 27, 2004

Mr. Milo Mecham  
Lane Council of Governments  
99 East Broadway, Suite 400  
Eugene, OR 97401

Dear Mr. Mecham:

In our letter to you of October 10, 2003, we suggested that the parties await the outcome of the Los Angeles arbitration proceeding which involves the same matter we have been discussing at length through past communications. You stated that if Comcast has a "full and unequivocal commitment" to "abide by the outcome in Los Angeles", and also provides certain information as identified in your letter of October 23, 2003, it may be possible for you to advise your principals on our suggestion.

As you are aware, the Los Angeles arbitration involves similar issues that we are confronting here, as more particularly described in our letter of October 10<sup>th</sup>. Accordingly, we suggested that we await the outcome of the Los Angeles arbitration. The decision from that proceeding will be persuasive and instructive, whatever the outcome. It was not, however, our intention to suggest that the parties agree to be bound by the Los Angeles decision. For your information, the arbitration proceeding with the City of Los Angeles is before Judge Abna Mikva (Retired) of the United States Court of Appeals for the District of Columbia Circuit regarding GAAP and its applicability to the reporting of franchise fees. Judge Mikva also was a former White House counsel. We expect a decision on this issue at the conclusion of this quarter or shortly thereafter.

You also referred to the "Portland metropolitan area, where Comcast takes a different position on the same issues." As we previously indicated, that preexisting situation was handled by our predecessor(s) and we will reassess the situation in the Portland metropolitan area based on the outcome of the Los Angeles arbitration.

Given these circumstances, we do not believe that the information you identified in your letter of October 23<sup>rd</sup> is either relevant or necessary in order to await the outcome of the Los Angeles arbitration. We sincerely believe this is the most prudent and reasonable course of action for the parties.

In addition, we appreciate your efforts in considering GAAP accounting principles as applicable to this situation, although you stated that GAAP is not the determinative factor with respect to whether franchise fees should be assessed on these monies.<sup>1</sup>

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<sup>1</sup> As it affects advertising agency commissions, we believe that GAAP confirms the manner in which these commissions are treated. Comcast is not entitled to collect them and does not consider them revenue because they arise out of the relationship between the advertiser and the agency.

Mr. Milo Meacham  
Lane Council of Governments  
January 27, 2004  
Page 2

We also would like to take this opportunity to provide you with additional legal authority in support of our position. We believe that GAAP is the only test to determine whether or not Comcast has properly included all monies in its determination of Gross Revenues because it is a bright-line test that is universally recognized as determinative as to whether a company has properly recorded its revenue. This was the conclusion reached in the *City of Dallas, Texas, v. FCC, 118 F.3d 393 (1997)*, that held that cable operators were required to include the monies that subscribers paid for franchise fees as Gross Revenue under GAAP. In reaching this conclusion, the *Dallas* court noted the Supreme Court's recognition that when a statute uses a technical term, it must have the meaning ascribed to it by the industry under regulation. The Fifth Circuit in the *City of Dallas* looked to the standard "industry accounting practices," including the Financial Accounting Standard Board's Statement of Financial Accounting Standards, in concluding that franchise fees may not be deducted from "gross revenues." *Id.*, 118 F.3d 393. The court further noted that "[t]here is nothing in the text of the statute, the structure of the statute, or the sparse committee reports to conclude that Congress intended 'gross revenue' to have a specialized meaning as it was used in Section 542(b)." *Id.*, 118 F.3d at 396. In other words, the court concluded that the term "gross revenue" did not have any special meaning under the Communications Act other than its customary usage. The *Dallas* Court, therefore, concluded that GAAP was the litmus test to be used in the calculation of the franchise fee. Comcast is not attempting to amend or circumvent the franchises by reference to GAAP. Simply, Comcast maintains that any effort to determine what constitutes "Gross Revenue" must be made with reference to GAAP.

Furthermore, the "5% of gross revenues cap" on franchise fees cannot be waived by contract. "Congress intended to restrict franchise fees to five percent of gross revenues in existing as well as new franchises and thus did not intend for the five percent cap to be subject to contractual waiver." *Cable TC Fund 14-A, Ltd. v. City of Naperville*, 1997 U.S. Dist. LEXIS 11511, at \*85 (July 25, 1997). Thus, the jurisdictions are precluded from arguing that the franchise can independently require Comcast to pay franchise revenues on advertising agency commissions and launch fees where such monies do not constitute revenue under GAAP, and to require payment on these monies would be in contravention of federal law. The determination of what constitutes "gross revenues" and accordingly, the 5% cap on collection of franchise fees, is determined by Congress, not by parties to a municipal franchise agreement. "The issue of what constitutes 'gross revenues . . . derived from the operation of a cable system' arises from a specific provision of the statute and not, as some commenters appear to claim from individual franchise agreements." *In the Matter of United Artists Cable of Baltimore*, FCC 96-188 (Apr. 24, 1996) (overruled on other grounds); accord *City of Dallas v. FCC, 118 F.3d 393 (5<sup>th</sup> Cir. 1997)* (construing "gross revenues" by looking to "[d]ictionary definitions, industry practice, and accounting standards . . . as prime sources . . . to determine congressional intent," and not looking to contractual intent of the parties to the franchise agreement) (Emphasis added).

The test for measuring the total amount of franchise fees paid by an operator was discussed in *Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802. The Court of Appeals noted that franchise fees that are imposed on a cable operator can be assessed in any number of ways so long as the total amount does not exceed five percent of the operator's



Mr. Milo Meacham  
Lane Council of Governments  
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annual gross revenue. ("For any twelve- month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services." 47 U.S.C. § 542 (b)(2)). Therefore, even if we were to agree that the jurisdictions have the authority to assess a franchise fee on advertising agency commissions or launch fees under the franchises notwithstanding the requirements of GAAP, Section 622 would not permit it. If Comcast were required to pay 5% of these monies on top of the requirement to pay 5% of Gross Revenues under the franchises, the 5% cap would be exceeded.

The Cable Act requires that "any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter, shall be deemed to be preempted and superseded." 47 U.S.C. § 556(c). A conflict preemption may occur when a local ordinance "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Qwest Broadband Serv. v. City of Boulder*, 151 F.Supp.2d 1236 (D. Co. 2001) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67-68 (1941)). Accordingly, the franchises must be construed in accordance with GAAP and Section 542 of the Cable Act in order to avoid preemption.

Lastly, we remain prepared to pay the amount that is not disputed, plus the applicable penalty and interest, with appropriate reductions for offsetting overpayments. As we mentioned previously on several occasions, in order to clarify amounts specific to Refunds and Bad Debt Recovery, our letter to you dated July 30, 2003 explained and provided information to correct the inadvertent mischaracterization to those items. Should Public Knowledge wish to review those entries, we will make the necessary arrangements.

We trust that you will find the information presented helpful regarding our position and our suggestion to await the outcome of the Los Angeles arbitration. As always, we look forward to continuing to work with you and the jurisdictions in a mutually cooperative manner.

Very truly yours,



Sanford Inouye  
Director of Franchising and Government Affairs

cc: Pam Berrian, City of Eugene  
Peter Thurston, Lane County  
Len Goodwin, City of Springfield

Exhibit  
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February 20, 2004

Sanford Inouye  
Comcast Cable Communications, Inc.  
2897 Chad Drive  
Eugene, OR 97408

Dear Mr. Inouye:

We have received your latest correspondence, sent January 27, 2004, concerning the dispute between Comcast and the Local Franchise Authorities (LFAs) of Eugene, Springfield and Lane County over payment of franchise fees.

Since receiving the March 14, 2003 review report, Comcast has not paid any of the amounts reported as being underpaid. Because of that, and because of several statements made in subsequent correspondence and subsequent discussions on the matter, the LFAs have been forced to the conclusion that all underpayments identified in the report are disputed by Comcast. Your offer, in your January 27, 2004, letter, to pay amounts that are not disputed suggests that you have a different understanding of the nature of the discussions at this point. If that is true, please feel free to make immediate payment to the local franchise authorities reflecting the amount of underpayment found in the March 14, 2003, report, plus penalties and interest as specified in the franchise. Comcast can deduct the credit identified in the March 14, 2003, report if it wishes. In the event that later discussions reveal that this credit was inapplicable because of the reconciliation of other matters related to advertising, then we can at that time develop a final accounting.

In your January 27 letter you make several points concerning Comcast's position. These are similar to earlier arguments, but do also introduce new issues.

**Franchise Obligations and Claims of Countervailing Law (GAAP)**

The local franchises of Eugene, Springfield and Lane County allow Comcast to use the public rights of way for the "purpose of producing, receiving, amplifying, storing, processing or distributing audio, video, digital, or other forms of electronic or electrical signals." In return for the ability to provide cable services and other telecommunications services over the cable communications system, the LFAs require franchise fee payments of five percent of gross revenues. The franchise has a broad definition of gross revenues: "any and all compensation in whatever form, grant, subsidy, exchange or otherwise, directly or indirectly received by Grantee for services provided to subscribers..."

In Comcast's earlier responses to the March 14, 2003 report, Comcast has asserted that certain payments received by Comcast should not be counted as revenues for the purpose of calculating gross revenues because Comcast's adherence to Generally Accepted Accounting Principles (GAAP), requires that Comcast record these payments as something other than revenue. In the most recent letter, Comcast expands earlier assertions, now claiming not only that Comcast's exclusion of these payments from gross revenue is mandated by GAAP rules, but also that federal law requires this treatment.

So that there is no later misunderstanding, let me start with an assurance that nothing in this letter should be taken as an assertion that federal law is irrelevant to the outcome of this local franchise dispute. Federal law does indeed play a role, but federal law does not define gross revenues in a manner that precludes collection of franchise fees on these payments. Federal law was written within the context of GAAP, but it was also written in the context of multiple local franchises across the nation, with multiple definitions of gross revenue. Our local franchise has a definition of gross revenue consistent with federal law, and that is the starting point for any analysis of Comcast revenues.

As we have explained in previous correspondence, there are other elements of GAAP that are equally or more applicable to the revenue issues in question. This is demonstrated in the case you cite in your letter, *City of Dallas, Tex. v. F.C.C.*, 118 F3d 393 (5<sup>th</sup> Cir. 1997).<sup>1</sup> It is ironic that you should rely on this case, however, since the court rejected industry attempts to restrict the meaning of gross revenue, and chose a broad definition; gross revenue includes "all money coming into the possession of the business, regardless of the source or purpose for which it is used." (p. 396) Also note that the *City of Dallas* court quoted the FASB *Statement of Financial Accounting Standards No. 51*, which says that, for gross revenue, "cable franchise fees are costs no different than the general manager's salary, marketing costs and programming costs." (p 395, emphasis added because marketing costs and programming costs are among the items you wish to exclude from gross revenues.)

There is nothing in federal law, in the local franchises, or in GAAP itself that mandates that GAAP must determine the meaning of gross revenue for our franchises. Unless it is limited by other phrases, gross revenue has a standard, broad definition, as is explained in the *City of Dallas* case. Our franchises' definition of gross revenue is consistent with the definition provided in the *City of Dallas* case. To the extent that that case discusses how GAAP treats gross revenues with regard to franchise fees, our franchise's language is entirely consistent with GAAP.

Your January 27, 2004 letter also introduces the idea that, by insisting that the franchise definition of gross revenue be applied, the LFAs would be violating the federal limit of five

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<sup>1</sup> The court briefly discusses one Financial Accounting Standards Board (FASB) definition. Since FASB discussions are a part of GAAP, I understood your suggestion that the court relied on GAAP to be a reference to the FASB definition discussed. The term GAAP does not, I believe, appear in the case. Contrary your January 27, 2004 letter, the *City of Dallas* court did not hold "that cable operators were required to include monies subscribers paid for franchise fees as Gross Revenues under GAAP." The court mentioned a number of common meanings for "gross revenue," including FASB. But the court also discussed definitions in Webster's and Black's dictionaries, and an Oregon case, *Lane Electric Cooperative, Inc. v. Oregon Dept. of Revenue*, 307 Or 226 (1998) "(noting 'the term all gross revenue ... is to be construed in the broadest sense. i.e. all money received')." The *holding* of the *City of Dallas* case was that gross revenues in federal law has the unambiguous meaning ascribed to it in normal and ordinary usage: "all revenues or receipts of a business, without deduction." (p. 396)

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percent of gross revenue. The fallacy of this argument is, of course, the assumption that the federal definition of gross revenue is narrower than the local franchise language. This mistake has already been dealt with. Your letter's mention of another Court of Appeals case, *Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F3d 802, deserves a brief discussion because it calls attention to a misimpression about franchise fees that Comcast encourages, here and elsewhere. The *Texas Coalition* case concerned a challenge to the FCC *Pasadena* decision, where the FCC held that cable companies could make cable subscribers pay the franchise fees owed because of other cable company activities, such as "advertising and commissions." (p.806)

As you must know, the *Texas Coalition* court held that such a practice did not result in the franchise fee becoming greater than five percent. FCC regulations allow, not require, the cable company to pass franchise fees for other revenue on to the subscribers. If the cable company chooses to make subscribers pay fees that the cable company owes because of other earnings, that does not mean that the franchise fee is greater than five percent. The FCC rules allow the behavior, and allow the cable company to create a misimpression that the subscribers are paying more than the five percent cap, but the *Texas Coalition* message is just the opposite of what you suggest: permitted accounting practices that create an appearance of a greater than five percent franchise fee *do not* mean that the five percent limit has been exceeded. If you want to look at the part of the decision most relevant to this discussion, I would call your attention to page 806 of the *Texas Coalition* case, where the court points out that using gross revenues is the most common method of assessing franchise fees "under which the LFA maximizes the amount collected" by legitimately including revenue from advertising and commissions.

Reviewing the discussion so far illustrates the gulf that remains on this issue. We both feel that the GAAP rules are important, but we have not agreed on their place in the discussion, which GAAP rules should be applied, and the conclusions that flow from that application.

### **Los Angeles Arbitration as a Means to Settle the Dispute**

Comcast earlier suggested that both sides agree to await the outcome of the arbitration which is scheduled to take place in Los Angeles. In the October 23, 2003, letter to you, I asked for more information regarding the Los Angeles arbitration. In your January 27, 2004 letter, you have responded that the information I requested is not relevant or necessary in order to await the outcome of the Los Angeles arbitration. The information I requested is, however, relevant to the question of the value of the LA arbitration, and it is relevant to trying to resolve the issues that currently prevent a resolution of our dispute. We need information that you say justifies Comcast's claim that other arrangements override the local franchise language if we are to go much further toward resolving the dispute.

### **Other Disputed Matters and Further Review**

In your January 27, 2004 letter you offer to allow our reviewer back to review Comcast's recharacterization of some of the revenues, such as from bad checks and the like. These are not matters where Comcast has asserted that GAAP precludes consideration as revenue. In the review, our reviewer found several categories of revenue where, in the process of switching from cash basis to accrual basis accounting, Comcast had simply failed to account for the revenue. Our reviewer pointed this out to your accountants and gave them the choice of how the funds

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were to be characterized. Your accountants selected a method of entry that led to the identification of some unpaid franchise fees. After, if not as a result of this finding, you announced that Comcast had "recharacterized" the revenues, so that they were not subject to franchise fees.

Of course this raises questions about how Comcast accountants, who are apparently otherwise bound by inflexible GAAP rules, could find the flexibility to first characterize and then recharacterize these revenues. This does not, however, explain the utility of another review of the accounts. Our reviewer was there once and identified an error and the amount of the error. You are not recalculating the accounts and discovering that an adjustment needs to be made and asking for a review of those calculations. You are saying that the funds, which you earlier concluded were black, are now white. If you can explain the value of sending our reviewer back, other than to confirm that Comcast has successfully re-characterized all of the funds in question, then we would be happy to evaluate the offer. At this point this matter seems like the others, in that we are talking about motives and accounting practices, rather than how certain accounts add up. We are not rejecting the offer of additional review, just wondering about its value.

### **Conclusion**

Comcast has not provided enough information to allow us to conclude that the LA arbitration concerns similar enough issues that waiting for resolution of that dispute is worth postponing trying to resolve our dispute locally. Comcast has not provided us with the information that we need to substantiate Comcast's claims that GAAP and Comcast's business relationships require that payments Comcast receive be excluded from gross revenue. Comcast has not provided any applicable authority to support its suggestion that federal law requires the outcome that Comcast wants.

We still hope for successful resolution of this matter. We hope that we can move toward resolution very quickly. The simple step of Comcast responding to our request for the information identified will help. A prompt response will indicate Comcast's willingness to resolve the matter.

Sincerely,

Milo Mecham

Cc: Pam Berrian  
Len Goodwin  
Peter Thurston