

ORDINANCE NO: 708

**AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE UTILITY
FRANCHISE TO AT&T; FIXING TERMS, CONDITIONS AND
COMPENSATION OF SUCH FRANCHISE.**

THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1 Definitions. For the purposes of this Ordinance and all attachments included hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- a. Access means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including City and its designees, of the Cable System to acquire, create, receive, and distribute video, Cable Service, and signals as permitted under applicable law, including, but not limited to:
 1. Public Access, which means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users;
 2. Educational Access, which means Access where schools and educational institutions are the primary users of programming and service
 3. Governmental Access, which means Access where governmental institutions are the primary users of programming and service; and
 4. PEG Access, which means Public Access, Educational Access, and Governmental Access, collectively.
- b. Access Center means a facility or facilities where Public, Educational, or Governmental use signals are managed and delivered to AT&T for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- c. Access Channel means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- d. Affiliate when used in connection with AT&T means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, AT&T.
- e. Basic Service means any service tier which includes the retransmission of local television broadcast signals and Public, Educational and Governmental Access Channels, or such service tier as may be further defined by federal law.

- f. Broadband Access Service means voice and information services, including Internet access via cable modem or equivalent technology, data transmission and networking services, and other hybrid and interactive services, to the extent such services are offered over AT&T's network facilities. Broadband Access Service shall not include: (i) "dial-up" access to the Internet services of third-party information service providers, AT&T, or its affiliates; or (ii) unbundled Broadband Access Services offered by AT&T on an "open platform" basis to third-party information service providers.
- g. Cable Acts means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.
- h. Cable Operator means any Person or group of Persons, including AT&T, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- i. Cable Service has the meaning given in 47 USC Section 522(6). Cable Service shall include Broadband Access Service. Cable Service shall include all services described in this Ordinance regardless of the method of transmission, including transmission by fiber optic cable.
- j. Cable System means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- k. Channel means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering video signal whether in an analog or digital format. This definition does not restrict the use of any channel to the transmission of analog video signals.
- l. Designated Access Provider means the entity or entities designated by the City to manage or co-manage Public, Educational or Governmental use Channels and facilities. The City may be a Designated Access Provider.
- m. Downstream means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

- n. FCC means the Federal Communications Commission.
- o. Franchise means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Ordinance, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.
- p. Franchise Area means the area within the jurisdictional boundaries of the City of Scappoose, including such area as shall be added in the future.
- q. City means the City of Scappoose.
- r. Gross Revenues means all amounts, in whatever form and from all sources, earned either by AT&T from the operation of AT&T's Cable System to provide Cable Services within the Franchise area, or by any Affiliate only to the extent such amounts are earned from the operation of AT&T's Cable System to provide Cable Services within the Franchise area.
1. "Gross Revenues" shall include, without limitation, amounts for Basic Service, tiers of service and premium services, audio services, Broadband Access Services, Subscriber installations and transactions, leased access, advertising, equipment rentals, and all other revenues derived from the operation of AT&T's Cable System to provide Cable Services. Revenues that are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per Subscriber basis measured in a consistent manner from period to period.
 2. "Gross Revenues" shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues," however, shall not be double counted. Revenues of both AT&T and an Affiliate that represent a transfer of funds between AT&T and the Affiliate, and that would otherwise constitute gross Revenues of both AT&T and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of AT&T which are payable from AT&T's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" shall include amounts earned by Affiliates only to the extent that AT&T could, in concept, have earned such types of revenue in connection with the operation of AT&T's Cable System to provide Cable Services and recorded such types of revenue in its books and records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales taxes imposed by law on Subscribers that AT&T is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.
- s. Headend means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.

- t. Interconnection means the provision by AT&T of technical, engineering, physical, and all other necessary components to maintain a physical linking of AT&T's Cable System and Cable Service or any designated Channel or signal pathway thereof with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this Ordinance.
- u. Leased Access Channel means any Channel commercially available for programming for a fee or charge by AT&T to members of the general public.
- v. Origination Point means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to AT&T for Upstream transmission.
- w. Person means any individual, natural Person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.
- x. Public Rights of Way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the City's right, title, interest, or authority to grant a franchise to occupy and use such streets and easements for telecommunications facilities. "Public rights of way" shall also include any easement granted to or owned by the City and acquired, established, dedicated, or devoted for public utility purposes.
- y. Quarterly, or quarter, means the standard calendar periods of January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, unless otherwise specified in this Ordinance.
- z. School means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools, and colleges and universities.
- aa. Street means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and other public ways.
- bb. Subscriber means any Person who elects to subscribe to, for any purpose, Cable Service provided by AT&T by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from AT&T's Cable System.
 1. Commercial Subscriber means any Subscriber other than a Residential Subscriber.
 2. Residential Subscriber means any Person who contracts individually for Cable Service to a residence, whether that residence is a single family unit or located in a multiple dwelling unit.

- cc. Upstream means the carrying of a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

Section 2 Grant of Franchise

a. Grant

1. City hereby grants to AT&T, which is authorized to do business in Oregon, in the public interest a nonexclusive and revocable authorization to make lawful use of the Streets and Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services.

2. This Ordinance is intended to convey limited rights and interests only as to those Streets and Public Rights of Way in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way, it does not provide AT&T any interest in any particular location within the right-of-way, and it does not confer rights other than as expressly provided in the grant hereof. This Ordinance does not deprive the City of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the City's Streets covered by this Ordinance, including without limitation, the right to perform work on its roadways, rights-of-way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

3. This Ordinance is subject to the general lawful police power of City affecting matters of local government concern and not merely existing contractual rights of AT&T. Nothing in this Ordinance shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by City.

4. This Ordinance authorizes AT&T to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This Ordinance shall not be interpreted to prevent the City from imposing lawful additional conditions, including additional compensation conditions for use of the rights-of-way should AT&T provide service other than Cable Service. Nothing herein shall be interpreted to prevent AT&T from challenging the lawfulness or enforceability of any provisions of applicable law.

5. AT&T promises and guarantees as a condition of exercising the privileges granted by this Ordinance, that any Affiliate or joint venture or partner of AT&T directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Ordinance.

- b. Use of Public Streets and Ways. Subject to City's supervision and control, AT&T may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets, including rights-of-way and public utility easements within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable

Service within the Franchise Area. AT&T shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate City agencies prior to commencing any construction activities.

AT&T, through this Ordinance, is granted extensive and valuable rights to operate its Cable System for profit using City's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable City construction codes and procedures. As trustee for the public, City is entitled to fair compensation to be paid for these valuable rights throughout the term of this Ordinance.

- c. Duration. The term of this Ordinance and all rights, privileges, obligations, and restrictions pertaining thereto shall be for twenty (20) years from the effective date of this Ordinance, unless extended or terminated sooner as hereinafter provided.
- d. Effective Date. This Ordinance shall be effective upon signing by the City Council, unless AT&T fails to file an unconditional written acceptance of this Ordinance and post the security required hereunder by the date specified herein. In either event, this Ordinance shall be null and void, and any and all rights of AT&T to own or operate a Cable System within the Franchise Area under this Ordinance shall be of no force or effect.
- e. Franchise Nonexclusive. This Ordinance shall be nonexclusive, and is subject to all prior rights, interests, Ordinances, permits, easements or licenses granted by City to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of City to use same for any purpose it deems fit, including the same or similar purposes allowed AT&T hereunder. City may, at any time, grant authorization to use the public rights-of-way for any purpose not incompatible with AT&T's authority under this Ordinance, and for such additional Franchises for Cable Systems as City deems appropriate, upon substantially equivalent terms and conditions to those contained herein as City deems appropriate.
- f. Grant of Other Franchises
 - 1. In the event the City enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than AT&T to enter into the City's public ways for the purpose of constructing or operating a Cable System, or providing Cable Service to any part of the Service Area in which AT&T is actually providing Cable Service under the terms and conditions of this Ordinance, or is required to extend Cable Service to under the provisions of Section 13.2 of this Ordinance, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.
 - 2. If City grants a Franchise to a third party for service to an area that AT&T is not actually serving or required to extend service to, and which has material provisions that are not reasonably comparable to those contained herein, City shall offer AT&T a Franchise to serve the same area under terms and conditions that are reasonably

comparable to those set forth in the Franchise Ordinance entered into with the third party.

- g. Police Powers. AT&T's rights hereunder are subject to the lawful police powers of City to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public and AT&T agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by City or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.
- h. Relations to Other Provisions Of Law. This Ordinance and all rights and privileges granted under it are subject to, and AT&T must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Ordinance is a contract, subject to the City's exercise of its police and other regulatory powers and such applicable law. This Ordinance does not confer rights or immunities upon AT&T other than as expressly provided herein. In cases of conflict between this Franchise Ordinance and any ordinance of general application enacted pursuant to the City's police power, the Ordinance shall govern; however, nothing herein shall be interpreted to prevent AT&T from challenging the lawfulness or enforceability of any provision of applicable law. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.
- i. Effect of Acceptance. By accepting the Ordinance AT&T: (1) acknowledges and accepts the City's legal right to issue and enforce the Ordinance; (2) agrees that it will not oppose the City's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Ordinance; and (4) agrees that the Ordinance was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

Section 3 Franchise Fee and Financial Controls

- a. Franchise Fees. As compensation for the benefits and privileges granted under this Ordinance, and in consideration of permission to use City's Streets, AT&T shall pay as a Franchise fee to City, throughout the duration of this Ordinance, an amount equal to five percent (5%) of AT&T's Gross Revenues including the franchise fee itself, derived from the operation of the Cable System to provide Cable Service in the Franchise Area. Accrual of such Franchise fees shall commence as of the effective date of this Ordinance. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that AT&T may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Ordinance and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

In the event any law or valid rule or regulation applicable to this franchise limits franchise fees below the five percent (5%) of gross revenues required herein, AT&T agrees to and shall pay the maximum permissible amount and, if such law or valid rule

or regulation is later repealed or amended to allow a higher permissible amount, then AT&T shall pay the higher amount up to the maximum allowable by law.

- b. Payments. AT&T's Franchise fee payments to City shall be computed quarterly based on calendar quarters. Each quarterly payment shall be due and made available to City no later than forty-five (45) days after the last day of the preceding calendar quarter.
- c. Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim City may have for further or additional sums payable or for the performance of any other obligation of AT&T.
- d. Quarterly Franchise Fee Reports. Each payment shall be accompanied by a written report to City containing an accurate statement in summarized form, as well as in detail, and in a form approved by City, of AT&T's Gross Revenues and the computation of the payment amount.
- e. Annual Franchise Fee Reports. AT&T shall, no later than one-hundred twenty (120) days after the end of each calendar year, furnish to City a statement (Audited Gross Receipts Report) stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.
- f. Audits/Reviews. On an annual basis, no more frequently than every twelve (12) months, upon thirty (30) days prior written notice, City shall have the right to conduct an independent audit or review of AT&T's records reasonably related to the administration or enforcement of this Ordinance, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit or review AT&T's financial records, in which case AT&T shall provide all necessary records to the certified public accountant. All such records shall be made available in the local offices of AT&T. If the audit or review shows that Franchise fees have been underpaid by three percent (3%) or more, AT&T shall reimburse to City the total cost of the audit or review within 30 days of the City's written demand for same.

Records for audit/review purposes shall include without limitation:

1. Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to and/or included in the determination of franchise fees, revenues or expenses related thereto.
2. Source documents that completely explain any and all calculations related to any allocation of any amounts involving franchise fees, revenues, or expenses related thereto.
3. Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, and/or support and/or correlate to any accounts involving franchise fees, revenues or expenses related thereto.

- g. Interest on Late Payments. In the event that a franchise fee payment or other sum is not received by the City on or before the due date, or is underpaid, AT&T shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.
- h. Alternative Remedies. If any section, subsection, paragraph, term, or provision of this Franchise Ordinance or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the section, subsection, paragraph, term, or provision directly involved in the controversy in which such holding shall have been rendered, and shall not in any way affect the validity of any other section, subsection, paragraph, term, or provision hereof. Under such a circumstance AT&T shall, upon the City's request, meet and confer with the City to consider amendments to the Franchise Ordinance. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law.

In the event the parties are unable to agree to a modification of this Ordinance within sixty (60) days either party may (1) seek appropriate legal remedies to amend the Ordinance, or (2) shorten the Ordinance to 36 months, at which point either party may invoke the renewal procedures under 47 U.S.C. Subsection 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

- i. Additional Commitments Not Franchise Fees. No term or condition in this Ordinance shall in any way modify or affect AT&T's obligation to pay Franchise fees to City. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Ordinance may total more than five percent (5%) of AT&T's Gross Revenues in any 12-month period, AT&T agrees that the additional commitments herein are not Franchise fees as defined under any federal law, to the extent not inconsistent with applicable federal law, nor are they to be offset or credited against any Franchise fee payments due to City.
- j. Costs of Publication. AT&T shall pay the reasonable cost of newspaper notices and publication pertaining to this Ordinance, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by City or applicable law.
- k. Tax Liability. Payment of the Franchise fees under this Ordinance shall not exempt AT&T from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of AT&T that may be imposed by City.
- l. Payment on Termination. If this Ordinance terminates for any reason, AT&T shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by AT&T since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of AT&T to the City by utilizing the funds available in a Letter of Credit or other security provided by AT&T.

Section 4 Administration and Regulation.

- a. **Authority.** City is vested with the power and right to regulate the exercise of the privileges permitted by this Ordinance in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.
- b. **Rates and Charges.** All of AT&T's rates and charges related to or regarding Cable Service shall be subject to regulation by City to the full extent authorized by applicable federal, state and local laws.
- c. **Rate Discrimination.** All of AT&T's rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. AT&T shall apply its rates in accordance with governing law, with similar rates and charges for all Subscribers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Franchise Area.

AT&T shall provide equivalent Cable Service to all Residential Subscribers at similar rates and to Commercial Subscribers as authorized by applicable laws. Nothing herein shall be construed to prohibit:

1. The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
 2. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
 3. AT&T from establishing different and nondiscriminatory rates and charges for commercial customers, as well as different nondiscriminatory monthly rates for commercial customers as allowable by federal law and regulations; or
 4. AT&T from establishing different and nondiscriminatory rates and charges for Residential Subscribers as allowable by federal law and regulations.
- d. **Filing of Rates and Charges.** Throughout the term of this Ordinance, AT&T shall maintain on file with City a complete schedule of applicable rates and charges for Cable Service provided under this Ordinance. Nothing in this subsection shall be construed to require AT&T to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns, and rates for multiple dwelling units, provided that AT&T shall make reasonable efforts to notify City in writing in advance of such promotions.

AT&T shall provide upon request from City a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided

by AT&T. The schedule shall include a description of the price, terms and conditions established by AT&T for Leased Access Channels.

- e. Time Limits Strictly Construed. Whenever this Ordinance sets forth a time for any act to be performed by AT&T, such time shall be deemed to be of the essence, and any failure of AT&T to perform within the allotted time may be considered a material violation of this Ordinance and sufficient grounds for City to invoke any relevant provision of this Ordinance. However, in the event that AT&T is prevented or delayed in the performance of any of its obligations under this Ordinance by reason of a force majeure occurrence, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), AT&T's performance shall be excused during the force majeure occurrence and AT&T thereafter shall, under the circumstances, promptly perform the affected obligations under this Ordinance or procure a substitute for performance which is satisfactory to City. AT&T shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.
- f. Performance Evaluation Sessions.
1. City may hold regular performance evaluation sessions annually on the anniversary dates of the effective date of this Ordinance. City shall conduct all such evaluation sessions, and each session shall be attended by AT&T.
 2. City may hold special evaluation sessions at any time during the term of this Ordinance.
 3. All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
 4. Evaluation sessions shall deal with AT&T's performance of the terms and conditions of the Ordinance and compliance with state and federal laws and regulations.
 5. As part of the annual performance evaluation session, AT&T shall submit to the City a plant survey, report, or map, in a format mutually acceptable to City and AT&T, which include a description of the portions of the Franchise Area that are cabled and have all Cable Services and Broadband Access Services available. Such report shall also include the number of miles and location of overhead and underground cable plant, and the number of miles (overhead and underground) and location of the PCN as described in Section 11.2. If the City has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the City, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
 6. During evaluations under this Section, AT&T shall fully cooperate with City and shall provide such information and documents as necessary and reasonable for City to perform the evaluation.

Section 5 Financial and Insurance Requirements

a. Insurance Requirements

1. General Requirement. AT&T must have adequate insurance during the entire term of this Ordinance to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Ordinance or involve AT&T, its duly authorized agents, representatives, contractors, subcontractors and their employees.

2. Initial Insurance Limits. AT&T must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the City. The AT&T shall obtain policies for the following initial minimum insurance limits:

- (a) Commercial General Liability: Two-million dollar (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollar (\$2,500,000) aggregate limit; one million dollar (\$1,000,000) limit for broadcasters liability.
- (b) Automobile Liability: Two-million dollar (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
- (c) Employer's Liability: Two-million dollar (\$2,000,000) limit.

b. Deductibles and Self-Insured Retentions. If AT&T changes its policy to include a self-insured retention, AT&T shall give notice of such change to the City. City's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit AT&T's liability to the City.

1. Endorsements. All policies shall contain, or shall be endorsed so that:

- (a) The City, its officers, officials, employees, and duly authorized agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, AT&T under this Ordinance or applicable law, or in the construction, operation or repair, or ownership of its Cable System;
- (b) The AT&T's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, and duly authorized agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees, and duly authorized agents shall be in excess of AT&T's insurance and shall not contribute to it;
- (c) AT&T's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability; and

(d) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the City .

2. Acceptability of Insurers. The insurance obtained by AT&T shall be placed with insurers with an A.M. Best's rating of no less than "A".

3. Verification of Coverage. The AT&T shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City prior to the commencement of activities associated with this Ordinance. The AT&T hereby warrants that its insurance policies satisfy the requirements of this Ordinance and City's ordinances and laws.

c. Indemnification.

1. Scope of Indemnity. AT&T shall, at its sole cost and expense, indemnify, hold harmless, and defend the City and its officers, boards, commissions, duly authorized agents, and employees against any and all claims.

This is including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of AT&T arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Ordinance, provided, however, AT&T will not be obligated to indemnify City should City intervene in any proceeding regarding the grant of this Ordinance pursuant to Section 2.9 of this Ordinance. Without limiting in any way AT&T's obligation to indemnify the City and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

- (a) To persons or property, to the extent such liability arises out of or through the acts or omissions of AT&T, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which AT&T's negligence or fault shall in any way contribute;
- (b) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by AT&T to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of AT&T, provided, however, that AT&T will not be required to

indemnify City for any claims arising out of use of PEG Access Channels by City and/or Designated Access Provider;

- (c) Arising out of AT&T's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to AT&T with respect to any aspect of its business to which this Ordinance applies, to the extent such liability arises out of or through the acts or omissions of AT&T; and
- (d) Arising from any third party suit, action or litigation, whether brought by a competitor to AT&T or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of AT&T, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the City to issue this Ordinance to AT&T; or (2) alleges that, in issuing this Ordinance to AT&T, the City has acted in a disparate or discriminatory manner.

2. Duty to Give Notice and Tender Defense. The City shall give AT&T timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to AT&T and AT&T shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the City shall cooperate fully therein. AT&T shall accept or decline the tender within thirty (30) days. AT&T shall reimburse reasonable attorney fees and costs incurred by the City during the thirty (30) day period in which AT&T accepts or declines tender. In the event that AT&T declines defense of the claim in violation of Section 5.3, the City may defend such claim and seek recovery from AT&T its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by City for defense and in seeking such recovery.

d. Letter of Credit.

1. No later than the effective date of this Ordinance, AT&T shall establish and provide to City, as security for the faithful performance by AT&T of all provisions of this Ordinance, a Letter of Credit in the amount of one-hundred-thousand dollars (\$100,000). The Letter of Credit shall be filed in a form acceptable to the City and issued by a financial institution acceptable to the City, provided the City, in its sole discretion, may direct that the Letter of Credit be issued by a local financial institution.

2. The Letter of Credit shall be maintained at one-hundred-thousand dollars (\$100,000) throughout the term of this Ordinance.

3. The Letter of Credit may be assessed by City for various purposes including, but not limited to, the following:

- (a) Failure of AT&T to pay City sums due under the terms of this Ordinance.
- (b) Reimbursement of costs borne by City to correct violations of this Ordinance not corrected by AT&T.

(c) Fines assessed against AT&T due to violations of the requirements of this Ordinance.

(d) Failure to comply with the Customer Service Standards.

4. If AT&T fails within thirty (30) days after the date of written notice to pay to City any franchise fees, assessment or taxes lawfully due which City determines can be remedied by a draw upon the Letter of Credit, City may thereafter withdraw the amount thereof from the Letter of Credit. Upon such withdrawal, City shall notify AT&T of the amount and date thereof. Within seven (7) days following receipt by AT&T of written notice from City that any amount has been withdrawn from the Letter of Credit, AT&T shall restore such Letter of Credit to the amount required under this Ordinance. Failure by AT&T to so restore the Letter of Credit shall be considered a material violation of this Ordinance.

5. The Letter of Credit deposited pursuant to this Section shall become the property of City in the event that this Ordinance is lawfully terminated or revoked for cause by reason of the violation by AT&T, and AT&T has exhausted all of its remedies relating thereto. AT&T, however, shall be entitled to the return of the Letter of Credit deposited in accordance with this Section, or any portion thereof remaining upon normal expiration of this Ordinance.

6. The rights reserved to City with respect to the Letter of Credit are in addition to all other rights of City whether reserved by this Ordinance or authorized by law or equity, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall constitute a waiver of any other right City may have.

7. A single Letter of Credit for the amount required herein shall satisfy the requirements of City.

e. Performance Bond.

1. Concurrent with the effective date of this Ordinance, AT&T shall post a performance bond in the amount of one million dollars (\$1,000,000).

2. A single performance bond, posted under the same terms and conditions as required herein, shall satisfy all of the requirements of City.

Section 6 Customer Service.

a. Definitions.

1. Normal business hours mean those hours during which most similar businesses in the Franchise Area are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

2. Normal operating conditions mean those service conditions that are within the control of AT&T. Those conditions which are not within the control of AT&T include,

but are not limited to, natural disasters, civil disturbances, major power outages, major non-AT&T owned telephone network outages, and severe and unusual weather conditions. Those conditions which are ordinarily within the control of AT&T include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

3. Service interruption means the loss of picture or sound on one or more cable channels

b. Local Office. Throughout the Ordinance term, AT&T must maintain, at a minimum, one (1) customer service center conveniently located in the Franchise Area which will be open during normal business hours, to provide Subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints. AT&T shall install telephones and other equipment so that customer complaints and service requests can be received by AT&T on a 24-hour basis at a toll-free telephone number.

c. Telephone Answering Standards.

1. Trained company representatives will be available to respond to telephone inquiries a minimum of twelve (12) hours each day, Monday through Friday, and eight (8) hours on Saturday and Sunday. Outside of normal business hours, and hours when the office is not staffed, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received by AT&T's answering service or automated response system must be responded to by a trained company representative before the end of the next business day.

2. Under normal operating conditions, telephone answer time by a customer representative including wait time, shall not exceed thirty (30) seconds from when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met for no less than ninety (90) percent of all calls received, measured quarterly.

3. Under normal operating conditions, no more than three (3) percent of all callers will receive a busy signal, measured quarterly. No more than five (5) percent of all calls received will be lost or abandoned, measured quarterly.

4. Failure to meet these standards shall subject AT&T to enforcement actions set forth in Section 15.

d. Installations, Outages and Service Calls.

1. Service calls and response time. Under normal operating conditions, each of the following standards will be met in no fewer than ninety-five (95) percent of applicable events, as measured on a quarterly basis. For purposes of calculating compliance with and determining enforcement of these standards, each request for service or installation shall be counted as one event:

- (a) For new installations to locations that are one hundred and twenty-five (125) feet or less from the existing distribution system, installations will be performed within twenty-four (24) hours after an order has been placed.
- (b) Where a request for service can be satisfied without a service call, the request must be satisfied within three (3) business days from the date of request.
- (c) For installations to locations that are more than one hundred and twenty-five (125) feet from the existing distribution system, in accordance with Section 13, service must be provided within thirty (30) days of the date the person requesting service agrees to pay the charges associated with the installation. Nothing in this Section permits AT&T to charge for extending service in an area where AT&T is required to provide service pursuant to Section 13.
- (d) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The AT&T may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.
- (e) AT&T may not cancel an appointment with a person after the close of business on the business day prior to the scheduled appointment.
- (f) If AT&T's representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, AT&T will attempt to contact subscriber at least two times. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer, and as soon as practical.
- (g) Excluding conditions beyond the control of AT&T, AT&T will begin working on service interruptions promptly and in no event later than twelve (12) hours after the interruption becomes known to AT&T. AT&T must begin actions to correct other service problems the next business day after notification of the service problem.

2. Failure to meet these standards shall subject AT&T to enforcement action set forth in Section 15.

e. Notice Requirements.

- 1. AT&T shall provide written information on each of the following areas at the time of installation of service; at least annually to all subscribers; and at any time upon request:
 - (a) Products and services offered;
 - (b) Prices and options for programming services and conditions of subscription to programming and other services. In order that subscribers are fully apprised of

the charges they may incur, AT&T shall note that advertised rates are subject to additional taxes and fees;

- (c) Installation and service maintenance policies;
- (d) Instructions on how to use the cable service;
- (e) Channel positions of programming carried on the system;
- (f) Billing and complaint procedures, including the address and telephone number of the City of Scappoose.

2. AT&T shall make its best efforts to submit the content of notices to subscribers regarding such changes to the City for review and comment at least 10 days prior to printing.

3. Failure to meet these standards shall subject AT&T to enforcement action set forth in Section 15.

f. Special Notice Procedures.

1. At any time a person subscribes to any service, the person must be specifically informed whether there will be a charge to terminate the service.

2. If there is any charge for terminating a promotional or free product or service, the charge must be disclosed in writing prior to connection of the service or provision of the product.

3. Subscribers shall be notified 30 days in advance of any changes in rates, programming services, or channel positions as soon as possible in writing unless otherwise expressly provided by federal law.

4. The City shall be notified of any change in rates, programming services, channel position or policy at least thirty (30) days in advance of such change by letter delivered to the City, except where such notification is impossible because the change is beyond the control of AT&T or any affiliate, in which case the notice must be given as quickly as possible. AT&T shall make its best efforts to submit the content of notices to subscribers regarding such changes to the City for review and comment at least 10 days prior to its printing.

5. Failure to meet these standards shall subject AT&T to enforcement action set forth in Section 15.

g. Billing.

1. Bills will be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits

In case of a billing dispute, AT&T shall respond to a written complaint from a Subscriber within thirty (30) days.

2. Refund checks will be issued promptly, but no later than either:

- (a) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (b) The return of the equipment supplied by AT&T if service is terminated.

3. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

4. For purposes of billing, a request for disconnection shall be effective immediately upon the Subscriber's oral or written request, and the Subscriber may not be billed for any service provided after the request, and is entitled to refunds on any prepaid period.

5. Subscriber bills from AT&T shall include the name, address, and telephone number of the City of Scappoose.

6. Failure to meet the standards in subsections 2 – 6 shall subject AT&T to enforcement actions set forth in Section 15.

- h. Subscriber Privacy. AT&T will comply with privacy rights of Subscribers in accordance with federal, state and local law.
- i. Emergency Broadcast. In accordance with, and at the time required by, the provisions of the FCC Regulations Part 11, Subpart 11.51, as such provisions may from time to time be amended, AT&T shall provide the emergency alert capability in accordance with Federal Law, and in compliance with the FCC-approved Oregon State Emergency Alert System (EAS) plan, and the Local Area EAS plans that apply to Columbia County. AT&T will cooperate with the City and local emergency officials to develop policies and procedures for the use of the emergency broadcast capability within the Franchise Ordinance service area.

Section 7 Reports and Records.

- a. Open Records.

1. AT&T shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to City. City shall have access to, and the right to inspect, any books and records of AT&T, its parent corporations and Affiliated entities that are reasonably related and necessary to the administration or enforcement of the terms of this Ordinance. AT&T shall not deny City access to any of AT&T's records on the basis that AT&T's records are under the control of any parent corporation, affiliated entity or a third party. City may, in writing, request copies of any such records or books and AT&T shall provide such copies within ten (10) business days of the transmittal of such request. If the requested books and records are too

voluminous, or for security reasons cannot be copied or removed, then AT&T may request, in writing within ten (10) business days, that City inspect them at one of AT&T's local area offices. If any books or records of AT&T are not kept in a local office, AT&T will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.

2. AT&T shall at all times maintain and allow City, with reasonable notice, access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the City and AT&T. City's review of the plans, records, and as-built maps, provided for herein, shall occur at AT&T's local office.

3. The ability for City to obtain records and information from AT&T is critical to the administration of this Ordinance and the requirements herein. Therefore, AT&T's failure to comply with the requirements of this Section may result in fines as prescribed in Section 15.

- b. Confidentiality. Subject to the limits of the Oregon Public Records Law, City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent AT&T makes City aware of such confidentiality. AT&T shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If City believes it must release any such confidential books and records in the course of enforcing this Ordinance, or for any other reason, it shall advise AT&T in advance so that AT&T may take appropriate steps to protect its interests. If City receives a demand from any Person for disclosure of any information designated by AT&T as confidential, City shall, so far as consistent with applicable law, advise AT&T and provide AT&T with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, City agrees that, to the extent permitted by state and federal law, it shall deny access to any of AT&T's books and records marked confidential as set forth above to any Person.
- c. Copies of Federal and State Documents. AT&T shall submit to City a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by AT&T or its parent corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of AT&T's Cable System within the Franchise Area. AT&T shall submit such list or documents to City no later than thirty (30) days after filing, mailing or publication thereof. AT&T shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained

in confidence by City and its duly authorized agents and shall not be made available for public inspection.

d. Complaint File and Reports.

1. AT&T shall keep an accurate and comprehensive file of any and all complaints regarding the operation and performance of the Cable System, within the franchise area, in a manner consistent with the privacy rights of Subscribers, and AT&T's actions in response to those complaints. Those files shall remain open to City during normal business hours.

(a) AT&T shall provide an executive summary report quarterly [within forty-five (45) days of the end of the preceding quarter] to City, which shall include the following information:

(i) Nature and type of customer complaints.

(ii) Number, duration, general location and customer impact of unplanned service interruptions.

(iii) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.

(iv) Subscriber counts, by service tiers, and EBU counts.

(v) Total disconnections and major reasons for those disconnections

(vi) Average response times and total number of service calls.

(vii) Video programming changes (additions/deletions).

(viii) Such other information about special problems, activities, or achievements as AT&T may want to provide City.

(b) AT&T shall provide City with an executive summary report within fifteen (15) days of the end of the period [described below in a), b), c), and d)] that shall include the following:

(i) Phone activity report, on a monthly basis;

(ii) New areas constructed and available for Cable Service, including multiple dwelling units, on a quarterly basis;

(iii) Subscriber reports to City indicating the total number of Subscribers by service categories, on a quarterly basis; and

(iv) The City may require the reports for b) and c) to be submitted on a monthly basis if City reasonably believes that AT&T may not be in compliance with the standards covered by these reports.

- (c) City shall also have the right to request such information as appropriate and reasonable to determine whether or not AT&T is in compliance with applicable Customer Service Standards, as referenced in Section 6.1. Such information shall be provided to City in such format as AT&T customarily prepares reports. AT&T shall fully cooperate with City and shall provide such information and documents as necessary and reasonable for City to evaluate compliance.
- e. Inspection of Facilities. City may inspect upon request any of AT&T's facilities and equipment to confirm performance under this Ordinance at any time upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice.
- f. False Statements. Any intentional false or misleading statement or representation in any report required by this Ordinance may be deemed a material violation of this Ordinance and may subject AT&T to all remedies, legal or equitable, which are available to City under this Ordinance or otherwise.
- g. Report Expense. All reports and records required under this or any other Section shall be furnished, without cost, to City.

Section 8 Programming.

- a. Broad Programming Categories.
 - 1. AT&T's cable television system shall provide the widest diversity of programming possible. AT&T shall provide at least the following broad categories of programming to the extent such categories are reasonably available:
 - (a) Educational programming.
 - (b) Sports.
 - (c) General entertainment (including movies).
 - (d) Children/family-oriented.
 - (e) Arts, culture and performing arts.
 - (f) Foreign language.
 - (g) Science/documentary.
 - (h) Weather information.
 - (i) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
 - (j) National, state, and local government affairs.

2. AT&T shall not delete any broad category of programming within its control.
- b. Parental Control Device. Upon request by any Subscriber, AT&T shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. AT&T shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.
- c. Leased Access Channels. AT&T shall meet the requirements for Leased Access Channels imposed by federal law.
- d. Continuity of Service.
 1. It shall be the right of all Subscribers to continue to receive Cable Service from AT&T insofar as their financial and other obligations to AT&T are satisfied. Subject to the force majeure provisions of this Ordinance, AT&T shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.
 2. In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Ordinance, AT&T shall cooperate with City and such new Cable Operator in maintaining continuity of service to all Subscribers.
- e. Service for the Disabled. AT&T shall comply with the Americans With Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations.

Section 9 Public, Educational and Governmental Access (PEG).

- a. General Definitions. For purposes of this section, the following definitions will apply with respect to Public, Educational, and Governmental (PEG) use of the Cable System.
 1. "Access Channel" means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service. Each Access Channel shall be six (6) MHz and must be capable of transmitting a standard analog video signal. The capacity can be used to transmit non-commercial signals in any format, and can be used to transmit: audio only, video, or other information (including, by way of example and not limitation, secondary audio, text, digital information, high-definition signals, and compressed signals.) A non-standard NTSC use shall be subject to AT&T's prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other Channels. Such uses must be in furtherance of PEG uses. Additionally, there shall not be commercial use or lease of such PEG capacity without the express written permission of AT&T.
 2. "Digital Access Channel", as used in this Section, means a Channel carrying PEG continuous full-motion video programming in a digital format. Digital Access Channels shall have the same compression ratio and transmission quality as is used to carry any

of the commercial Channels that deliver programming to the City in a similar format for delivery to each Subscriber.

3. "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Public, Educational or Governmental use Channels and facilities. The City may be a Designated Access Provider.

4. "Origination Point" means a location other than an Access Center, where Public, Educational, and Governmental use programming is delivered to AT&T for Upstream transmission.

5. "Locally Produced" means programming produced in the City of Scappoose, and throughout Columbia County.

6. "Original Programming" means Programming in its initial cablecast on the Cable System or in its first or second repeat.

7. "Locally Scheduled" means that the scheduling, selection and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received from an Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by AT&T as a part of its Basic or expanded Basic Cable Services shall not be considered "Locally Scheduled."

b. Management and Control of Access Channels.

1. City may authorize a Designated Access Provider to control and manage the use of any and all Access Facilities provided by AT&T under this Ordinance, including, without limitation, the operation of Access Channels. To the extent of such designation by City, as between the Designated Access Provider and AT&T, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities. The City or its designee may formulate rules for the operation of the PEG Access Channels, consistent with this Ordinance; such rules shall not be designed to control the content of Public Access programming. Nothing herein shall prohibit the City from authorizing itself to be a Designated Access Provider.

2. AT&T shall cooperate with the City and Designated Access Provider in the use of the Cable System and Access facilities for the provision of PEG Access. AT&T shall enter into such operating agreements with the Designated Access Provider as may be necessary to facilitate and coordinate the provision of PEG Access, provided that such operating agreements shall not be inconsistent with the terms of this Ordinance and shall be subject to approval by the City.

3. Except as provided in this Ordinance, the City shall allocate Access resources only to the Designated Access Provider. The AT&T shall cooperate with the City in such allocations, in such manner as the City shall direct.

4. Subject to written authorization from the City, AT&T shall have the right to use temporarily any Channel, or portion thereof, which is allocated under this Section for public, educational, or governmental uses pursuant to Section 611(d) of the Cable Act.

c. Channel Capacity and Use.

1. Upon effective date of this Ordinance, all Access Channels provided for herein are administered by the City or designee.

2. Upon the effective date of this Ordinance, The AT&T shall provide, at minimum, six (6) Access Channels for distribution of Public, Educational, and Governmental Access programming on the residential Cable System. However, if all video programming is delivered in a digital format or if City requests PEG Channels be digitized, then in lieu of the Access Channels required under this Section AT&T shall provide a maximum of twelve (12) PEG continuous, full-motion video programming Digital Access Channels. The City shall determine the number of Digital Access Channels to be activated. If all PEG video programming is delivered in digital format, the bandwidth available for PEG use shall not exceed twice the amount of bandwidth that is necessary to transmit the twelve (12) PEG Digital Access Channels, except that the amount of capacity available beyond the amount required to transmit the twelve (12) Digital Access Channels shall not be less than twelve (12) MHz.

3. AT&T shall provide connection of all PEG Access Channels required by this Ordinance to and from AT&T's Headend and the Designated Access Providers' Headends as of the effective date of this Ordinance. AT&T agrees to provide reconnection for Designated Access Provider's Headend if it is relocated within twelve (12) months of the effective date of this Ordinance at no charge to City or to Designated Access Provider.

d. Relocation of Access Channels. AT&T shall provide City with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred twenty (120) days notice, prior to the time Public, Educational, and Governmental (PEG) Access Channel designations are changed. AT&T shall consult with City prior to making a final determination regarding any changes in PEG Access Channel designations/assignments. Any new Channel designations for the PEG Access Channels provided pursuant to this Ordinance shall be in full compliance with FCC signal quality and proof of performance standards.

e. Origination Points.

1. Upon the effective date of this Ordinance, AT&T shall provide, without charge, adequate capacity to facilitate the transmission of character-generated, pre-recorded, and live cablecasts from the Origination Points covered by this Ordinance, to enable the distribution of PEG Access programming on the residential Cable System on Access Channels.

2. Additional permanent Origination Points required by the City or Designated Access Provider shall be provided by AT&T within ninety (90) days following receipt of

written notice from City at expense of City or Designated Access Provider. The Additional Origination Points shall be connected without charge to City.

3. By mutual agreement by City and AT&T, upon six (6) weeks written notice in advance of the scheduled cablecast, and provided that an active drop is available at the desired location, AT&T shall provide additional Origination Points on a short-term basis for the live cablecast of Access Programming. The first three short-term Origination Points each year shall be provided at no cost to the City or Designated Access Provider. The incremental, out-of-pocket costs to AT&T shall be paid for by City or Designated Access Provider. AT&T shall not be required to facilitate more than two (2) such Origination Points in any twenty-four (24) hour period.

4. There shall be no charge to the City nor to any other person for the use of the upstream capacity from the program origination locations described in this section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

f. Access Interconnections.

1. AT&T shall maintain for the duration of this Ordinance any and all existing Interconnections of Access Channels with contiguous cable systems.

2. AT&T shall be capable of interconnection of PEG Access Channels in the Cable System in other Franchise Areas that are geographically adjacent to City, provided that City has secured the written permission for such Interconnection from the regulatory authority for the adjacent Franchise Area. The cost of such Interconnections shall be AT&T's so long as AT&T or AT&T's affiliate owns the adjacent Cable System. If the adjacent Cable System is not owned by AT&T, the cost for interconnection shall be equally shared by the two Cable Systems.

3. All Interconnections shall have the capability of transmitting and receiving PEG programming. All Interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this agreement on all interconnected Channels. Installation of all interconnect capacity shall be completed at AT&T's expense, except as otherwise provided herein.

4. The City, or its Designated Access Provider, shall have the right to control and schedule the operation of all interconnected Access Channels and capacity. In addition, the City, or its Designated Access Provider, shall have the right to use, at its sole discretion and at no cost, any Access Channels and capacity provided under this agreement for non-commercial purposes, in furtherance of PEG use. However, the requirement to interconnect PEG programming with adjacent Cable Systems of willing franchise authorities shall not result in an increase in the number of PEG Channels beyond the number of Access Channels provided for in Sections 9.3 and 9.7 of this Ordinance.

5. AT&T shall take all necessary steps to ensure that technically adequate signal quality in compliance with FCC requirements are initially and continuously provided for all Access Interconnections and Origination Points.
- g. Trigger for Expansion of Access Channels.
1. AT&T shall, if directed by the City, provide additional, activated Downstream Channel capacity for PEG Access, to a maximum total of nine (9) Access Channels as described in Section 9.3. The City shall give AT&T at least ninety (90) days prior notice of required additional Access Channels.
 2. The City may require AT&T to provide additional activated Downstream Channel capacity for a particular type of PEG Access under this Section. When a Channel for a particular type of PEG Access programming meets the criteria set forth below, City may require AT&T to provide additional activated Downstream Channel capacity for that type of PEG Access under this section. Upon AT&T's request a public hearing will be conducted regarding the need for additional capacity, to a maximum total of nine (9) Access Channels, as established by the criteria set forth below:
 - (a) Public Access Channels: During any eight (8) consecutive weeks, the Public Access Channel is in use for Locally Produced, Locally Scheduled Original Programming 80% of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or,
 - (b) Educational Access Channels: During any eight (8) consecutive weeks, the Educational Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.; or,
 - (c) Governmental Access Channels: During any eight (8) consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.; and,
 - (d) The applicable PEG Access Channel capacity expansion criteria as set forth in Subsections (1), (2) or (3) has been met, or exceeded, by the City or its Designated Access Provider with responsibility for programming the PEG Access Channel.
- h. Nature of Franchise Fees. The City recognizes Franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Ordinance and AT&T has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

- i. Access Channels on Lowest Available Tier. All Access Channels provided to Subscribers under this Ordinance shall be included by AT&T, without limitation, as a part of Basic Cable Service offered by AT&T on its Cable System.
- j. Change in Technology. In the event AT&T makes any change in the Cable System and related equipment and Facilities or in AT&T's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access services or programming, AT&T shall, at its own expense, take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of the City's or Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.
- k. Technical Quality. AT&T shall maintain all Upstream and Downstream Access services, Channels and Interconnections at the same level of technical quality and reliability required by this Ordinance and all other applicable laws, rules and regulations for Residential Subscriber Channels. The AT&T shall provide routine maintenance and shall repair and replace all transmission equipment, including modulators, associated cable and equipment in use upon the effective date of this Ordinance, necessary to carry a quality signal to and from the City's or Designated Access Provider's facilities.
- l. Promotional Services.
 1. AT&T shall provide, at no cost to the City, ten 30-second PEG Access advertising availabilities per month on various Subscriber Cable Services carried by AT&T on the Cable System, scheduled at AT&T's discretion. AT&T shall be provided an opportunity to review and approve the content of the PEG advertising.
 2. AT&T shall allow the City to include two bill stuffers per year. The City shall be responsible for the cost of printing its bill stuffers, the costs of inserting the information into AT&T's bills, and for any incremental postage costs. Bill stuffers must conform to AT&T's mailing requirements. AT&T shall be provided an opportunity to review and approve all PEG bill stuffers.
- m. Channel Identification. If requested by the City or Designated Access Provider AT&T will identify the PEG Channels and FM signal and identify the programming carried on the PEG Channels and FM signal in its printed and electronic programming guides, in the same manner in which it identifies the Channels and programming on Channels and audio services under its control. It is the responsibility of the Designated Access Provider to provide appropriate entities with program schedules in a timely manner, and, if the Designated Access Provider fails to do so for a particular Channel, AT&T may simply identify the general type of programming carried on the Channel. AT&T shall be responsible for costs required to comply with this Section.
- n. Capital Support For Access Costs.
 1. During the first four years of the term of this Ordinance, AT&T shall provide \$0.75 per month, per Residential Subscriber for operating and/or capital support for PEG.

Starting in year five (5) of this Ordinance, and continuing through year nine (9), AT&T shall provide, for this same purpose, \$1.00 per month per Residential Subscriber. Starting in year ten (10) of this Ordinance, and continuing through year fourteen (14), AT&T shall provide, for this same purpose, \$1.25 per month per Residential Subscriber. Starting in year fifteen (15) of this Ordinance, and continuing until the expiration of this Ordinance, AT&T shall provide, for this same purpose, \$1.50 per month per Residential Subscriber. At the end of each of the first ten years of the Franchise, City may carry over any unspent amount up to a cumulative maximum of \$500,000 into each succeeding year. City may carry over any unspent amount up to a cumulative maximum of \$750,000 in each of the subsequent years of the Franchise. Interest earned by City shall not be counted as unspent funds for the purpose of computing the carry forward limit. These carry over limits may be modified upon mutual written agreement of the parties. Consent to a request by City for an increased carry over will not be unreasonably withheld.

2. The contribution shall be payable by AT&T to the City after notice has been given to AT&T's subscribers and contribution has been included on subscribers bills. The AT&T shall make its best efforts to submit the content of notice to subscribers regarding such changes to the City for review and comment at least 10 days prior to its printing.

3. AT&T shall make such payments quarterly, following the effective date of this Ordinance, for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days after the end of each quarter. Payments under this section shall be subject to the provisions in Section 9(o)1.

4. Capital and/or operating funds provided by AT&T to City for the purposes of supporting both the Public, Educational, and Governmental (PEG) Access program will be disbursed in the form of grants to the Designated Access Provider. City shall establish a grant award process and a committee to award such grants. AT&T shall be represented on this committee as a non-voting ex-officio member. Committee grant award recommendations shall be forwarded to the City Council for final consideration and award.

5. City shall provide a report annually to AT&T on the use of access funds provided to City. The first report shall be submitted to AT&T no later than July 31, 2002. Subsequent reports shall be submitted to AT&T within 120 days after the end of the City's fiscal year. AT&T may reasonably review records of the City and of the Designated Access Provider related to the use of funds in such reports. Consent to a request by City for modification to the matching requirement will not be unreasonably withheld. All funds used for PEG support shall not be used for administration of the fund or for any purpose other than PEG support.

o. Access Support Not Franchise Fees

1. AT&T agrees that support for Access (Section 9) shall in no way modify or otherwise affect AT&T's obligations to pay franchise fees to the City. The AT&T

agrees that although the sum of Franchise fees and the payments set forth in this Section may total more than five percent (5%) of AT&T's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Ordinance.

2. The City recognizes Franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Ordinance and AT&T has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

Section 10 General Street Use and Construction.

a. Construction.

1. Subject to applicable laws, regulations and ordinances of City and the provisions of this Ordinance, AT&T may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Streets incident to AT&T's Cable System shall, regardless of who performs the construction, be and remain AT&T's responsibility. AT&T shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. AT&T shall pay, prior to issuance, all applicable fees of the requisite construction permits.

2. Prior to beginning any construction, AT&T shall provide City with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Ordinance and all applicable City Ordinances and Codes. When obtaining a permit, AT&T shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, AT&T shall work with other providers, AT&T permittees and franchisees so as to reduce as far as possible the number of Street cuts.

3. City shall have the right to inspect all construction or installation work performed within the franchise area as it shall find necessary to ensure compliance with the terms of this agreement and other pertinent provisions of law.

b. Location of Facilities. Within forty-eight (48) hours after notification of any proposed Street excavation, AT&T shall, at AT&T's expense:

1. Mark on the surface all of its underground facilities within the area of the proposed excavation;

2. Notify the excavator of any non-located underground facilities in the area of the proposed excavation; or

3. Notify the excavator that AT&T does not have any underground facilities in the vicinity of the proposed excavation.

c. Relocation. City shall have the right to require AT&T to change the location of any part of AT&T's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by AT&T. Should AT&T fail to remove or relocate any such facilities by the date established by City, City may effect such removal or relocation, and the expense thereof shall be paid by AT&T, including all costs and expenses incurred by City due to AT&T's delay. If City requires AT&T to relocate its facilities located within the Streets, City shall make a reasonable effort to provide AT&T with an alternate location within the Streets.

d. Restoration of Streets.

1. Whenever AT&T disturbs the surface of any Street for any purpose, AT&T shall promptly restore the Street to at least its prior condition. When any opening is made by AT&T in a hard surface pavement in any Street, AT&T shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to City.

2. If AT&T excavates the surface of any Street, AT&T shall be responsible for restoration in accordance with applicable regulations of the jurisdiction within the area affected by the excavation. City may, after providing notice to AT&T, refill or repave any opening made by AT&T in the Street, and the expense thereof shall be paid by AT&T. City may, after providing notice to AT&T, remove or repair any work done by AT&T that, in the determination of City, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by AT&T. All excavations made by AT&T in the Streets shall be properly safeguarded for the prevention of accidents. All of AT&T's work under this Ordinance, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of City. Prior to making any Street or right-of-way cuts or openings, AT&T shall provide written notice to City.

e. Maintenance and Workmanship.

1. AT&T's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of City, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, City's authority.

2. AT&T shall provide and use any equipment necessary to control and carry AT&T's cable television signals so as to prevent injury to City's property or property belonging to any Person. AT&T, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

f. Reservation of City Street Rights. Nothing in this Ordinance shall prevent City or utilities owned, maintained or operated by public entities other than City, from constructing sewers; grading, paving, repairing or altering any Street; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of AT&T's Cable System. However, if any of AT&T's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main,

AT&T's Cable System shall be removed or replaced in the manner City shall direct, and City shall in no event be liable for any damage to any portion of AT&T's Cable System. Any and all such removal or replacement shall be at the expense of AT&T.

Should AT&T fail to remove, adjust or relocate its facilities by the date established by City's written notice to AT&T, City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by AT&T, including all reasonable costs and expenses incurred by City due to AT&T's delay.

- g. Use of Conduits by City. City may install or affix and maintain wires and equipment owned by City for governmental purposes in or upon any and all of AT&T's ducts, conduits or equipment in the Streets and other public places without charge to City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable Ordinances and Codes. For the purposes of this Subsection 10.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by City for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes in competition with AT&T. AT&T shall not deduct the value of such use of its facilities from its Franchise fees payable to City.
- h. Street Vacation. If any Street or portion thereof used by AT&T is vacated by City during the term of this Ordinance, unless City specifically reserves to AT&T the right to continue its installation in the vacated Street, AT&T shall, without delay or expense to City, remove its facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by City. In the event of failure, neglect or refusal of AT&T, after thirty (30) days' notice by City, to restore, repair or reconstruct such Street, City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by City, shall be paid by AT&T within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Ordinance.
- i. Discontinuing Use of Facilities. Whenever AT&T intends to discontinue using any facility within the Streets, AT&T shall submit for City's approval a complete description of the facility and the date on which AT&T intends to discontinue using the facility. AT&T may remove the facility or request that City allow it to remain in place. Notwithstanding AT&T's request that any such facility remain in place, City may require AT&T to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. City may require AT&T to perform a combination of modification and removal of the facility. AT&T shall complete such removal or modification in accordance with a reasonable schedule set by City. Until such time as AT&T removes or modifies the facility as directed by City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, AT&T shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and AT&T shall retain all liability for such facility. If AT&T abandons its

facilities, City may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

j. Hazardous Substances.

1. AT&T shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to AT&T's Cable System in the Streets.

2. AT&T shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to AT&T, City may inspect AT&T's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to AT&T's Cable System. In removing or modifying AT&T's facilities as provided in this Ordinance, AT&T shall also remove all residue of hazardous substances related thereto.

k. Undergrounding of Cable.

1. Wiring.

(a) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines services at no additional expense to the City or Subscribers, to the extent permitted by law and applicable safety codes. Cable must be installed underground where: (1) all existing utilities are placed underground, (2) statute, ordinance, policy, or other regulation of the City requires utilities to be placed underground, or (3) all overhead utility lines are placed underground.

Related Cable System equipment such as pedestals must be placed in accordance with applicable Code requirements and underground utility rules as interpreted by each City's appropriate public works official. In areas where electric or telephone utility wiring is aerial, AT&T may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.

(b) AT&T shall utilize existing poles and conduit wherever possible.

(c) This Ordinance does not grant, give or convey to AT&T the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the City upon demonstrated need and subject to protecting AT&T's proprietary information from disclosure to third parties.

(d) Whenever possible, to avoid additional wear and tear on AT&T's Rights of Way, City shall when relocating or upgrading the current cable network install

additional conduit or provide additional space for a rebuilt system. AT&T may charge for use of the conduit consistent with all applicable laws.

2. Repair and Restoration of Property.

- (a) AT&T shall protect public and private property from damage. If damage occurs AT&T shall promptly notify the property owner within twenty-four (24) hours in writing.
- (b) If public or private property is disturbed or damaged, AT&T shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way or other City property shall be restored, in a manner and within a timeframe approved by the City's Director of Public Works or other appropriate designated official. If restoration of public right-of-way or other property of the City is not satisfactorily performed within a reasonable time, the Director of Public Works or other appropriate designated official may, after prior notice to AT&T, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at AT&T's expense and recover the cost of those repairs from AT&T. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, AT&T shall pay the City. If suit is brought upon AT&T's failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the City, then AT&T shall pay all of the City's actual costs and expenses resulting from the non-payment, including penalties, interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than seventy-two (72) hours.
- (c) Prior to entering onto private property to construct, operate or repair its Cable System, AT&T shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

3. Movement of Cable System For and By City. The City may remove, replace, modify or disconnect AT&T's facilities and equipment located in the public right-of-way or on any other property of the City in the case of fire, disaster, or other emergency, or when a project or activity of the City's makes the removal, replacement, modification or disconnection necessary or less expensive for the City. Except during an emergency, the City shall attempt to provide reasonable notice to AT&T prior to taking such action and shall, when feasible, provide AT&T with the opportunity to perform such action. Following notice by the City, AT&T shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other property of

the City, except that the City shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of AT&T's facilities or equipment. If AT&T fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to AT&T. Within thirty (30) days of receipt of an itemized list of those costs, AT&T shall pay the City.

4. Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, AT&T shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Those Persons shall determine how costs associated with the removal or relocation required herein shall be allocated.

5. Movement for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, AT&T shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and AT&T may require a reasonable deposit of the estimated payment in advance.

6. Tree Trimming. Subject to acquiring prior written permission of the City, AT&T shall have the authority to trim trees that overhang a public right-of-way of the City so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

l. Codes. AT&T shall strictly adhere to all building and zoning codes currently or hereafter in effect. AT&T shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, City may require the removal or relocation of AT&T's lines, cables, and other appurtenances, at AT&T's cost, from the property in question.

m. Standards.

1. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The AT&T must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, AT&T must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

2. AT&T shall ensure that individual Cable System drops are properly bonded to the electrical power ground at the home, and are consistent, in all respects, with the requirements of the National Electric Code and the National Electrical Safety Code.

Section 11 System Design.

a. Subscriber Network.

1. Design. As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed, FCC technical quality standards regardless of the particular manner in which the signal is transmitted. AT&T's Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

2. System Functionality.

(a) It is the intent of the parties to provide for a process that provides the City with an opportunity to review system design plans and construction progress to ensure that the Cable System meets or exceeds the specifications described herein. AT&T agrees that it shall provide City with reasonable notice of its intent to test the performance of the Cable System so that City can witness such testing.

(b) AT&T will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Ordinance or applicable law.

3. Timing of Construction. Any decision by AT&T regarding construction of facilities for service from each hub or node shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of the Franchise Area.

Section 12 Test and Compliance Procedures.

a. Upon request, AT&T shall advise City of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of City may witness tests, and written test reports may be made available to City upon request.

b. As required by FCC Rules, AT&T shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. AT&T shall provide City summary written reports of the results of such tests.

Section 13 Service Extension, Construction, and Interconnection.

a. Equivalent Service. It is AT&T's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from AT&T's Cable System under nondiscriminatory rates and reasonable terms and conditions. AT&T shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

b. Service Availability.

1. Service to New Subdivisions. AT&T shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by AT&T, receipt of a written request by AT&T, or receipt by AT&T of a verified verbal request. AT&T shall provide such service:

- (a) With no line extension charge except as specifically authorized elsewhere in this Ordinance.
- (b) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred and twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by AT&T and provided in writing to City; and at nondiscriminatory monthly rates for Residential Subscribers.

2. Required Extensions of Service. Whenever AT&T shall receive a request for service from at least ten (10) residences within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Customers at no cost to said Customers for Cable System extension, other than the usual connection fees for all Customers within ninety (90) days, provided that such extension is technically feasible, and if it will not otherwise adversely affect the operation of the Cable System.

3. Customer Charges for Extensions of Service. No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as a Customer's request to locate a cable drop underground, existence of more than one hundred and twenty-five (125) feet of distance from distribution cable to connection of service to Customers, or a density of less than ten (10) residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by AT&T and Customers in the area in which service may be expanded, AT&T will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The AT&T may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

4. Enforcement. Failure to meet these standards shall subject AT&T to enforcement actions on a per Subscriber basis in Section 15.

- c. Connection of Public Facilities. AT&T shall, at no cost to City, provide one (1) outlet of Basic and expanded basic programming to City's public use buildings, as designated by the City, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, AT&T agrees to provide, at no cost, one (1) outlet of Basic and expanded basic programming to all such future public buildings if the drop line to such building does not exceed one hundred and twenty five (125) cable feet or if City or other agency agrees to pay the incremental cost of such drop line in excess of one hundred twenty five (125) feet, including the cost of such excess labor and materials. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of City.

Section 14 Standby Power. AT&T shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. AT&T shall maintain standby power system supplies, to the node, rated for at least two (2) hours duration. In addition, throughout the term of this Ordinance, AT&T shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to City no later than ninety (90) days following the effective date of this Ordinance.

Section 15 Franchise Violations, Revocation of Franchise.

a. Procedure for Remediating Franchise Violations.

1. If City believes that AT&T has failed to perform any obligation under this Ordinance or has failed to perform in a timely manner, City shall notify AT&T in writing, stating with reasonable specificity the nature of the alleged violation.
2. The City must provide written notice of a violation. Upon receipt of notice, AT&T will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the City a reasonable remedial plan. The City shall, with AT&T's consent, decide whether to accept, reject, or modify the remedial plan presented by AT&T. Fines shall be assessed only in the event that either a cure has not occurred within thirty (30) days or the City rejects the remedial plan. The procedures provided in Section 15 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date AT&T receives notice of the violation provided, however, that if City has actual knowledge of the violation and fails to give AT&T the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the City gives AT&T the notice of the violation.
3. AT&T shall have thirty (30) calendar days from the date of receipt of such notice to:
 - (a) Respond to City, contesting City's assertion that a violation has occurred, and requesting a hearing in accordance with subsection (E) below, or;
 - (b) Cure the violation, or;

(c) Notify City that AT&T cannot cure the violation within the thirty (30) days, and notify the City in writing of what steps AT&T shall take to cure the violation including AT&T's projected completion date for such cure. In such case, City shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection C below.

4. In the event that AT&T notifies the City that it cannot cure the violation within the thirty (30) day cure period, City shall, within thirty (30) days of City's receipt of such notice, set a hearing. At the hearing, City shall review and determine whether AT&T has taken reasonable steps to cure the violation and whether AT&T's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the City, who may waive all or part of the fines for such extended cure period in accordance with the criteria set forth in subsection G. of this section.

5. In the event that AT&T fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the City pursuant to subsection (C), the City shall set a hearing to determine what fines, if any, shall be applied.

6. In the event that AT&T contests the City's assertion that a violation has occurred, and requests a hearing in accordance with subsection (B)(1) above, the City shall set a hearing within sixty (60) days of the City's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.

7. In the case of any hearing pursuant to this section, City shall notify AT&T of the hearing in writing and at the hearing, AT&T shall be provided an opportunity to be heard, examine City's witnesses, and to present evidence in its defense. The City may also hear any other person interested in the subject, and may provide additional hearing procedures as City deems appropriate.

8. The fines set forth in Section 15.2 of this Ordinance may be reduced at the discretion of the City, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (a) Whether the violation was unintentional;
- (b) The nature of the harm which resulted;
- (c) Whether there is a history of prior violations of the same or other requirements;
- (d) Whether there is a history of overall compliance, and/or;
- (e) Whether the violation was voluntarily disclosed, admitted or cured.

9. If, after the hearing, City determines that a violation exists, City may use one or more of the following remedies:

- (a) Order AT&T to correct or remedy the violation within a reasonable time frame as City shall determine;
 - (b) Establish the amount of fine set forth in Section 15, taking into consideration the criteria provided for in subsection 15.b of this section as appropriate in City's discretion;
 - (c) Revoke this Ordinance, and/or;
 - (d) Pursue any other legal or equitable remedy available under this Ordinance or any applicable law.
- b. Fines. Failure to comply with provisions of the agreement may result in injury to City. It will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this Ordinance are intended as a reasonable forecast of compensation to City for the harm caused by violation of this Ordinance, including but not limited to administrative expense, legal fees, publication of notices, and holding of a hearing or hearings as provided herein.
1. For violating aggregate performance telephone answering standards for a quarterly measurement period:
 - (a) \$10,000 for the first such violation;
 - (b) \$20,000 for the second such violation, unless the violation has been cured;
 - (c) \$30,000 for any and all subsequent violations, unless the violation has been cured.
 2. A cure is defined as meeting the subscriber telephone answering standards for two consecutive quarterly measurement periods.
 3. For violation of applicable subscriber service standards where violations are not measured in terms of aggregate performance standards: \$25 per violation multiplied by the number of affected subscribers, per day;
 4. For violations of Sections 11.1 and 11.2: \$1,000 per day;
 5. For all other violations of this agreement, except as otherwise provided herein, (for example, but not limited to, record submissions under Section 7): \$250/day for each violation for each day the violation continues.
- c. Collection of Fines. The collection of fines by the City shall in no respect affect:
1. Compensation owed to Subscribers; or
 2. The AT&T's obligation to comply with all of the provisions of this Ordinance or applicable law; or

3. Other remedies available to the City.
- d. Revocation. In addition to all other rights and powers retained by the City under this Ordinance or otherwise, the City reserves the right to forfeit and terminate this Ordinance and all rights and privileges of AT&T hereunder, in whole or in part, in the event of a material violation of its terms and conditions. A material violation by AT&T shall include, but shall not be limited to the following:
1. Violation of any material provision of this Ordinance or any other Ordinance between City and AT&T, or any material rule, order, regulation, standard or determination of the City or authorized agent made pursuant to this Ordinance or other Ordinance;
 2. Attempt to evade any material provision of this Ordinance or to practice any fraud or deceit upon the City or its Subscribers or customers;
 3. Failure to restore service after forty-eight (48) consecutive hours of interrupted service system-wide, except when approval of such interruption is obtained from the City;
 4. Material misrepresentation of fact in the application for or negotiation of this Ordinance, or;
 5. If AT&T becomes insolvent, or the subject of a bankruptcy proceeding.
- e. Relationship of Remedies.
1. Remedies are Non-exclusive. The remedies provided for in this agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the City at law or equity provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed. By way of example and not limitation, the collection of fines by City shall in no respect affect:
 - (a) Compensation owed to subscribers; or
 - (b) AT&T's obligation to comply with the provisions of this agreement or applicable law.
 2. No Election of Remedies. Without limitation, the withdrawal of amounts from AT&T's Letter of Credit (LOC), or the recovery of amounts under the insurance, indemnity or penalty provisions of this agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of AT&T under the Ordinance for fines or otherwise; or an excuse of faithful performance by AT&T.
- f. Removal.

1. In the event of termination, expiration or revocation of this Ordinance, City may order the removal of the above-ground Cable System facilities and such underground facilities as required by City in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at AT&T's sole expense within a reasonable period of time as determined by City. In removing its plant, structures and equipment, AT&T shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good a condition as that prevailing prior to AT&T's removal of its equipment.

2. If AT&T fails to complete any required removal to the satisfaction of City, City may cause the work to be done and AT&T shall reimburse City for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs and City may recover the costs through the Letter of Credit provided by AT&T.

g. Receivership and Foreclosure.

1. At the option of City, subject to applicable law, this Ordinance may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of AT&T whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

- (a) The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment, or;
- (b) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance, and have remedied all violations under the Ordinance. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Ordinance.

2. If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of AT&T, City may serve notice of revocation on AT&T and to the purchaser at the sale, and the rights and privileges of AT&T under this Ordinance shall be revoked thirty (30) days after service of such notice, unless:

- (a) City has approved the transfer of the Ordinance, in accordance with the procedures set forth in this Ordinance and as provided by law; and
- (b) The purchaser has agreed with City to assume and be bound by all of the terms and conditions of this Ordinance.

h. No Recourse Against City. AT&T shall not have any monetary recourse against City or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Ordinance or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the City under this Ordinance are in addition to, and shall not

be read to limit, any rights or immunities the City may enjoy under federal, state or local law. However, under federal law, AT&T does have the right to seek injunctive and declaratory relief.

- i. Nonenforcement by City. AT&T is not relieved of its obligation to comply with any of the provisions of this Ordinance by reason of any failure of City to enforce prompt compliance. City's forbearance or failure to enforce any provision of this Ordinance shall not serve as a basis to stop any subsequent enforcement. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Ordinance or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

Section 16 Abandonment.

- a. Effect of Abandonment. If AT&T abandons its System during the Ordinance term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until AT&T restores service under conditions acceptable to the City or until the Ordinance is revoked and a new Franchise is selected by the City; or obtain an injunction requiring AT&T to continue operations. If the City is required to operate or designate another entity to operate the Cable System, AT&T shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.
- b. What Constitutes Abandonment. The City shall be entitled to exercise its options and obtain any required injunctive relief if:
 1. AT&T fails to provide Cable Service in accordance with this Ordinance to the Franchise Area for ninety-six (96) consecutive hours, unless the City authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.5; or
 2. AT&T, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Ordinance.

Section 17 Franchise Renewal and Transfer.

- a. Renewal.
 1. The City and AT&T agree that any proceedings undertaken by the City that relate to the renewal of AT&T's Ordinance shall be governed by and comply with the provisions of the Cable Act (47USC§546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

2. In addition to the procedures set forth in the Cable Act, the City agrees to notify AT&T of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of AT&T under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, AT&T and City agree that at any time during the term of the then current Ordinance, while affording the public adequate notice and opportunity for comment, the City and AT&T may agree to undertake and finalize negotiations regarding renewal of the then current Ordinance and the City may grant a renewal thereof. AT&T and City consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

b. Transfer of Ownership or Control.

1. The Cable System and this Ordinance shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld.

2. AT&T shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of AT&T. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in AT&T, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in AT&T. Every change, transfer or acquisition of control of AT&T shall make this Ordinance subject to cancellation unless and until the City shall have consented thereto.

3. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

4. The City shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

5. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, AT&T shall file with the City a copy of the deed, franchise, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by AT&T and the transferee.

6. In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and AT&T shall assist the City in so inquiring. The City may condition said sale or

transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Ordinance by AT&T.

7. The consent or approval of the City to any transfer by AT&T shall not constitute a waiver or release of any rights of the City, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Ordinance.

8. Notwithstanding anything to the contrary in this Section, the prior approval of the City shall not be required for any sale, assignment or transfer of the Ordinance or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as AT&T provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all provisions of the Ordinance.

Section 18 Franchise Review.

- a. During the six-month period beginning nine (9) years after the effective date of this Agreement, the City and AT&T shall undertake a review of AT&T's system and performance to date, in order to determine whether the Franchise should continue in effect for the full twenty (20) year term, or should terminate at the end of the tenth (10th) year from the effective date of this Ordinance. The City may terminate the Franchise at the end of the tenth (10th) year if at least one of the following has occurred: 1) City determines there has been a pattern of violation of material provisions of the Agreement; and/or 2) by the end of the six-month period, AT&T refuses to make provision for the effective resolution of any evident patterns of customer service problems unanticipated in the provisions of the Agreement. Any proposal by the City to terminate the franchise at the end of the tenth (10th) year from the effective date of this Ordinance shall be subject to the same procedural requirements as for forfeiture, revocation or termination under Section 15 hereof.
- b. In addition, during the six-month period beginning nine (9) years after the effective date of this Ordinance, either the City or the AT&T may request the other party to participate in good faith negotiations, for a period not to exceed six (6) months, to consider one or more of the following subjects:
 1. Technology
 2. Parity with neighboring systems
 3. PEG access support by the AT&T
 4. Franchise term

- c. Nothing in this subsection requires either the City or the AT&T to agree to any amendment to this agreement, and any amendments hereto must be formally accepted in writing by both parties.

Section 19 Severability. If any section, subsection, paragraph, term or provision of this Ordinance is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Ordinance, all of which will remain in full force and effect for the term of the Ordinance.

Section 20 Miscellaneous Provisions.

- a. Preferential or Discriminatory Practices Prohibited. AT&T shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Ordinance, AT&T shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.
- b. Dispute Resolution.
 - 1. The City and AT&T agree that should a dispute arise between the parties concerning any aspect of this Ordinance which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the City and AT&T agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.
 - 2. If the parties are unable to successfully conclude the mediation within 45 days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.
- c. Notices. Throughout the term of the Ordinance, AT&T shall maintain and file with City a designated legal or local address for the service of notices by mail. A copy of all notices from City to AT&T shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this Ordinance, such address shall be:

If to the City:

City Manager
City of Scappoose
P.O. Box P
Scappoose OR 97056

If to AT&T:

AT&T
Attn : Legal Department
3500 SW Bond
Portland, Oregon 97201

- d. Binding Effect. This Ordinance shall be binding upon the parties hereto, their permitted successors and assigns.
- e. Authority to Amend. This Ordinance may be amended at any time by written agreement between the parties.
- f. Governing Law. This Ordinance shall be governed in all respects by the laws of the State of Oregon.
- g. Captions. The captions and headings of this Ordinance are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Ordinance.
- h. Entire Agreement. This Ordinance, together with all appendices and attachments, contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.
- i. Construction of Agreement. The provisions of this Ordinance shall be liberally construed to promote the public interest.

Section 21 Acceptance.


- a. Written Acceptance. On or before thirty days after this ordinance becomes effective, AT&T shall file with the City Auditor's Office a written acceptance of this Franchise ordinance duly executed by AT&T, and meeting the approval of the City Attorney's Office. Such acceptance shall be unqualified and shall be an acceptance of all the terms, conditions and restrictions contained in this Franchise Ordinance.
- b. Failure to File Acceptance. Any failure on the part of AT&T to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and this ordinance shall thereupon be null and void.

Section 22 Change of Law; Severability. If, due to changes in state or federal law or for any other reason, any section, subsection, or portion of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 23 Emergency Declared. as it is necessary for the peace, health and safety of the citizens of Scappoose, an emergency is hereby declared and this ordinance is put in full force and effect immediately upon its passage by the Council and approval by the Mayor.

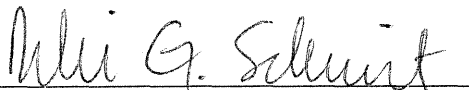
PASSED AND ADOPTED by the Scappoose City Council and signed by the Council President and the City Recorder in authentication of its passage on this 4th day of September, 2001.

CITY OF SCAPPOOSE, OREGON



Floyd Pittard, Council President

ATTEST:



Debi G. Schmit, City Recorder

First Reading: August 20, 2001

Second Reading: September 4, 2001