[Cable Television Franchise Amendments.]  

Ordinance amending Ordinance No. 105-64, as amended by Ordinance Nos. 528-88, 315-89, 42-91, 42-97, and 266-99, by amending sections 1, 9, 24.3, 25, 25.5, 27.2, 31, and 32 and Appendix C to extend the term of the franchise and to clarify and expand the obligations of the Comcast of California III, Inc.

Note: Additions are _single-underline italics Times New Roman_; deletions are __strike-through italics Times New Roman__. Board amendment additions are double underlined. Board amendment deletions are strikethrough normal.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Sections 1, 9, 24.3, 31, and 32 of Ordinance No. 105-64, as amended by Ordinance Nos. 528-88, 315-89, 42-91, 42-97, and 266-99, are amended as follows:

SECTION 1. GRANT.

That there is hereby created by the City and County of San Francisco (hereinafter called the City), to _Television Signal Corporation Comcast of California III, Inc._, a California corporation (hereinafter called the Grantee) and its successors and assigns, _for a period of twenty-one (21) years from the effective date of this ordinance_, the right, power, authority, and privilege to conduct the business of, and to build, construct, equip, own, maintain, and operate in, or on, or under, or over, the present and future streets, alleys, and other public places in the City, wires, lines, poles, arms, cables, appurtenances, fixtures, and other apparatus for the purpose of operating and conducting, a Community Antenna System as defined in Section 32 hereof.

There is hereby granted the further right, power, authority, and privilege to the Grantee to lease, rent, or in any other manner obtain the use of, and use, within the corporate limits of the City, such wires, lines, poles, arms, cables, appurtenances, fixtures, and
other apparatus from any and all holders of public permits, public licenses or franchises
granted by the City or by any other source and to use such wires, lines, poles, arms,
cables, appurtenances, fixtures, and other such apparatus, subject to all the terms and
conditions of this Franchise, and to the extent that they shall not conflict with this
Franchise, or any such permit, license, resolutions, and regulations of the City.
There is also granted the right to buy, purchase, lease, erect, equip, maintain, own, or
operate such plants, machinery, equipment, or buildings as are necessary to maintain
and operate such Community Antenna System, and the right to buy, hold, own, or
lease any and all real estate necessary to conduct such business.

This Franchise, and each and every provision thereof, shall also be applicable to any and all
facilities installed or operated by Grantee before the effective date of this Franchise.
During the term of this Franchise, the Grantee shall comply with the customer service
requirements in effect as of April 1, 2005, as adopted by the Federal Communications
Commission and set forth in 47 C.F.R. § 76.309(c) and incorporated in the San Francisco
Administrative Code at Section 11.51.

SECTION 9. TERM/NON-EXCLUSIVITY.
The term of this Franchise shall extend until December 31, 2005. This Franchise is to
be nonexclusive and shall be construed in accordance with all applicable Laws in the
State of California, including the charter, ordinances, resolutions, and regulations of the City.

SECTION 24.3 CABLE FACILITIES CAPITAL GRANT.
On or before January 15 in each of the years 1997, 1998, 1999, 2000, and 2001 the
Grantee shall pay to the City fifty thousand dollars ($50,000) and on or before January
15 in each of the years 2002, 2003, 2004 and 2005, the Grantee shall pay to the City
twenty-five thousand dollars ($25,000). These funds may be used by the City, in its sole
and absolute discretion, for any of the following purposes, (i) to purchase and install
cable drops or outlets and associated equipment in Public Buildings, (ii) to purchase
and install any product or service offered by the Grantee (which the Grantee shall
provide at or below its lowest commercially available rate) or offered by any other entity
authorized to provide services over the Cable System, or (iii) to make any capital
expenditure related to the Franchise Agreement, including but not limited to
expenditures for facilities and equipment for the support of any PEG Channel. The City
acknowledges that the Grantee has paid all amounts due under this Section 24.3 in full.

SECTION 27.2 FACILITIES & SUPPORT FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL (PEG) CHANNELS.

(a) Within thirty (30) days after the Date of the Franchise Amendments, the Grantee
shall make a cash grant to the City in the amount of seven hundred and fifty thousand
($750,000) for the acquisition of equipment by the City, or by any entity designated by
the City to manage and control any PEG Channel or any portion thereof, to support the
operations of the PEG Channels. The City acknowledges that the Grantee has paid all
amounts due under this subsection in full.

(b) The Grantee shall make additional cash grants to the City for acquisition and
replacement of equipment to support the operations of the PEG Channels according to
the following schedule and in the following amounts: seven thousand dollars ($7000) on
or before June 15 in each of the years 1997, 1998, 1999, and 2000; fifteen thousand
dollars ($15,000) on or before June 15 in each of the years 2001, 2002, and 2003; and
twenty-five thousand dollars ($25,000) on or before June 15 in 2004 and 2005. The City
acknowledges that the Grantee has paid all amounts due under this subsection in full.
(c) Within thirty (30) days after the Date of the Franchise Amendments, the Grantee shall make a cash grant to the City in the amount of four hundred thousand dollars ($400,000) for the development of a new public access production facility. The City, in its sole and absolute discretion, may elect to use these funds to renovate the existing production facility located at 1855 Folsom Street or to build out a public access production facility in a new location. The City acknowledges that the Grantee has paid all amounts due under this subsection in full.

(d) Within sixty (60) days after receiving specifications from the City, the Grantee shall confirm to the City that it has ordered a mobile video production van, for use in the production of programming for the PEG Channels, with van and equipment meeting City specifications for costs not to exceed two hundred thousand dollars ($200,000). If within sixty (60) days after receiving City specifications the Grantee is unable to confirm that it has ordered a van and equipment meeting City specifications for a cost not to exceed two hundred thousand dollars ($200,000), the Grantee shall make an immediate cash grant to the City in the amount of two hundred thousand dollars ($200,000), or in the sole and absolute discretion of the City Controller, shall provide a letter of credit in the amount of two hundred thousand dollars ($200,000) for acquisition of a mobile production van. The City, in its sole discretion, shall determine the specifications for the van and for equipment consistent with the purposes set forth herein. The van and equipment specifications shall be consistent with use for taping video programming for playback on any PEG Channel and for transmitting live programming from any PEG Channel Origination Location, but not for other live transmission. The City, in its sole discretion, shall establish policies and procedures governing the use of the mobile video
production van. *The City acknowledges that the Grantee has paid all amounts due and satisfied all other obligations under this subsection in full.*

(e) Within thirty (30) days after the Date of the Franchise Amendments, the Grantee shall make a cash grant to the City in the amount of seventy-five thousand ($75,000) to facilitate transfer of control over the public access Channel from the Grantee to a not-for-profit corporation designated by the Board pursuant to Section 27.3 and for 1996 operating expenses. *The City acknowledges that the Grantee has paid all amounts due under this subsection in full.*

(f) Commencing with 1997, the Grantee shall make an annual cash grant to the City to be used for operating expenses for the PEG Channels. The amount of the grant shall be four hundred and fifty thousand ($450,000) for each of the calendar years 1997 and 1998; provided, however that the amount of the grant in the initial year shall be prorated based on the number of days remaining in the year as of the date on which management and control over the public access Channel is transferred pursuant to Section 27.3. The annual grant payment shall be due and payable on or before January 15; provided, however that the initial grant shall be due and payable on the date on which management and control over the public access Channel is transferred. The amount of the annual cash grant shall increase by twenty-two thousand and five hundred dollars ($22,500) every three years and throughout the period that the Franchise is in effect (e.g., 1999, 2002, 2005, and 2008), *but such cash grant shall not exceed five hundred seventeen thousand and five hundred dollars ($517,500) per year.* The Grantee agrees that these payments are not Franchise fees and are not subject to any limitation on Franchise fees contained in 47 U.S.C. Sec. 542, Section 8 of the Franchise, or Applicable Law. Beginning with the grant due in 2005, nothing in this Rebuild Extension Ordinance shall
prohibit the Grantee from passing through to Subscribers the cost of these payments to the extent otherwise permitted by Applicable Law.

(g) In lieu of the payments that would have been due the City but for the delay in the transfer of control of PEG facilities to the City, within thirty (30) days after the Effective date of the rebuild Ordinance, the Grantee shall make a cash grant to the City in the amount of two hundred and fifty thousand dollars ($250,000) to support the PEG Channels. The City acknowledges that the Grantee has paid all amounts due under this subsection in full.

(h) Commencing thirty (30) days after the Extension Date and throughout the period that the Franchise is in effect, the Grantee shall pay the City fifty-two cents ($0.52) per paying Subscriber account per month for PEG access capital support and such payments shall be used to support the City's PEG capital and facilities requirements. The City may allocate a portion of these payments for the following: (i) to purchase and install cable drops or outlets and associated equipment in Public Buildings; (ii) to purchase and install any product or service offered by the Grantee (which the Grantee shall provide at or below its lowest commercially available rate) or offered by any other entity authorized to provide services over the Cable System; or (iii) to make any capital expenditure related to the Franchise Agreement. The Grantee shall make these payments to the Controller quarterly and the payment shall be due on or before the end of the following quarter. Nothing in this subsection prohibits Grantee from passing through to Subscribers the cost of these payments to the extent otherwise permitted by Applicable Law.

SECTION 31. MISCELLANEOUS PROVISIONS.

(a) The City and the Grantee disagree over their relative rights and obligations under certain provisions of this Franchise Agreement in light of changes in law subsequent to...
the grant of the Franchise. The Grantee and the City agree that it is to their mutual benefit to agree to the Franchise Amendments and the Rebuild Ordinance without resolving their disagreements over the impact, if any, of changes in law between the date on which the Franchise Agreement was originally adopted and the Date of the Rebuild Ordinance on their relative rights and obligations pursuant to the terms of the Franchise as it existed prior to the adoption of the Rebuild Ordinance. The City and the Grantee agree that neither of them shall rely on, nor shall any court or administrative body consider, the execution and performance of the Franchise Amendments or the Rebuild Ordinance, or the failure to modify any provision of the Franchise Agreement in the Franchise Amendments or the Rebuild Ordinance, as a waiver of any claim or defense arising from any change in law between the date on which the Franchise was originally granted and the Date of the Rebuild Ordinance. Nothing in this paragraph shall be construed to affect the Grantee's agreement to faithfully perform all the obligations undertaken in the Franchise Amendments and the Rebuild Ordinance.

(b) The original grant of the Franchise may have created a possessory interest subject to property taxation, and, if a possessory interest was created, the Grantee may be subject to the payment of property taxes levied on such interest. The Grantee agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the interest created by the Franchise Agreement and to pay all other taxes, excises, licenses, permit charges and assessments based on the Grantee's usage of the public right-of-way that may be imposed upon the Grantee by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) The Grantee shall cooperate with the City to extinguish any claim by a superior governmental entity that it (i) is a franchising authority within the meaning of Title VI of
the Communications Act of 1934 (Title VI), or (ii) is entitled to assess or collect Title VI franchise fees based upon the provision of services to any Person within the geographic boundaries of the City and County of San Francisco.

(d) If the Grantee cooperates fully with the City pursuant to subsection (c) to extinguish any such claim, amounts paid or incurred as franchise fees, within the meaning of Title VI, to such an entity under legal obligation pursuant to a franchise granted under Title VI may be deducted from the franchise fees that are otherwise due and payable to the City and County of San Francisco on revenues from or in connection with service to Persons at addresses within the territory claimed to be subject to the franchising authority of a superior governmental entity. No such deduction shall exceed five percent (5%) of gross revenues from Persons served at such addresses.

(e) All section and subsection titles are for reference only and shall not be considered in construing this Franchise Agreement.

(f) Wherever the Franchise designates a specific City officer, employee or entity to perform any duty or exercise any authority under the Franchise, the City specifically reserves the right to reassign such responsibility or authority to any other officer, employee, department or commission of the City. The Board of Supervisors or the City Administrator are specifically authorized to exercise the City's right to reassign any responsibility or authority and shall notify the Grantee of any such reassignment.

(g) Upon the effective date of Ordinance Number 440-96, as amended by Ordinance Number 481-96 (Domestic Partners Ordinance), the Grantee shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code which prohibits discrimination in the provision of benefits between employees with registered domestic partners and employees with spouses.
(h) In the event that the Grantee fails to timely make any payment required by the Franchise and fails to cure any such nonpayment within 15 days of the Grantee's receipt of written notice to the Grantee from the City, the Grantee agrees to provide a cash escrow account, a letter of credit, or other security instrument acceptable to the City, an the amount of five hundred thousand dollars ($500,000) to secure future compliance with any obligations of the Grantee under the Franchise. The security shall be provided within thirty (30) days of Grantee's receipt of written notice of the nonpayment and shall be in addition to any other remedy available to the City for Grantee's failure to make any payment required by the Franchise. This provision shall not apply to a failure to pay any portion of franchise fees over which there is a good faith dispute. The City, in its sole discretion, through its Controller, may draw upon the security upon twenty (20) days further notice to the Grantee company.

(i) In the event of an irreconcilable conflict between the provisions of the Rebuild Ordinance, the Rebuild Extension Ordinance, and the Franchise as it existed prior to the amendments effected by the Rebuild Ordinance and the Rebuild Extension Ordinance, the provisions and intent of the Rebuild Extension Ordinance shall take precedence followed by the Rebuild Ordinance prevail.

(j) All portions of the Rebuilt Cable System, including, but not limited to, headends, hub sites, weather heads, cable drops, overhead and underground trunk and distribution system cables, strand, guying, anchoring, bonding, grounding, and workmanship shall be constructed to comply with all lawful Federal, State, and local construction requirements, including, but not limited to, the City's Municipal Code and California Public Utilities Commission General Orders 95 and 128, as amended. In addition, all
cable drops and other related facilities that comprise the Cable System shall be capable of

carrying all Upgraded Services to the home without deterioration of signal.

(k) This Rebuild Extension Ordinance shall be of no force and effect unless the Settlement

Agreement is approved by the Board and Mayor and the Grantee unconditionally accepts the
terms and conditions of the Rebuild Extension Ordinance as approved by the Board and Mayor.

Section 2. Sections 25, 25.5, and 27.2 of Ordinance No. 105-64, as amended by

Ordinance Nos. 528-88, 315-89, 42-91, 42-97, and 266-99, are hereby amended and

replaced to read as follows:

SECTION 25. REBUILD OF CABLE SYSTEM.

(a) The Grantee shall Complete a Rebuild of the Cable System. The Rebuilt System was originally

required to be Completed within forty-eight (48) months of the Effective Date of the Rebuild

Ordinance. In consideration for the Grantee's performance of its obligations set forth in the

Settlement Agreement and this Section 25, the original deadline is replaced with the deadlines in

subsection (b) of this Section. The Grantee understands and agrees that this Section 25 is a

material term of the Franchise. The City may request documents or information required to verify

compliance with any of the requirements in this Section 25, and the Grantee shall provide the

requested documents or information within thirty (30) days of a written request. It is the Grantee's

responsibility to ensure that it has access to all documents or information related to the Rebuild or

relevant to evaluating any claim by the Grantee that a force majeure event has occurred, whether

such documents are in the Grantee's control or in the control of any person acting on the Grantee's

behalf or performing work for the Grantee in connection with the Rebuild.

(b) The Grantee shall meet the following deadlines:

(1) By the Extension Date, the Cable System shall satisfy the requirements in

subparagraphs (1) through (4) of subsection (d) of this Section.
(2) By the Extension Date, the Grantee shall be offering and have widely advertised the availability of Upgraded Services through direct mail, bill inserts, or home delivery of information or such other means as are reasonably acceptable to the City.

(3) By November 30, 2005, the Grantee shall satisfy the requirements of subparagraph (5) of subsection (d) of this Section, except for the installation of permanent power supply units ("PPSUs") in the public right-of-way in all areas where such PPSUs are required to be placed underground pursuant to Public Works Code Section 913 ("Underground Areas").

(4) In all Underground Areas where the Grantee intends to install PPSUs in the public right-of-way surface, the Grantee shall at a minimum do the following:

(i) Mail the notice required under section 3.1 of the agreement between the Grantee and the Department of Public Works effective June 23, 2004 (the "Power Supply Agreement") within forty-five (45) days of receiving approval of a proposed site from the Department of City Planning for so long as the Power Supply Agreement is in effect, except to the extent that DTIS consents in writing to an extension or continuance because of the Grantee's efforts to locate PPSUs on private property, which consent shall not be unreasonably withheld or delayed.

(ii) Diligently pursue and perform in good faith and in a timely manner all actions necessary to obtain City authorizations to place facilities or equipment on public rights-of-way.

(iii) Within one (1) year of obtaining an excavation permit to construct a PPSU in a particular location, Complete the Rebuilt System in the area intended to be served by such PPSU, as set forth in subparagraph (1) of subsection (l) of this Section, and submit an affidavit to DTIS to that effect, as set forth in subparagraph (2) of subsection (l) of this Section.

(iv) Notwithstanding the foregoing, the Grantee agrees that it shall locate on the public right-of-way surface no more than seventy-five (75) PPSUs, or no more than fifty percent (50%) of the total number of the Grantee's PPSUs in Underground Areas, whichever is less. The Grantee
agrees to use its diligent, good faith efforts to locate PPSUs on private property, or on other
property that is not on a public right-of-way surface.

(v) On or before the Extension Date, the Grantee shall meet with DTIS and present its
current plan for the deployment of PPSUs, including its current projection for which PPSUs may
be located on private property, below ground or on a public right-of-way surface. The Grantee
shall notify the City within thirty (30) days of any material change to its plan for the deployment of
PPSUs.

(c) The Grantee understands and agrees that time is of the essence with regard to the commitments
contained in this Section. The Grantee agrees that: (i) the City provided the Grantee with notice of
an alleged breach of Section 25 of the Franchise, as that Section existed on September 1, 2002;
and (ii) the requirements of this Rebuild Extension Ordinance establish what the Grantee must do
to cure that alleged breach and, by extending the time for Completing the Rebuild, provides the
Grantee an opportunity to Complete the Rebuilt System as set forth herein. The City acknowledges
that the Grantee identified matters that it alleged caused certain delays and disputed the existence
of any breach. The Grantee further agrees that no further notice or opportunity to cure is required
with respect to such alleged breach except as expressly provided herein, that the City is not
required to provide the Grantee additional notice or an opportunity to cure if the Grantee fails to
Complete the Rebuilt System as contemplated in this Section, and that the City may exercise any
rights it has under the Franchise or Applicable Law as if any requirement for notice and
opportunity to cure had been satisfied. This includes, but is not limited to, any obligation to
provide notice and opportunity to cure under 47 U.S.C. § 546(d). Nothing in this Section 25
modifies Section 7 of the Franchise and, except as expressly provided in the Franchise or in the
Settlement Agreement, neither the Grantee nor the City waives any rights, claims or defenses it
may have under the Franchise or Applicable Law.
(d) Upon Completion of the Rebuild, the Cable System shall satisfy the minimum requirements set forth in this subsection (d). These specifications for the Cable System shall replace "system requirements" set forth in Section 2(a)(1) of the Franchise.

1. For components installed after November 18, 2002, all active components of the Cable System shall have a minimum capacity of 860 MHz and all passive components shall have a minimum capacity of 1 GHz. In order to ensure that services of equivalent quality and capability are available throughout the City, the Grantee shall replace active components installed before November 18, 2002 with active components having a minimum capacity of 860 MHz and passive components having a minimum capacity of 1 GHz prior to the Grantee utilizing any portion of the capacity of its system above 750 MHz to offer or deliver services anywhere in the City.

2. The Cable System shall provide activated two-way capability.

3. The Cable System shall utilize a flexible architecture that enables the Grantee to provide high-quality and reliable service and to provide additional or improved services throughout the term of the Franchise. A maximum of twelve hundred (1,200) Dwelling Units may be passed by the distribution system fed from each node. The Cable System shall use scalable node architecture that is readily capable of segmentation to nodes no larger than one-quarter of the maximum size allowed without requiring substantial additional construction or causing disruption of service and without any degradation in the quality of service.

4. The Cable System shall provide reliable, continuous auto-start backup power at the headend and all hubs. The Grantee shall maintain adequate backup mobile generators, monitoring systems, and personnel so that it can detect outages and place mobile generators to prevent loss of fixed backup power to Subscribers.

5. The Cable System shall provide standby power to all active components, including each node, to sustain their individual loads for a minimum backup capability of four (4) hours, except in
those areas where temporary power supply sources are being used pending installation of permanent PPSUs.

(e) Within thirty (30) days after the end of each calendar quarter until the entire Rebuild of the Cable System is Complete, the Grantee shall file a "Rebuild Progress Report" with DTIS. DTIS's receipt and/or review of a Rebuild Progress Report shall in no way excuse or waive any breach of the Franchise or other Applicable Law. If no change has occurred with respect to any of the information below, the Grantee may so indicate in lieu of filing/reporting the same material/information. The Rebuild Progress Report shall include, in a form approved by DTIS, which approval shall not be unreasonably withheld, the following:

(1) A system-level design map that clearly identifies, through customary symbols: (i) the location of all physical features of the Cable System, including coaxial cable routes, hubs, nodes and PPSUs; (ii) any construction that has occurred with respect to the electronic or physical features of the Cable System during the period covered by the Rebuild Progress Report, including placement and activation of PPSUs; and (iii) any construction that is anticipated with respect to the electronic or physical features during the upcoming three months. The City may review more detailed system-level design maps, including electronic features, fiber routes and active components, at the Grantee's primary business location in the City upon request.

(2) The number and percentage of Dwelling Units served by each PPSU, the location of each PPSU, and a description of the Grantee's efforts to install PPSUs, including the status of electrical activation to date and during the period covered by the Rebuild Progress Report. The Grantee also will provide then current projections for PPSU installations planned for the upcoming three months.

(3) The total number, location, and geographic boundaries of nodes activated, and a description of the services offered to date, during the period covered by the Rebuild Progress Report.
Report, and planned during the upcoming three months. Once all nodes are activated, this item need not be further reported.

(4) The location and a description of each building housing equipment that serves as a hub and the status of each such building not yet complete. Once all hubs are complete, this item need not be further reported.

(5) The number, date, location, and type of all City permits related to the Rebuild that have been: (i) applied for but not yet granted; (ii) granted (including date of grant) during the period covered by the Rebuild Progress Report; and/or (iii) expected to be applied for during the upcoming three months.

(6) A complete list, by street address, of every multiple Dwelling Unit ("MDU") inspected within the period covered by the Rebuild Progress Report, a list of MDUs to be inspected in the upcoming three (3) months, and a list of every MDU that has not yet been inspected by the Grantee.

(7) A complete list of each Subscriber location where a drop has been inspected from January 1, 2004, through the end of the period covered by the Rebuild Progress Report, identified by property address.

(8) A status report on the Grantee's efforts to install and activate PPSUs including, with respect to the prior calendar quarter, the number of PPSUs installed either in the public right-of-way or on private property, the location of all installed PPSUs, the number of permit applications submitted to the Department of Public Works, and the number of outstanding requests to PG&E.

(f) The City shall provide the Grantee the opportunity to protect from disclosure to the public any information it submits to the City that is proprietary, trade secret, or is otherwise protected from disclosure under the California Public Records Act (Cal. Gov't Code Section 6254, et seq.), the City's Sunshine Ordinance (S.F. Admin. Code Chapter 67), and other Applicable Law. In the event
that the City receives a request for disclosure of any information provided by the Grantee to the City under seal (as set forth below), the City shall inform the Grantee in writing (which may be by email or fax) at the notice addresses contained in the Settlement Agreement either that the City will: (i) refuse to disclose the protected information if the City finds that a proper basis exists for such refusal; or (ii) disclose the information unless ordered otherwise by a court if the City finds that no proper basis exists for such refusal. Nothing herein shall require the City to take any action, or to refuse to release information, where to do so would violate Applicable Law. The City's obligations under this subsection (f) are limited to confidential, trade secret, or otherwise protected information that is provided to the City in a sealed envelope and identified on the envelope and on the face of each page of the document as proprietary, trade secret, or otherwise protected from disclosure, and that is accompanied by a written certification from the Grantee that it believes, in good faith, that such information is protected from disclosure. The City hereby acknowledges that the Grantee asserts that its system-level design maps are proprietary and trade secret information of the Grantee.

(g) (1) The Grantee's failure to comply with this Section 25 will result in damages to the City that will be impractical or difficult to determine. The Grantee agrees that the liquidated damages set forth in this subsection are not penalties, but rather are reasonable estimates of the damage that the City will incur if the Grantee does not comply with the requirements of the Rebuild Extension Ordinance. The liquidated damages set forth in this subsection are in addition to any other remedies or relief that may be available to the City under the Franchise or Applicable Law, provided that the City shall not be entitled to exercise any other remedy for damages resulting from a particular breach once it has accepted payment of liquidated damages and has not rejected and returned such payment within thirty (30) days of receipt.
(2) Notwithstanding the foregoing, the payment of liquidated damages under this subsection shall not limit the City's authority under 47 U.S.C. § 546(c)(1) to consider the Grantee's failure to comply with the requirements of this Section 25 in determining whether: (i) the Grantee substantially complied with material terms of the Franchise and Applicable Law; (ii) the quality or level of the Grantee's service was reasonable in light of community needs; or (iii) the Grantee has the ability to provide the services, facilities, and equipment set forth in its renewal proposal.

(3) If the Grantee does not satisfy each requirement set forth in subparagraphs (1) and (2) of subsection (b) of this Section, the Grantee shall provide a four dollar ($4.00) credit per month or portion thereof to each then current Subscriber (one per subscription) to the Grantee's Cable Service to whom Upgraded Services should be but are not available until the date such Upgraded Services are available to such Subscriber.

(4) If the Grantee does not satisfy each requirement set forth in subparagraphs (1) and (2) of subsection (b) of this Section, the Grantee shall pay to the City sixty thousand dollars ($60,000) per month or portion thereof for each month that such requirement is not satisfied.

(5) If the Grantee does not satisfy each requirement in subparagraph (3) of subsection (b) of this Section, the Grantee shall pay to the City sixty thousand dollars ($60,000) per month or portion thereof for each month that such requirement is not satisfied.

(6) If the Grantee does not satisfy each requirement in subparagraph (4) of subsection (b) of this Section, the Grantee shall pay to the City sixty thousand dollars ($60,000) per month or portion thereof for each month that such requirement is not satisfied.

(7) The Grantee shall not be obligated to pay more than sixty thousand dollars ($60,000) per month or portion thereof in liquidated damages for any breach or collection of breaches under subparagraphs (4), (5), and (6) of this subsection (g) of Section 25.
(8) If the Grantee fails to provide any of the information required under subsections (a),
(e), or (k) of this Section 25, the Grantee shall pay to the City liquidated damages of one hundred
dollars ($100) per day until such information is submitted.

(9) Liquidated damages shall commence on the date that performance was due and
continue until the Grantee has fully performed the applicable obligation or obligations giving rise
to the payment of liquidated damages. The Grantee's obligation to pay liquidated damages under
this subsection (g) does not depend on a demand from the City. Without limiting the foregoing, the
City may demand payment of liquidated damages and the Grantee shall submit such payment
within thirty (30) days after the City's demand. The Grantee shall continue to pay liquidated
damages on a monthly basis for each breach until each of the underlying obligations that gave rise
to the liquidated damages is satisfied.

(10) The Grantee acknowledges that: (i) any obligation to pay liquidated damages does not
in any way affect its obligation to pay Franchise fees or perform other obligations in the
Franchise; (ii) such liquidated damages do not constitute Franchise fees and are not subject to any
limitations on franchise fees contained in 47 U.S.C. § 542, Section 8 of the Franchise, or
Applicable Law; and (iii) any obligation to pay lawful liquidated damages is not a cost of
satisfying franchise requirements as provided in 47 C.F.R. § 76.925. The Grantee agrees that it
will not pass through the cost of any liquidated damages to Subscribers through Subscriber rates
or itemize or otherwise identify on Subscribers' bills any obligation the Grantee may have to pay
lawful liquidated damages.

(11) On or before the Extension Date, the Grantee shall provide to the City an irrevocable
standby letter of credit in a form and from an issuer approved by the City's Risk Manager and the
City Attorney, in their reasonable discretion, in the amount of two million dollars ($2,000,000) to
secure payment of liquidated damages under this subsection. The Grantee shall maintain the letter
of credit until the entire Rebuilt System is Complete. The Grantee shall provide written notice that the Rebuilt System is Complete, as set forth in subparagraphs (1) and (2) of subsection (d) of this Section, and request that the City release the letter of credit. The City will have sixty (60) days to either explain why the Rebuilt System is not Complete or to release the letter of credit. In the event that: (i) the Grantee fails to pay any liquidated damages in accordance with the terms of this subsection; or (ii) the letter of credit is set to expire within the following thirty (30) days (unless such expiration is set to occur after the Franchise term expires) and the Grantee has not renewed it or provided a new letter of credit satisfactory to the City, the City may, in its sole discretion and upon ten (10) days notice to the Grantee, draw upon the letter of credit; provided that the City shall not be required to give such notice if the letter of credit is set to expire before such ten (10) day notice period. To the extent that the City draws upon the letter of credit, the Grantee shall replenish the letter of credit to its full amount within thirty (30) days. To the extent that the City has drawn on the letter of credit because the letter of credit was set to expire as set forth above, and the City has not used such amounts to satisfy the Grantee's obligations, the City shall repay the amounts drawn if the Grantee, within ninety (90) days, renews the letter of credit or provides a new letter of credit in a form and from an issuer approved by the City's Risk manager and the City Attorney, in their reasonable discretion.

(12) In the event that the Grantee disputes that it must pay liquidated damages, or disputes the amount of liquidated damages owed, the Grantee shall pay on time and under protest the maximum amount of liquidated damages that the City believes the Grantee may owe and shall submit to the City with such payment a written explanation of the reasons why the Grantee believes it does not owe liquidated damages or owes less than the amount remitted. Within thirty (30) days of its receipt of such written explanation, the City shall review the explanation and either notify the Grantee of its determination or state that it needs another thirty (30) days to review the situation.
If the Grantee disputes the City's determination, or if the City does not make a determination within the period prescribed, the Grantee may pursue any remedy available to it at law or in equity.

(h) The Grantee shall not deny any services, including any Upgraded Services, to any group of potential Subscribers because of the income of the residents in the local area in which such group resides.

(i) The Grantee shall inform affected Subscribers at least forty-eight (48) hours prior to any scheduled or expected temporary interruptions to existing services exceeding five minutes during the period of 5:30 a.m. to 1:00 a.m. Pacific Time which may occur due to construction under the Rebuild Extension Ordinance.

(j) (1) The Grantee shall not be excused from the timely performance of its obligations in this Section 25 except for acts or omissions beyond the control of the Grantee, that the Grantee could not reasonably have anticipated (including the following: wars; civil disturbance; changes in laws, regulations, rules, orders or procedures of any governmental authority; Acts of God; sabotage; strikes; or failure or delay in transportation). A delay shall not be excused to the extent that Grantee could reasonably have avoided or mitigated the delay by altering its construction plans. Acts or omissions of Affiliates or agents shall be considered to be within the Grantee's control. It is agreed and understood that the Grantee shall account for and include in its scheduling the possibility of delays in obtaining permits, and pole attachment and other access rights, and the Grantee shall provide itself sufficient advance time to allow for such delays.

(2) In order to claim that a delay is excused under subparagraph (1) of this subsection, the Grantee must notify the City of the act or omission upon which a claim is based within thirty (30) days of the date that the Grantee knew or reasonably should have known that such act or
omission could affect the Grantee's timely performance had the Grantee exercised reasonable
diligence. Knowledge of any Affiliate or agent of the Grantee shall be imputed to the Grantee.
In addition, the Grantee shall promptly notify the City when an event under subparagraph (1) of
this subsection has terminated. The Grantee must identify with specificity all of the conditions
that it believes are the basis for a claim under subparagraph (1) of this subsection. In order to
justify a claim that any delay should be excused under this subsection, the Grantee must
demonstrate that it has exercised due care to prevent the occurrence of such events, to the
extent possible, and has taken (or is taking) reasonable steps to mitigate the delay caused by or
resulting from such events.

(3) Extensions of time for claims under subparagraph (1) of this subsection that overlap
in time are not cumulative and only the event causing the longest delay shall be taken into
account in calculating any extension period.

(4) The Grantee shall not assert that any delay in the Rebuild is excused under
subsection (j) of this Section as a result of any act or omission arising prior to the Extension
Date.

(k) (1) Independent Evaluator: Within thirty (30) days of Extension Date, the City shall
retain an Independent Evaluator to: (i) conduct performance tests of the Cable System; (ii)
inspect the Grantee's electrical facilities and connections by November 30, 2005; (iii) inspect
the Grantee's PPSUs that are on installed on utility poles or on private property; and (iv)
inspect the Grantee's PPSUs that are installed on the public right-of-way surface.

(2) The Grantee shall reimburse the City for up to eighty thousand dollars ($80,000) in
the aggregate of the fees and expenses of the Independent Evaluator. The Grantee shall not be
responsible for any fees and expenses in excess of such amount except as otherwise expressly
provided in subparagraph (10) of subsection (k) of this Section. The Independent Evaluator's
work shall be performed by one or more licensed engineers who are qualified to perform the
tests required by the Franchise and assess plant and drop compliance with the current version
of applicable safety and construction codes, including but not limited to electrical codes and
codes or other requirements governing utility pole and ground clearances.

(3) The City's selection of any Independent Evaluator must be approved in writing by the
Grantee, and such approval shall not be unreasonably withheld. The Independent Evaluator
shall work under the direction of the DTIS Director.

(4) The Grantee shall use good faith, diligent efforts to notify the Independent Evaluator
at least three (3) business days in advance of any plans to inspect, maintain, or repair facilities,
except that the Grantee is not required to notify the Independent Evaluator of any removal of
installations, Subscriber installations, and routine maintenance drive-throughs. The Grantee
shall permit the Independent Evaluator to accompany the Grantee when it performs inspection,
maintenance, and repair activities, provided that the Independent Evaluator shall not interfere
with any work being performed by the Grantee.

(5) No later than sixty (60) days after the Extension Date, the Independent Evaluator
shall commence and diligently pursue to completion (no later than ninety (90) days after
commencement) the following performance tests ("Tests") at up to thirty (30) Subscriber
network distribution locations at the tap port, using a test drop. The Subscriber network
distribution locations shall be selected by the City and not disclosed to the Grantee until the day
prior to the Tests. The Tests will be performed under the City's supervision and in accordance
with procedures and documentation established by the Independent Evaluator, and approved by
the Grantee and the City, which approval shall not be unreasonably withheld. Neither the City
nor the Grantee will withhold its consent to any procedures and documentation that are
consistent with best engineering and testing practices in the cable television industry. The
Grantee must demonstrate that the Cable System satisfies the requirements of subparagraphs (i) through (x) of subsection (d) of this Section, and conforms to Federal Communications Commission ("FCC") standards with respect to items (i) through (x), below, and satisfies item (xi), below, as well as any additional criteria mutually agreed upon by the City and the Grantee that are consistent with best engineering and testing practices in the cable television industry:

(i) Visual carrier levels on each activated Channel.

(ii) Aural carrier levels on each activated Channel.

(iii) The calculated difference between the visual and aural carrier levels on each activated Channel.

(iv) Adjacent Channel video difference on activated Channels.

(v) The difference between the highest video carrier level on any activated Channel and the lowest video carrier level on any activated Channel.

(vi) Carrier-to-noise ratio on 6 Channels in first 300 MHz and on an additional channel in each successive 100 MHz, selected by City.

(vii) Low frequency distortions on six (6) Channels in first 300 MHz and on an additional channel in each successive 100 MHz, selected by City.

(viii) Intermodulation distortions on six (6) Channels in first 300 MHz and on an additional channel in each successive 100 MHz, selected by City.

(ix) Expert rating of picture distortions, if any, on all activated Channels.

(x) Signal leakage.

(xi) Digital performance measurements comparable to the performance measures set forth in (i) through (x), above, to determine the quality of the digital transmission.
Within ten (10) days after performance of any Tests, the Independent Evaluator shall provide to
the City and the Grantee written documentation of the results of the Tests.

(6) Immediately prior to conducting any Test as set forth in subparagraph (5) of this
subsection (k), the Independent Evaluator, under the City's supervision, shall take the following
measurements at the Grantee's headend: (i) video carrier levels and picture quality on all
Channels leaving the headend; (ii) audio carrier levels on all Channels leaving the headend;
(iii) FM radio carrier levels, if any; and (iv) any measurements at the headend required in
order to determine compliance with the standards set forth above. Additionally, prior to
conducting any Tests, the Independent Evaluator shall present the City with copies of current
calibration certificates issued by an independent calibration laboratory for all frequency/
voltage sensitive equipment that will be used in the Tests.

(7) If the Tests demonstrate that any portion of the Cable System tested fails to comply
with all applicable technical and performance requirements, the Grantee shall promptly cure
any such identified deficiencies. If the Independent Evaluator determines that fewer than ninety
percent (90%) of the Subscriber network distribution locations tested satisfy the criteria set
forth in subparagraph (5) of subsection (k) of this Section, then the Grantee shall not have
complied with the deadline contained in subparagraph (1) of subsection (b) of this Section. The
Grantee shall undertake such actions as may be necessary to ensure its compliance and shall
pay the City liquidated damages as required under subparagraphs (1) through (3) of subsection
(g) of this Section.

(8) On or before October 30, 2005, the Grantee shall cause the Cable System to comply
with the requirements of Section 31(j) of the Franchise, and all applicable federal, state and
local construction requirements. No later than November 30, 2005, the Independent Evaluator
shall commence and diligently pursue to completion (no later than ninety (90) days of
commencement) inspections to determine whether the Cable System complies with the 
requirements of Section 31(j) of the Franchise and all applicable federal, state and local 
construction requirements. The Independent Evaluator shall inspect a minimum of ten percent 
(10%) of outside plant miles, including, but not limited to, the Grantee’s plant attached to poles, 
pedestals and vaults of the Cable System, and a minimum of three hundred (300) cable drops at 
Subscriber locations. DTIS will select the Subscriber locations and portions of the outside plant 
to be inspected. The Independent Evaluator shall report its findings to the City and the 
Grantee. If the Independent Evaluator determines that any portion of the Cable System fails to 
comply with the applicable requirements, the Grantee shall promptly cure any such identified 
deficiencies, including notifying third parties as necessary to accomplish the cure. The Grantee 
shall not have complied with the October 30, 2005 deadline for the completion of such work if 
the Independent Evaluator determines that fewer than ninety percent (90%) of: (i) plant 
attachments, pedestals and vaults along outside plant miles inspected or (ii) cable drops at 
Subscriber locations inspected, comply with the applicable requirements. The Grantee shall 
undertake such actions as may be necessary to ensure its compliance and shall pay the City 
liquidated damages as required under subparagraphs (1) through (3) of subsection (g) of this 
Section effective from November 1, 2005. For purposes of determining whether the Grantee 
must pay liquidated damages under this subparagraph (8), no facility shall be deemed non- 
compliant for purposes of the ninety percent (90%) compliance standard unless the Grantee is 
responsible for the deficiency. In no event shall the Grantee be responsible for a deficiency, for 
purposes of the ninety percent (90%) compliance standard, if the deficiency was caused by the 
acts or omissions of a third party; provided that, with respect to any portion of the plant 
installed, constructed or last upgraded after January 1, 2002, the Grantee must demonstrate to 
the City that any such deficiency resulted from the acts or omissions of such third party.
Subscriber drops shall not be included for purposes of determining compliance of outside plant miles. The City and the Grantee shall develop jointly and agree upon a sampling and inspection method for facilities and locations to be reviewed under this subparagraph (8) consistent with generally acceptable engineering practices and sampling methods; provided that, if the City and the Grantee cannot reach such an agreement by November 15, 2005, the parties shall engage a mutually acceptable independent engineering consulting firm with expertise in the cable industry to develop the sampling and inspection method. The Grantee shall be responsible for up to fifteen thousand dollars ($15,000) of fees charged by such consultant.

(9) On or before October 30, 2005, the Grantee shall cause all PPSUs installed on utility poles on private property or on other property that is not on a public right-of-way surface, to conform to all applicable requirements of subparagraph (5) of subsection (d) of this Section and Section 31(j) of the Franchise. No later than November 30, 2005, the Independent Evaluator shall commence and diligently pursue to completion (no later than ninety (90) days of commencement) inspections of at least ten percent (10%) (up to twenty five percent (25%) at the City’s discretion) of all PPSUs installed on utility poles, on private property, or on other property that is not on a public right-of-way surface, to determine whether the PPSUs conform to all the applicable requirements of subparagraph (5) of subsection (d) of this Section and Section 31(j) of the Franchise and all applicable federal, state, and local construction requirements. The Independent Evaluator shall report its findings to the City and the Grantee.

If the inspections demonstrate that any portion of the Cable System tested fails to comply with the applicable requirements, the Grantee shall promptly cure any such identified deficiencies. If the Independent Evaluator determines that fewer than ninety percent (90%) of the PPSUs tested conform to the applicable requirements, then the Grantee shall not have complied with the October 30, 2005, deadline contained in subparagraph (3) of subsection (b) for the
completion of such work. The Grantee shall undertake such actions as may be necessary to ensure its compliance and shall pay the City liquidated damages as required under subparagraphs (1) through (3) of subsection (g) of this Section effective November 1, 2005; provided that if the Cable System satisfies such testing standard, but the Independent Evaluator identifies any PPSU that is deficient, the Grantee shall pay to the City a one time fee of seven hundred and fifty dollars ($750) for each deficient PPSU identified.

(10) Within sixty (60) days from the date that the Grantee notifies the City that all of the PPSUs located on a public right-of-way surface in Underground Areas have been installed, the Independent Evaluator shall commence and diligently pursue to completion (no later than ninety (90) days of commencement) tests of at least ten percent (10%) (up to twenty-five percent (25%) at the City’s discretion) of all such PPSUs in Underground Areas to determine whether the PPSUs conform to all the applicable requirements of subparagraph (5) of subsection (d) of this Section and Section 31(i) of the Franchise and all applicable federal, state, and local construction requirements. The Independent Evaluator shall report its findings to the City and the Grantee. If the Tests demonstrate that any portion of the Cable System tested fails to comply with the applicable requirements, the Grantee shall promptly cure any such identified deficiencies. If the Independent Evaluator finds that fewer than ninety percent (90%) of the PPSUs tested conform to the applicable requirements, then the Grantee shall not have complied with the deadline contained in subparagraph (4) of subsection (b) of this Section. The Grantee shall undertake such actions as may be necessary to ensure its compliance and shall pay the City liquidated damages as required under subparagraphs (1) through (3) of subsection (g) of this Section effective from the one (1) year anniversary of the date on which the Grantee obtains an excavation permit to construct the last PPSU to be installed in an Underground Area; provided that if the Cable System satisfies such testing standard, but the Independent Evaluator
identifies any PPSU that is deficient, the Grantee shall pay to the City a one time fee of seven
hundred and fifty dollars ($750) for each deficient PPSU identified.

(11) For each test referenced in subparagraphs (7) through (10) of subsection (k) of this
Section, if the Independent Evaluator determines that ten percent (10%) or more of the
locations tested do not comply with the applicable requirements, the City may select additional
test locations or PPSUs, and the Independent Evaluator shall retest until the City determines
that at least ninety percent (90%) of the locations tested comply with the applicable
requirements. To the extent that the cost of such retesting is not covered by the amount paid to
the Independent Evaluator under subparagraph (1) of subsection (k) of this Section, then the
Grantee shall be responsible for any such additional costs, and the Grantee may deduct this
amount from any liquidated damages that may be due and owing the City.

(12) The various tests contemplated under this subsection (k) have been established to
verify Completion of aspects of the Rebuild, and for no other purpose. The Grantee shall not
again be subjected to any test under this subsection (k) for purposes of determining Completion
once the applicable test criteria has been satisfied. Except to the extent that the Grantee shall
be a cause of any delay in the testing process, if the Independent Evaluator does not commence
any applicable test by the date provided for in the applicable subparagraph of subsection (k),
and diligently pursue the same to completion, the Grantee shall not be liable for any liquidated
damages under subsection (g) with respect to such testing criteria or Cable System requirement.

(i) (1) The Rebuilt System shall be Complete only when the Grantee demonstrates that: (i)
the Grantee is offering and has widely advertised the availability of Upgraded Services as set
forth in subparagraph (2) of subsection (b) of this Section; (ii) the Cable System has satisfied
each of the requirements in subsection (d) of this Section; (iii) the Cable System is in
compliance with FCC signal leakage standards; and (iv) the Independent Evaluator has
determined that the Cable System satisfies the requirements of subparagraphs (5), (8), (9), and (10) of subsection (k) of this Section.

(2) The Grantee shall notify the City that the Rebuilt System is Complete by submitting a written affidavit to DTIS that all of the requirements in subparagraph (1) of this subsection have been satisfied. Within thirty (30) days of the City's receipt of the Grantee's affidavit, the City shall respond in writing with a determination about whether it agrees that the Rebuilt System is Complete, or shall state that it needs additional time to make such a determination not to exceed an additional thirty (30) days.

(m) The Grantee shall perform signal leakage tests once a year, including one fly-over test, and shall provide those test results to the City within forty-five (45) days after the signal leakage tests are complete, and demonstrate to the City that the Grantee is in compliance with FCC signal leakage standards.

(n) The Grantee warrants and represents that it will diligently comply in good faith with all of the provisions of the Franchise, as modified by the Rebuild Ordinance and Rebuild Extension Ordinance.

(o) The Grantee shall comply with all terms and provisions of the Power Supply Agreement, including all construction standards and requirements therein.

SECTION 25.5 TECHNICAL UPGRADE OF CABLE FACILITIES

(a) Multiple Dwelling Units: During the construction of the Rebuilt System, until the entire Rebuild is Complete, the Grantee shall inspect and repair, if necessary, the cable facilities at every multiple Dwelling Unit (a building with ten (10) or more Dwelling Units) ("MDU") to which it has been afforded access to determine whether such facilities comply with Section 31(j) of the Franchise. On or before October 30, 2005, the Grantee shall provide DTIS with a certification confirming that it has completed such inspections and repaired, or upgraded all
facilities as required under this Section 25.5 and demonstrating that the Grantee has made good faith and diligent efforts to contact all owners of MDUs to which it did not have access in order to inspect and repair those facilities.

(b) Maintenance of Cable System: From and after the Extension Date, any time the Grantee performs work on any facilities between the tap and a Subscriber's television the Grantee shall inspect the facilities serving the location to determine if such facilities are in compliance with Section 31(i) of the Franchise. If such facilities are not in compliance with Section 31(i) of the Franchise, the Grantee shall perform any maintenance or upgrade required to bring the facilities into compliance with Section 31(i). The Grantee shall maintain complete and accurate records by address of Subscriber locations that have been inspected, maintained, or upgraded pursuant to this Section.

(c) Without limiting the Grantee's other obligations contained in this Section 25.5, the Grantee shall inspect and repair every cable drop and associated facility whose compliance with the San Francisco Municipal Codes appears to be affected by an electrical service upgrade within thirty (30) days of receiving a report of the street address from the Department of Building Inspection.

(d) Remedy for Violations: If DTIS determines that any portion of the Grantee's facilities are not in compliance with the requirements of Section 31(i) of the Franchise, DTIS may issue a correction notice regarding the non-compliant facility to the Grantee. The Grantee shall have ten (10) business days from the date of receipt of the correction notice to bring the facility into compliance, unless DTIS determines, in its sole discretion, that an emergency or an immediate threat to persons or property requires that such time be shortened. DTIS may issue a second correction notice upon finding that Grantee has failed to bring any facility into compliance with the requirements of Section 31(i) after receipt of a first notice.

(e) Liquidated Damages.
(1) The Grantee's failure to comply with the provisions of this Section 25.5 and Section 31(j) of the Franchise will result in damages to the City that will be impractical or difficult to determine. The Grantee agrees that the liquidated damages set forth in this subsection are not penalties but are reasonable estimates of the damage that the City will incur if the Grantee does not comply with the requirements of this Section. The liquidated damages set forth in this subsection are in addition to any other remedies or relief that may be available to the City under the Franchise or Applicable Law, except that the City shall not be entitled to exercise any other remedy for damages for a particular breach once it has accepted payment of liquidated damages and has not rejected and returned such payment within thirty (30) days of receipt. The Grantee shall pay to the City liquidated damages in the following amounts: (i) two hundred and fifty dollars ($250) per non-compliant facility that the Grantee fails to bring into compliance within the initial correction period provided pursuant to subsections (a) through (d) herein; and (ii) five hundred dollars ($500) per non-compliant facility per month that the Grantee fails to repair within ten (10) days after a second correction notice has been issued pursuant to subsections (a) through (d) herein.

(2) Liquidated damages shall commence on the date that performance was due and shall continue until the Grantee has fully performed the applicable obligation giving rise to the payment of liquidated damages. The Grantee's obligation to pay liquidated damages does not depend on a demand from the City. Without limiting the foregoing, the City may demand payment of liquidated damages and the Grantee shall submit such payment within thirty (30) days after the City's demand. The Grantee shall continue to pay liquidated damages on a monthly basis for each breach until the Grantee's underlying obligation that gave rise to the liquidated damages is satisfied.
(3) The Grantee acknowledges that: (i) any obligation to pay liquidated damages does not in any way affect its obligation to pay Franchise fees or perform other obligations in the Franchise; (ii) such liquidated damages do not constitute Franchise fees and are not subject to any limitations on franchise fees contained in 47 U.S.C. § 542, Section 8 of the Franchise, or Applicable Law; and (iii) any obligation to pay lawful liquidated damages is not a cost of satisfying franchise requirements as provided in 47 C.F.R. § 76.925. The Grantee agrees that it will not pass through the cost of any liquidated damages to Subscribers through Subscriber rates or itemize or otherwise identify on Subscribers’ bills any obligation the Grantee may have to pay liquidated damages.

(4) Notwithstanding the foregoing, the payment of liquidated damages under this subsection shall not limit the City’s authority to consider the Grantee’s failure to comply with the requirements of this subsection in determining whether: (i) the Grantee substantially complied with the material terms of the Franchise and Applicable Law; (ii) the quality or level of the Grantee’s service was reasonable in light of community needs; and (iii) the Grantee has the ability to provide the services, facilities and equipment set forth in its renewal proposal, as provided by 47 U.S.C. § 546(c)(1).

(j) Deposit: The City acknowledges that the Grantee has deposited with the City seventy-five thousand dollars ($75,000) to guarantee the Grantee’s payment of any liquidated damages that are due pursuant to subsection (e) of this Section ("Deposit"). In the event that the Grantee fails to pay any liquidated damages in accordance with the terms of this subsection, the City may, in its sole discretion and upon ten (10) days notice to the Grantee, draw upon the Deposit. To the extent that the City draws upon the Deposit, the Grantee shall replenish the Deposit to its full amount within thirty (30) days.
(g) The Grantee understands and agrees that this Section 25.5 is a material term of the Franchise. The Grantee further agrees that the City provided the Grantee with notice of a breach of Section 25.5 of the Franchise, as that Section existed on the Extension Date. The City acknowledges that the Grantee identified matters that it alleged caused certain delays and disputed the existence of any breach. The modifications to this Section 25.5 provide the Grantee an opportunity to satisfy the underlying obligations of Section 25.5.

(h) Nothing in the Franchise relieves the Grantee of any obligation it may have under Applicable Law now or in the future to correct violations that may present a danger to the health of safety of persons or property. The Franchise does not in any way relieve the Grantee of any criminal liability or civil liability to any third party or to the City for damage caused by any safety code violation, even if the Grantee is complying with the provisions for correction of violations contemplated in this Section 25.5.

SECTION 32. DEFINITIONS.

Where capitalized, the following terms used in this Franchise Agreement shall have the meaning provided herein.

32.1 "Affiliate" when used in relation to any Person shall mean another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

32.2 "Board" shall mean the Board of Supervisors of the City and County of San Francisco.

32.3 "Cable Operator" shall mean any Person or group of Persons (a) who provides any Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in the Cable System, or (b) who otherwise controls or is
responsible for, through any arrangement, the management and operation of the Cable System.

32.4 "Cable Service(s)" shall mean (a) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

32.5 "Cable System" and "Community Antenna System" shall mean the facilities installed, maintained or operated by the Grantee pursuant to the Franchise Agreement, 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 the geographic boundaries of the City and County of San Francisco, but shall not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934, except that such facility shall be considered a Cable System other than for purposes of 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 services; or (D) an open video system that complies with section 653 of the Communications Act of 1934; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

32.6 "Channel" shall mean a band of frequencies in the electromagnetic spectrum which is capable of delivering NTSC (i.e. 6 MHz) or digital signals.
32.7 "Construction Plan" shall mean the construction plan developed by the Grantee and the City, pursuant to Ordinance No. 541-80, that governed construction completed by the Grantee prior to the Date of the Franchise Amendments.

32.8 "Date of the Franchise Amendments" shall mean the date on which the Mayor signs the ordinance contained in Board of Supervisors File Number 32-96-1.4 or, if the Mayor does not sign the ordinance, ten days after the date on which the ordinance was delivered to the Mayor's Office for consideration, or, if the Mayor disapproves the ordinance, the date on which the Mayor's veto is overridden.

32.9 "Expansion Area" shall mean an area designated in Appendix F to be incorporated within the Required Service Area pursuant to the terms of subsection (c) of Section 26 of the Franchise Amendments.

32.10 "Franchise Agreement" and "Franchise" shall mean all the terms of this franchise originally granted by Ordinance Number 105-64, as amended.

32.11 "Franchise Amendments" shall mean the additions and deletions to the Franchise Agreement adopted by the ordinance contained in Board of Supervisors File Number 32-96-1.4.

32.12 "Gross Revenue," shall mean:

(a) All cash, payments, or other consideration of any kind and in any form whatever (hereafter " Amounts") received by the Grantee or by any Affiliate of the Grantee that is a Cable Operator of the Cable System, including, but not limited to: (i) Amounts received for the provision of any Cable Service, including basic, cable programming, optional, premium, per-Channel, and per-program services; and (ii) Amounts received for installation, disconnection, re-connection, change-in-service, repair, maintenance, late fees, and rental or sale of equipment; and (iii) Amounts received for advertising in...
program guides; and (iv) Amounts received for carriage of any programming on the Cable System (including Amounts for advertising, but only as provided in subsection (c)); and (v) Amounts received for carriage of home shopping Channels; and (vi) Amounts received for studio and production equipment rental and personnel fees; and (vii) the fair market value of any free services, except as provided in subsection (d).

(b) Gross Revenue shall also include Amounts received by any Person who, pursuant to any arrangement with the Grantee or any Affiliate of the Grantee, receives Amounts that would be Gross Revenue pursuant to subsection (a) if they were received by the Grantee or by any Affiliate of the Grantee that is a Cable Operator of the Cable System, to the extent that the Amounts received by such Person are (i) of a type normally received in the ordinary course of business by a cable operator similarly situated to the Grantee or to any Affiliate of the Grantee who is a Cable Operator of the Cable System, or (ii) of a type actually received by the Grantee or any Affiliate of the Grantee who is a Cable Operator at any time within 6 months after the Date of the Franchise Amendments.

(c) Gross Revenue shall also include all Amounts received by the Grantee for advertising distributed over the Cable System, except revenue received from Bay Cable Advertising ("BCA"), or by any other Affiliate of the Grantee engaged in the business of selling local or regional advertising on the Cable System ("BCA Equivalent"). With respect to revenue received from or by BCA or a BCA Equivalent, Gross Revenue shall equal the greater of: (i) all Amounts received by the Grantee from BCA or any BCA Equivalent or (ii) forty per cent (40%) of the "subscriber pro-rated amount" multiplied by the "net advertising revenue" received by BCA or any BCA equivalent. "Net advertising revenue" shall include gross revenue to BCA or any BCA
Equivalent, less any fees or commissions paid to any advertising agency that is not an Affiliate, but not reduced by the amount of any fee or commission paid to any advertising agency that is an Affiliate. The "subscriber pro-rated amount" shall be the number of Subscribers within the geographic boundaries of the City and County of San Francisco divided by the total number of subscribers served by cable systems for which advertising is sold by BCA or any BCA Equivalent.

(d) Gross Revenue shall not include: (i) any taxes on services furnished by the Grantee which are imposed directly upon any Subscriber by the United States, the State of California or by any local agency and collected by Grantee on behalf of the government; (ii) the revenue of any Person, including without limitation a supplier of programming to the Grantee, to the extent that said revenue is also included in Gross Revenue of the Grantee; (iii) the fair market value of any free services provided by the Grantee to employees of the Grantee, to Public Buildings, or as a contribution to any organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended; (iv) any investment income received by the Grantee or any Affiliate of the Grantee; (v) to the extent consistent with generally accepted accounting principles, consistently applied, actual bad debt write-offs; provided, however that any part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenue in the period collected; or (vi) Amounts paid by a Subscriber but subsequently refunded to the Subscriber.

(e) The Grantee shall pay the City Franchise fees on Gross Revenues derived from the operation of the Cable System to provide Cable Service. If Applicable Law changes to permit any other service revenues to be subject to Franchise fees, or to eliminate any category of revenues from being subject to Franchise fees, or changes the classification of any revenue
source to or from a "Cable Service," the Grantee shall modify its Franchise fee payments to
reflect such change, without requiring any action on the part of the City or any other entity, on
the earliest date that such change in law takes effect, and the Grantee shall thereafter pay
Franchise fees in accordance with such change. Grantee agrees that @Home residential
Internet service (or any successor residential Internet access service) ("@Home") constitutes a
Cable Service within the meaning of §32.4 of this Franchise and that Gross Revenues received
by the Grantee or any other Cable Operator of the Cable System from the provision of @Home
service shall be subject to the payment of franchise fees, unless and until the FCC by final
order, or a court of competent jurisdiction, rendering a judgment enforceable in San Francisco,
finds that residential Internet access service provided over a Cable System is not a "Cable
Service" and the order or judgment becomes final because a court of competent jurisdiction lets
stand or affirms such order or judgment and any time for appeal or review of such order or
judgment passes.

32.13 "PEG Channel(s)" shall mean a Channel designated for transmission of public,
educational or governmental audio, video and/or digital signals pursuant to Section 27
of the Franchise Amendments.

32.14 "PEG Channel Origination Location" shall mean a location from which the
Grantee will provide the capacity to distribute signals over any PEG Channel pursuant
to the requirements of Section 27.1.

32.15 "Person" shall mean any individual, partnership, association, joint stock
company, trust, corporation, or governmental entity.

32.16 "Public Building" shall mean (i) any building identified in Appendices A through
D; and (ii) any school, university or public building wired for service and served by the
Grantee on or before July 1, 1996; and (iii) any building owned or leased and occupied
by the City and County of San Francisco, the San Francisco Unified School District, or
the San Francisco Community College District; and (iv) any building owned or leased
and occupied by administrative offices of the San Francisco Housing Authority or the
Redevelopment Agency of the City and County of San Francisco. For the purposes of
this definition, a building shall be considered "occupied" by an eligible entity when the
entity occupies at least 50% of the rentable space, not including common areas.
32.17 "Rebuild Hub Service Area" shall mean an area within the City and County of
San Francisco identified in Appendix E.
32.18 "Rebuild" or "Rebuilt System" shall mean replacement, upgrade or enhancement
of any portion of the facilities installed by the Grantee to achieve a signal transmission
capacity at or exceeding 750 MHz.
32.19 "Required Service Area" shall mean the area designated in Appendix F, provided
that the Required Service Area shall also mean Expansion Areas and locations served
by line extensions when served or required to be served pursuant to the terms of
subsections (b) and (c) of Section 26 of the Franchise Amendments.
32.20 "Subscriber" shall mean any Person who lawfully receives any Cable Service
provided by the Grantee over the Cable System within the geographic boundaries of
the City and County of San Francisco, whether or not a fee is paid for such Cable
Service; provided however that Subscriber shall not mean any Person who receives
any Cable Service provided by the Grantee at an address within an area subject to a
franchise granted under Title VI of the Communications Act of 1934 by a superior
governmental entity.
32.21 "Upgraded Services" shall mean any services provided over the Rebuilt System, or any portion of it, that are not provided over portions of the Cable System that have not been rebuilt.

32.22 "Effective Date" shall mean the effective date of an enactment of the San Francisco Board of Supervisors approving the Rebuild Ordinance.

32.23 "Rebuild Ordinance" shall mean the Ordinance adopted by the San Francisco Board of Supervisors in Board File No. 990376.

32.24 "Comparable" shall mean equivalent to features found in three (3) of five (5) Sample Cable Systems at any time between January 1, 1999 and December 31, 2001. The Rebuilt System shall be Comparable to the Sample Cable Systems if it provides substantially equivalent: range of services; fiber-to-the feeder trunk and feeder design architecture; and stand-by powering of the headend, nodes, and the coaxial portion of the system. The Sample Cable Systems shall be selected by the City from a list of all of the cable systems with more than 140,000 subscribers as of the Effective Date of the Rebuild Ordinance that are owned or controlled by AT&T or TCI. Grantee shall provide such a list to City within thirty (30) days of the Effective Date of the Rebuild Ordinance. City shall select five cable systems from the list ("Sample Cable Systems") within ninety (90) days of receipt of the list and shall provide Grantee written notice of its selection.

32.25 "Applicable Law" shall mean all applicable federal, state, and lawful City ordinances, codes, rules, regulations, and orders.

32.26 "Complete" when used to describe the Rebuild shall mean that the Grantee has satisfied each of the requirements in subparagraph (I) of subsection (I) of Section 25 of the Franchise.
32.27 "Dwelling" shall mean a building, or portion thereof, containing one or more Dwelling Units.

32.28 "Dwelling Unit" shall mean a room or rooms in any building or portion thereof that is designed, built, owned, leased, let or hired out to be occupied or which is occupied as the home or residence of one or more persons. For the purpose of calculating liquidated damages under this Franchise, each Dwelling Unit shall be counted separately.

32.29 "Extension Date" shall mean the effective date of an enactment of the Board approving the Rebuild Extension Ordinance.

32.30 "Rebuild" or "Rebuilt System" shall mean a system that conforms to the minimum requirements in Section 25(d) of the Franchise, as amended.

32.31 "Rebuild Extension Ordinance" shall mean the amendments to the Franchise contained in the Ordinance adopted by the Board in File No. 05-1005.

32.32 "Settlement Agreement" shall mean the Settlement Agreement between the parties adopted by Ordinance of the Board in File No. 05-1005.

32.33 "Transfer" as that term is used in Section 6 of the Franchise shall include any assignment, sale, lease or transfer of assets of the Franchise and any transfer or sale of any direct or indirect ownership interest in Grantee (including by force or voluntary sale, merger, consolidation, receivership or any other means) that results in a change of control over the affairs of Grantee or its direct or indirect parent companies.

Section 3. Appendix C of Ordinance No. 105-64, as amended by Ordinance Nos. 528-88, 315-89, 42-91, 42-97, and 266-99, is amended as follows:
# APPENDIX C

<table>
<thead>
<tr>
<th>Address</th>
<th>Facility</th>
<th>Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>1145 Market St</td>
<td>City Offices</td>
<td>Admin Svcs</td>
</tr>
<tr>
<td>1380 Howard St</td>
<td>Offices</td>
<td>Parking/Health</td>
</tr>
<tr>
<td>350 Amber Drive</td>
<td>Academy</td>
<td>Police</td>
</tr>
<tr>
<td>44 Gough St</td>
<td>Offices</td>
<td>Human Resources</td>
</tr>
<tr>
<td>555-7th St</td>
<td>Building &amp; Grounds</td>
<td>PubDef/Sheriff</td>
</tr>
<tr>
<td>834 Toland St</td>
<td>Work Furlough Bldg</td>
<td>School District</td>
</tr>
<tr>
<td>Bryant btw 7th/8th</td>
<td>Overhead Lines</td>
<td>Sheriff</td>
</tr>
<tr>
<td>1401 Bryant St</td>
<td>Woods Division</td>
<td>Hetch Hetchy</td>
</tr>
<tr>
<td>2031 Stockton St</td>
<td>Potrero Division</td>
<td>Muni Railway</td>
</tr>
<tr>
<td>2500 Mariposa</td>
<td>Motive Power Division</td>
<td>Muni Railway</td>
</tr>
<tr>
<td>2502 Alameda St</td>
<td>Green Division</td>
<td>Muni Railway</td>
</tr>
<tr>
<td>425 Geneva</td>
<td>Paint Shop</td>
<td>Parking &amp; Traffic</td>
</tr>
<tr>
<td>80 Charter Oak</td>
<td>Pistol Range</td>
<td>Police</td>
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<tr>
<td>Skyline Drive</td>
<td>War Memorial Veterans Building</td>
<td>SFWMPAC</td>
</tr>
<tr>
<td>War Memorial Opera House</td>
<td>City Offices</td>
<td>SFWMPAC</td>
</tr>
</tbody>
</table>

ACKNOWLEDGED AND AGREED TO BY THE PARTIES:

CITY AND COUNTY OF SAN FRANCISCO
Approved By:

CHRIS VEIN
Acting Executive Director, Department of Telecommunications and Information Services
Date: 9/12/05

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

By:
WILLIAM K. SANDERS
Deputy City Attorney

COMCAST OF CALIFORNIA III, Inc.

RICK GERMANO
Regional Senior Vice President
Date: 9/12/05
Ordinance amending Ordinance No. 105-64, as amended by Ordinance Nos. 528-88, 315-89, 42-91, 42-97, and 266-99, by amending sections 1, 9, 24.3, 25, 25.5, 27.2, 31, and 32 and Appendix C to extend the term of the franchise and to clarify and expand the obligations of the Comcast of California III, Inc.

August 9, 2005 Board of Supervisors — CONTINUED
Ayes: 10 - Alioto-Pier, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Excused: 1 - Ammiano

August 16, 2005 Board of Supervisors — CONTINUED
Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin
Absent: 1 - Sandoval

September 13, 2005 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

September 13, 2005 Board of Supervisors — PASSED ON FIRST READING AS AMENDED
Ayes: 6 - Alioto-Pier, Dufty, Elsbernd, Ma, Maxwell, Peskin
Noes: 5 - Ammiano, Daly, McGoldrick, Mirkarimi, Sandoval

September 27, 2005 Board of Supervisors — FINALLY PASSED
Ayes: 6 - Alioto-Pier, Dufty, Elsbernd, Ma, Maxwell, Peskin
Noes: 5 - Ammiano, Daly, McGoldrick, Mirkarimi, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on September 27, 2005 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

Date Approved

10-07-05

Mayor Gavin Newsom