

**ORDINANCE NO. 5127**

AN ORDINANCE granting a nonexclusive, cable subscriber television system franchise to TCI Cablevision of Oregon, Inc., an Oregon corporation, fixing terms, conditions, and compensation of such franchise, repealing Ordinance 3242, as amended.

WHEREAS, TCI Cablevision of Oregon, Inc. (hereinafter FRANCHISEE) has been operating a cable communication system pursuant to Ordinance 3242.

WHEREAS, the City of Albany, Oregon (hereinafter CITY) intends by the adoption of this franchise to authorize the continued operation of the system; and,

WHEREAS, it is the determination of the city council that such continued operation can contribute significantly to the communication needs and desires of the CITY and many individuals, associations, and institutions; and,

WHEREAS, the CITY has the power to grant a franchise by virtue of its Charter and federal statutory authority; now, therefore,

**THE CITY OF ALBANY ORDAINS AS FOLLOWS:**

**1.1 - Short Title.** This ordinance shall be known as the Albany Cable franchise ordinance. Within this document, it shall also be referred to as "this franchise" or "the franchise".

**1.2 - Definitions.** For the purpose of this ordinance, the following terms shall have the meaning given herein:

"Antenna" shall be the tower or device for receiving radio and/or television signals for redistribution through a closed circuit.

"Bridge" includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine, or other place, but does not include a culvert.

"Cable" is the distributing conductor or conductors for the transmission of radio and/or television signals in a closed circuit.

"Cable Act" means the Cable Communications Policy Act of 1984, as amended by the "Cable Television Consumer Protection Act of 1992".

"Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service to subscribers.

"Cable television system" or "CATV" means (i) the one-way transmission to subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection of such video programming communication service.

"City" means the City of Albany, Oregon and the area within its boundaries as extended in the future.

"Conduit" is an electrical raceway for the enclosure of electrical conductors and may consist of rigid conduit of electrical metallic tubing or plastic tubing.

"Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television received of a subscriber and increases the number of channels the subscriber may select.

"Council" means the legislative body of the City.

"Customer", "user" or "subscriber" shall mean any person or entity lawfully receiving cable service.

"Franchise territory" means the area within the legal boundaries of the City and including any areas annexed during the term of the franchise.

"Franchisee" means TCI Cablevision of Oregon, Inc., an Oregon corporation, its successors, legal representatives or assigns.

"Gross Revenues" mean any revenue received by the Franchisee from the operation of the cable system in the franchise territory. Gross Revenue includes the following: all tiers of programming services, including basic services, installation and connection fees, premium services, and per channel and per event service; equipment rental; audio services; advertising income prorated by the number of Franchisee's customers in the City compared to the number of customers in the entire advertising area; and franchisee's share of all home shopping revenues. Gross Revenue shall not include any fees or taxes on Cable Service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Franchisee on behalf of such governmental unit or agency.

"May" is permissive.

"Person" includes an individual, corporation, association, firm, partnership and joint stock company.

"Public Place" includes any City-owned park, place, facility or grounds within the City that is open to the public, but does not include a street or bridge.

"Street" includes the surface, the air space above the surface, and the area below the surface of any public street, alley, avenue, road, boulevard, thoroughfare, or public highway, other public right-of-way, including public utility easements, but does not include a bridge or public place.

"Shall" is mandatory.

"Technical Facilities" or "Facilities" shall mean all real property, equipment, and fixtures used by Franchisee in the distribution of its services through its system and includes, but is not limited to, poles, conduit, cables, wires, microwave transmitters, antennae, amplifiers, etc.

**1.3 - Grant of Authority.** Subject to the conditions and reservations contained in this ordinance, the city hereby grants to Franchisee, the right, privilege and franchise to:

1. Construct, maintain and operate a cable television system within the city.
2. Install , maintain and operate on, over, or under the streets, bridges and public places approved by the city, facilities for the transmission of electronic signals to be distributed to the city and to its inhabitants and to other customers and territory beyond the limits of the City; and
3. Carry on a CATV subscription business for television systems, services and radio and television signal distribution of closed circuit signals.

**1.4 - Periodic Review.** Recognizing that the field of cable communications is ever changing and to help achieve the goal of a continually advanced and modern cable communications system for the City, the Franchisee and the City agree to the following review procedure:

1. The City reserves the right to adopt rules and regulations controlling the procedures as set forth below and subjects for review sessions. In the absence of any action taken by the City to exercise these rights, Franchisee shall be subject to at least the procedures and subjects described in this section.
2. All periodic review sessions shall be open to the public and notice of sessions published in a newspaper of general circulation in the City.
3. Topics which may be discussed at any evaluation session include, but are not limited to, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this franchise, judicial rulings, FCC rulings, line extension policies and any other topic the City and Franchisee deem relevant, to the extent that these topics are not subject to current negotiations or confidential under Oregon law.
4. As a result of a periodic review session, the City and the Franchisee may mutually agree to negotiate modifications or revisions to the franchise... negotiations are confidential under Oregon state or federal law.

**1.5 - Rules of Construction.** This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

1. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.
2. Time is of the essence of this ordinance. Franchisee shall not be relieved of its obligation to comply promptly with any provision of this ordinance by any failure of the City to enforce prompt compliance with any of its provisions.
3. Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the council.
4. Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.

1.6 - Severability and Constitutionality. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any other consideration or obligation required by the Franchisee of any franchise granted hereafter. If any court or governmental agency shall increase the maximum amount that may be required by the Franchisee, then the parties shall negotiate in good faith what the new fee shall be. During the period of negotiations, Franchisee shall continue to pay the City the compensation specified in Section 7.4.1 hereof.

1.7 - Commercial Impracticability. The Franchisee has examined the requirements of this franchise thoroughly and the acceptance hereof constitutes a representation that they have the financial and technical capacity to carry out their obligations stated herein. All services and requirements anticipated by this franchise are commercially practicable at the time of the granting of the franchise.

## **SECTION II - SERVICE**

2.1 - Continuous Service. The Franchisee shall maintain and operate an adequate cable system in the City. The Franchisee shall use due diligence to maintain continuous and uninterrupted service which shall conform at least to the standards common in the business and the standards adopted by the State and Federal authorities, and to standards of the City contained herein which are not in conflict with those adopted by State and Federal authorities. Under no circumstances is the Franchisee liable to the City for an interruption or failure of service caused by acts of God, unavoidable accident, or other circumstance beyond the control of the Franchisee through no fault of its own.

2.2 - Emergency Repair Service. The Franchisee shall maintain emergency repair service locally on a twenty -four- hour-per-day, seven -day-a-week basis. Such

emergency service shall be easily reached by phone during normal business hours and through answering service at all other times.

### 2.3 - Justified Service.

1. Activation of service. Franchisee Shall Promptly provide service upon request at standard installation rate where the potential subscriber can be served by extension of distribution cable past occupied dwelling units, equivalent to a density of ten (10) dwelling units per quarter mile of cable contiguous to the already activated system. Such density shall be computed on the basis of dwelling units which can be served on either side of the cable.
2. The Franchisee shall furnish service under this franchise within City limits whenever there is demand reasonably great enough to justify cost of installing cables and equipment. The City shall have the right to make the determination of the demand, in accordance with the provisions of Section 2.3.1 but shall give Franchisee fifteen (15) days notice prior to making the determination; and if the Franchisee fails to comply with the City's determination, then this franchise may be terminated pursuant to the procedures of Section 5.9 of this franchise.

### 2.4 - Extension of Service.

1. Service to Individual Subscribers from Existing System. Where a subscriber can be served from the Franchisee's existing system without extension of trunk or distribution cable, the Franchisee shall serve the potential subscriber upon request on the following terms and conditions:
  - a. The building unit shall be connected to cable at the standard installation charge if the connection can be made with an aerial drop and does not exceed 150 feet.
  - b. If the aerial connection drop exceeds 150 feet, the potential subscriber may be charged the actual cost for the distance exceed 150 feet plus standard installation charge; and Franchisee may request advance payment for each installation.
  - c. If the requested installation is to be placed underground, the potential subscriber must pay for furnishing open trench, as specified by the Franchisee, backfilling, and restoring the property to its original condition. Franchisee may request advance payment for such work.
  - d. The Franchisee shall arrange for all necessary easements over or under private property. Any easement for such use which has already been granted to a telephone or other utility company shall, to the extent possible, be interpreted so as to grant the Franchisee the same rights and privileges as have been granted to the telephone or other utility company. In such easements, the words "telephone" or "telephone company", "public utility" and the like shall be interpreted to include the Franchisee, to the extent possible.

- e. Standard installations will be performed within seven business days after an order has been placed on an average 90% of the time throughout the year.
2. **Additional Extension of System.** In areas not meeting the requirements for mandatory extension of service, Franchisee shall provide, upon request of five or more potential subscribers desiring service, an estimate of costs required to extend service to said subscribers and the amount by which said costs exceed what would be the cost of mandatory extension under this section. Franchisee shall extend service to any such dwelling units upon advance payment (or assurance of payment satisfactory to the Franchisee) of the additional cost. Such payment shall be non-refundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated in full or in part as consideration for early extension of service.
  3. **Underground Extension of System.**
    - a. **Installation of System.** In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Franchisee reasonable notice of such construction or development, including a copy of any final plat and of the particular date on which open trenching will be available for Franchisee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Franchisee's expense. Franchisee shall also provide specifications as needed for trenching.
    - b. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Franchisee fails to install its conduit, pedestals and/or vaults, and laterals within two (2) working days of the date the trenches are available, then should the trenches be closed after the two-day period, the cost of new trenching is to be borne by Franchisee.
    - c. In those areas and portions of the City where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground or hereafter may be placed underground, then the Franchisee shall likewise construct, operate, and maintain all of its transmission and distribution facilities underground.
    - d. It shall be the policy of the City to encourage all utilities, including Franchisee, to place all existing and future transmission and distribution facilities underground. The Franchisee agrees with this policy and will work with the City and other utilities to implement this policy.

### 2.5 - Levels of Service.

1. **Basic Service.** Basic service is the lowest tier of service regularly provided to all subscribers that includes the retransmission of local broadcast signals. In no event shall subscribers be required to subscribe to any other service as a condition for obtaining basic service.
2. **Service to Institutions.** Upon request, the Franchisee shall make single installations of its cable communications system facilities to each fire and police station, public school, Linn Benton Community College, County Courthouse, City offices, Public Museum and all public libraries within the franchise territory on the terms provided in Section 7 (2) of this Ordinance, except no standard installation fee shall be imposed for such installations. No monthly service charge shall be made for distribution of the basic service to these locations.

### **SECTION III - CONSTRUCTION**

#### **3.1 - Rearrangement of Facilities to Permit Moving of Buildings and Other Objects.**

1. Upon seven (7) days notice in writing from any person desiring to move a building or other object, the Franchisee shall temporarily raise, lower or remove its facilities upon any street, bridge, or public place with the City, when necessary to permit the person to move the building or other object across or along such street, bridge or public place. The raising, lowering, or removal of the facilities of the Franchisee shall be in accordance with all applicable ordinances and regulations of the City.
2. The notice required by Subsection 1 of this section shall bear the approval of the City Manager, shall detail the route of movement of the building or other objects and shall provide that the actual expense incurred by the Franchisee in making the temporary rearrangement of its facilities, including the cost to the Franchisee of any interruption of service to its customers caused thereby, will be borne by the person giving the notice. It shall further provide that the person giving said notice will indemnify and save said Franchisee harmless of any from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of Franchisee's facilities.
3. Franchisee, before making the temporary rearrangement of its facilities, may require the person desiring the temporary rearrangement to deposit cash or adequate security, at the option of the person, to secure payment of the costs of rearrangement as estimated by the Franchisee.

#### **3.2 - Public Works and Improvement Not Affected by Franchise.**

The City reserves the right:

1. To construct, install, maintain, and operate any public improvement, work or facility.
2. To do any work that the City may find desirable on, over, or under any street, bridge or public place.

3. To vacate, alter or close any street, bridge or public place.
4. Whenever the City shall excavate or perform any work in any of the present and future streets, bridges and public places of the City of Albany or shall contract or issue permits for such excavation or work where such excavation or work may disturb Franchisee's underground cables, pipes, conduits and appurtenances, the City shall, in writing, notify Franchisee sufficiently in advance of such contemplated excavation or work to enable Franchisee to take such measures as may be deemed necessary to protect such underground cables, pipes, conduits, and appurtenances from damage and possible inconvenience to the public. In any such case, the Franchisee, upon receiving such notice, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.

3.3 - Control of Construction. The Franchisee shall file with the City maps showing the location of any construction, extension, or relocation of any of the facilities of the Franchisee and shall obtain the City's approval of the location and plans prior to the commencement of the work. The City may require the Franchisee to obtain a permit before commencing the construction, extension, or relocation of any of its facilities.

#### **SECTION IV - USE OF PUBLIC WAYS**

##### 4.1 - Excavation and Restoration.

1. Use. All transmission and distribution structures, lines, and equipment erected by the Franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, bridges, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, bridges, or other public ways or places.
2. Prior to making an excavation within any public right-of-way or public easement, the Franchisee shall obtain from the City approval of the excavation and its location.
3. Unless approved by the city no newly overlaid street or newly constructed street shall be excavated by the Franchisee for a period of five years from the time of completion of the street overlay or the street construction. In any such case, Franchisee shall be excused by the City from extending service if a practical alternate route cannot be found.
4. All installations by the Franchisee in new residential subdivisions shall be, wherever and whenever practical, laid in conjunction with power and/or telephone cable installations.
5. Restoration. Except as provided in Subsection 3 of this section, when any excavation is made by the Franchisee, the Franchisee shall promptly restore the



affected portion of the street, bridge, easement area, or public place to the reasonably same conditions in which it was prior to the excavation. The restoration shall be done in compliance with City specification, requirements, and regulations in effect at the time of such restoration. If the Franchisee fails to restore promptly the affected portion of the street, bridge, or public place to the same condition in which it was prior to the excavation, the City may make the restoration; and the reasonable costs of making the restoration, including the cost of inspection, supervision, and administration shall be paid by the Franchisee.

6. The City may require that any excavation made by the Franchisee in any street, bridge, or public place be filled and the surface replaced by the City and that the reasonable cost thereof, including the cost of inspection, supervision, and the administration shall be paid by the Franchisee.
7. The reasonable costs of excavation and restoration incurred by the City pursuant of Section 4.1.5 and 4.1.6 of this franchise, including the cost of inspection, supervision, and administration shall be paid by the Franchisee to the City in accordance with the standard billing policy of the City in effect at the time the excavation or restoration occurred.

#### 4.2 - Relocation of Facilities.

1. Franchisee shall, protect, support, temporarily disconnect or relocate any of its equipment when required to do so by the City by reason of traffic conditions, public safety, street vacation, highway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks, or any other type of structures or improvements by the City.
2. The cost of such removal or relocation of its facilities shall be paid by the Franchisee, but when such removal or relocation is required for the exclusive convenience or benefit of any person or governmental agency and instrumentality other than the City, Franchisee may be entitled to reimbursement for the reasonable costs thereof from such person, agency, or instrumentality. If the Franchisee fails to comply with any requirement of the City Manager made pursuant to this section within 30 days of written notice, the City may remove or relocate the facilities at the expense of the Franchisee.
3. The Franchisee shall not place its technical facilities where they will interfere with any gas, electric or telephone fixture, sewer or water facility. All facilities placed in the street shall be placed as the City directs.

#### 4.3 - Tree Trimming.

1. Subject to the provisions of this ordinance, Franchisee may trim trees when necessary in public rights-of-way for the operation of the lines, wires, cables and antennae or other appurtenances, provided such trimming shall be done by competent employees, agents, or contractors; and it shall be done without cost or expense to the City.

2. Said tree trimming shall be allowed only after Franchisee makes application and a written permit is approved by the City Manager of the City of Albany or any person appointed by the City Manager to exercise this function. Tree trimming shall be performed in accordance with City ordinances.

4.4 - Use of Poles. The city reserves to itself the right at any time to use the poles and other installations of the Franchisee erected or installed under the authority granted in this ordinance for any City-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere with the Franchisee's use thereof, subject to Section 7.10. Franchisee shall not be required to own or operate any facilities the City is using if the Franchisee ceases to have a need therefor.

4.5 - Use of Bridges and Public Places by Franchisee.

1. Before the Franchisee may use or occupy any bridge or City facility, the Franchisee shall first obtain permission from the City to do so and comply with any special conditions the City desires to impose on such use or occupation
2. The compensation paid by the Franchisee for this franchise includes compensation for the use of bridges and public places located within the City, as authorized. However, this subsection shall not be construed to prevent the City from requiring the Franchisee to pay charges as provided in Section 7.5 of this ordinance.

4.6- Emergency Removal and Alternate Routing of Facilities. If, at any time, in case of fire or disaster in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cable, amplifiers or other appurtenances to the system of the Franchisee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Franchisee, at its sole expense, provided that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City. The City shall hold the Franchisee, its agents, employees, officers and assigns hereunder harmless from any claims arising out of the City's cutting or moving of Franchisee's facilities.

In the event continued use of any street is denied to the Franchisee by the City for any reason, the Franchisee shall provide service to affected subscribers over such alternate routes as shall be determined by Franchisee within a reasonable period of time.

## **SECTION V - RULES AND REGULATIONS**

5.1 Compliance with Laws, Rules, and Regulations. At all times during the term of this franchise, Franchisee shall comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Oregon, and the City of Albany, including all agencies and subdivisions thereof. Franchisee shall be subject to the lawful exercise of the police power of the City of Albany and to such reasonable regulations of general applicability as the City may from time to time hereafter by resolution or ordinance provide insofar as such regulations or ordinances do not materially alter or impair the rights and obligations of Franchisee and are adopted

pursuant to the lawful police power of the City. No provision of this franchise shall be construed as a waiver of local, state or Federal law, or as a limit of liability.

**5.2 - Safety Standards and Work Specifications.**

1. Franchisee shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in a good state of repair and shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or the City.
2. The location, construction, extension, installation, maintenance, removal and relocation of the facilities of the Franchisee shall conform to:
  - a. The requirements of the State and Federal statutes and regulations adopted pursuant thereto in force at the time of such work, and
  - b. Such reasonable specifications in force at the time of such work, as the City may from time to time adopt.
3. All installations, rearrangements, removals, lowering or raising of aerial cables or wiring or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon and the ordinance of the City.
4. For the purpose of carrying out subsections 1 and 2 of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

**5.3 - Franchisee Rules.** The Franchisee shall have authority to promulgate such reasonable rules and regulations governing the conduct of its business as shall be reasonably necessary to enable the Franchisee to exercise its rights and performance obligations under this franchise and to assure uninterrupted services to its customers. Franchisee's rules and regulations shall be subject to the provisions of this ordinance and any other governmental regulations.

**5.4 - Discriminatory Practices Prohibited.** Franchisee shall make its services available to all citizens of the City without discrimination and shall not give any person any preference or advantage not available to all persons similarly situated.

**5.5 - Sale of Subscriber Lists Prohibited.** The Franchisee shall not sell, or otherwise make available any list which identifies subscribers by name or address, to any person, agency or entity, except as needed to maintain current services or implement new services to subscribers in connection with Franchisee's service.

**5.6 - Right to Inspect Books.** The Franchisee shall make available to the City at an office in Oregon current and accurate books of account at an office in Oregon for the purpose of determining the amounts due the City under Section 7.4 of this ordinance.

Upon 48 hours notice to Franchisee, the City may inspect the books of account any time during business hours and may audit the books from time to time as is necessary for the enforcement of this ordinance. The Council may require periodic reports from the Franchisee relating to its operations and revenue within the City. If an audit of the books is required to determine that Franchisee has paid the right franchise fee, the cost of such satisfactory independent audit shall be borne fully by the Franchisee, providing they were wrong.

**5.7 - Maps.** The Franchisee shall provide the City with requested maps drawn to accurate scale to keep the City informed as to the location of all facilities installed in the franchise territory. The maps shall clearly indicate location of trunks and distribution of lines within the public rights-of-way. Location of subscriber service drops in a specified underground area shall be provided promptly by Franchisee upon City's request.

**5.8 - Reports and Records.**

1. Within one hundred fifty (150) days after the close of the Franchisee's fiscal year, Franchisee shall file with the City the following reports:
  - a. Total number of customers at the end of the fiscal year, current penetration, and projected customers for the coming year, all pertaining to the Franchise Territory.
  - b. Number of miles of cable added, deleted or abandoned to the system during the year.
  - c. Summary of other additions to the system in terms of increased channel capacity of technological improvement made during the year.
  - d. Outline of plans for expansion and improvement of the system in the next fiscal year.
  - e. Upon request the financial status of the Franchisee, using an acceptable format or such uniform as may be provided by the state of Oregon. Financial information shall include: balance sheet and income statement. All such reports are to reflect Franchisee's operations within Oregon. This report shall be signed by an authorized agent of the corporation and an account who participated in its preparation or review. This is in addition to notarized statements required in 7.4.3
  - f. Any other information which may be reasonably required by the City for its performance of duties.
2. **Copies of Reports.** Upon request, copies of all petitions, applications, and communications submitted by the Franchisee to the Federal Communications Commission or any other Federal or State regulator, commission or any other Federal or State regulator, commission, or agency having jurisdiction in respect to any matters relating specifically to operation of the cable communications system authorized pursuant to this franchise shall also be submitted to the City

at its request.

3. **Cost of Reports.** The cost of preparing and furnishing to the City the records and reports required by this section shall be borne by the Franchisee.

#### 5.9 - Duration, Renewal, and Renegotiation.

1. **Duration and Renewal.** This franchise and the rights and privileges granted herein shall take effect thirty (30) days after the date this ordinance is passed by the City and remain in effect until March 31, 2006 unless terminated sooner under provisions of Subsection 3 of this section, provided, however, that the terms of the franchise must be unconditionally accepted by the Franchisee in writing, signed by an officer of the corporation within thirty (30) days after the date this ordinance is passed by the City; and if the Franchisee fails to do so, this ordinance shall be void.
2. **Franchise Review.**
  - a. As need arises, during the term of the franchise, the City shall review the franchise performance, generally, and in particular, the following matter:
    - i. Use of channel space, including public access channels and programming, and the need for activation of additional channels as set forth in Section 7.7.
    - ii. Service extension policies set forth in Section 2.4, including, but not limited to, changes in urban service boundaries affecting areas to be served by Franchisee;
    - iii. Technical adequacy of the system including, but not limited to, picture quality, two-way transmission capacity, and compliance with standards set forth in Section 7.8.
    - iv. New technological, regulatory or legal developments affecting the franchise, Franchisee's operation or City's regulatory authority hereunder, including changes in FCC authority, rules or regulations; and
    - v. The franchise fee.
  - b. The Franchisee shall be represented at these meeting by a representative of the corporation authorized to speak on behalf of the head office of the corporation on questions of corporate practice, policy, plans or other matters concerning the cable communications system in the Franchise Territory.
3. **Termination.**

- a. The City reserves the right to terminate this franchise and all rights and privileges thereto, in the event that:
- i. The Franchisee shall substantially default in any of the material terms, covenants, or conditions required to be performed by them or in payment of any sum required to be paid under the terms of this franchise. The following non-exclusive provisions are deemed to be material to the performance of the franchise:
    - 2.1 Continuous Service
    - 2.5 Levels of Service
    - 7.2 Channel Capacity
    - 7.4 Compensation
    - 7.6 Special Provisions
    - 7.7 Public Access Programming
    - 7.8 Technical Standards
    - 7.10 Complaint Procedures and Inquiries; or
  - ii. The Franchisee deliberately fails to operate the system without prior approval of the City or without just cause; or
  - iii. Subject to applicable law, the Franchisee intentionally evades any of the provisions of this franchise or is found to have practiced any fraud or deceit upon the City or a customer.
- b. Prior to any termination proceedings under this franchise, the Franchisee shall be given sixty (60) days notice in writing, which notice shall state with particularity the grounds upon which the City relies. If, at the end of the sixty-day period, the Franchisee has not corrected the matter which provides grounds for termination, the franchise may, at the option of the City, become null and void and the Franchisee shall thereafter be entitled to none of the privileges or rights herein extended to them and said Franchisee shall thereupon cease and desist from any activity within the City limits of the City; provided, however, that the City may at its option pursue any other and different or additional remedies provided to it by law or in equity.
- c. Termination under this subsection shall be accomplished openly by the passage of an ordinance after proceedings affording Franchisee due process of law and a full opportunity to be heard.
- d. Upon expiration or the termination of this franchise, the City may require Franchisee to continue to operate the system for an extended period of time, not to exceed six (6) months. Franchisee shall, as trustee for its successor in interest, continue to operate the system under the terms and conditions of this franchise. In the event Franchisee does not so operate the system, the City may take such steps as it, in its sole discretion, deems necessary to assure continued service to subscribers. Neither

party shall be deemed to have waived any rights as a result of Franchisee's performance under this provision.

**5.10 - Collection Facilities.** The Franchisee shall make reasonable efforts to maintain facilities in the City where its customers may pay their bills for cable service during normal business hours.

**5.11 - Assignment of Franchise: Sale of Franchise.**

1. This franchise shall be binding upon, and inure to the benefit of, the successors, legal representatives and assigns of the Franchisee. This franchise shall not be sold or assigned other than to an entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee except for security purposes without prior written approval of the City by ordinance. Such approval shall not be unreasonably withheld.
2. The City's approval shall be based upon the financial responsibility of the party unto whom the franchise is being proposed for sale, assignment, or transfer. The proposed assignee must show, in addition to financial capability, technical ability, legal qualifications, demonstrated ability, and experience, sufficient to comply with the terms of the franchise as determined by the City, and must agree to comply with all provisions of the franchise. The City shall be deemed to have approved the proposed transfer or assignment in the event that its consent is not communicated in writing to the Franchisee within sixty (60) days following receipt of written notice of the proposed transfer or assignment.
3. The Franchisee shall promptly notify the City of any proposed change in or transfer of or acquisition by any other party, of control of the Franchisee. A transfer of control of the Franchisee shall arise upon the proposed sale by any person or group of persons of 51 percent of the voting interest of the Franchisee.
4. The consent or approval of the City Council to any transfer of the franchise shall not constitute a waiver of release of the rights of the City in and to the streets and rights of way, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this franchise.
5. In no event shall a transfer of ownership or control of the franchise be approved without successor in interest becoming a signatory to the franchise agreement.

**SECTION VI - INSURANCE, BONDING, AND PENALTIES**

**6.1 - Insurance.**

1. Franchisee shall pay, save harmless, and indemnify the City from any loss or claim against the City on account of, or in connection with, any activity of Franchisee in the construction, operation or maintenance of its technical facilities and systems services.

2. The Franchisee shall, for the purposes of carrying out the provisions of this section, prior to commencing construction of any kind, have in full force and effect, and file and maintain during the term of the franchise evidence thereto with the City Recorder, good and sufficient policies covering:
  - a. Compensation Insurance in compliance with all Worker's Compensation Insurance and Safety Laws of the State of Oregon and amendments thereto;
  - b. Bodily Injury Insurance with limits of at least \$500,000 personal injury each person and \$1,000,000 each occurrence;
  - c. Property Damage Insurance with limits of at least \$100,000 each accident and \$300,000 each occurrence.
3. The City of Albany, its officers, agents, and employees, shall be named additional insureds in said policy for losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted.
4. Upon any material alteration or cancellation of any of the coverage, the Franchisee shall give the City 30 days notice in advance of the effective date of the alteration or cancellation of the coverage.

**6.2 - Bonds and Other Surety.** Except as expressly provided herein, Franchisee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the franchise or continuing its existence at the time this franchise is granted. The City acknowledges that the legal, financial, and technical qualifications of Franchisee are sufficient to afford compliance with the terms of the franchise and the enforcement thereof. Initially, no bond or other surety will be required. In the event that one is required in the future, the City agrees to give the Franchisee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement and the amount. Such reason must demonstrate a change in the Franchisee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the franchise or afford compliance therewith.

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



6.4 - Penalties. Subject to requirement of prior notice as set forth in c below, for violations of this ordinance occurring without just cause, City may, at its discretion and in addition to any other remedies provided herein, assess penalties against Franchisee as follows:

- a. For failure to adhere to material provisions of this franchise, as defined in Section 5.9.3, up to \$200 per day for each provision not fulfilled.
- b. For failure to comply with any provision of this franchise other than the above paragraph, up to \$50 per day for each failure to fulfill franchise provision.
- c. Prior to imposing any penalty under this section, the City shall provide Franchisee with written notice specifying the nature of the violation. Franchisee shall be subject to penalty if the violation is not remedied within ten days of receipt of notice. If the violation cannot be satisfied within ten days, Franchisee shall notify the City of the expected date on which the violation will be remedied. This notice shall not provide Franchisee with immunity from penalties under this section.

## **SECTION VII - FRANCHISE SPECIFICATIONS**

7.1 - Franchise Nonexclusive. This franchise is not exclusive and shall not be construed as a limitation on the City in:

1. Granting rights, privileges and authority to other persons similar to, or different from, those granted by this ordinance.
2. Constructing, installing, maintaining or operating any City-owned public utility.
3. 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 Franchisee to enter into the City's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, insofar as this is not in conflict with rules of government, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

7.2 - Channel Capacity. Franchisee's facilities shall maintain current channel capacity as are available at time of franchise renewal. Franchisee shall upgrade its facilities with state of the art equipment so as to be capable of delivering 62 within three(3) years after the date this ordinance is passed.

1. Franchisee shall make its Public Access Channels available to City use upon request from Council, City Manager, or Mayor.
2. The City shall indemnify and hold Franchisee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the use of its facilities by the City.

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7.3 - Rate Structure. City and Franchisee will comply with Cable act.

7.4 - Compensation.

1. As compensation for the franchise granted by this ordinance, unless changed by the Council as provided herein, the Franchisee shall pay to the City an amount equal to five (5) percent of the Gross Revenue as defined in section 1.2 (14) of this franchise, collected by the Franchisee from its customers for cable services within the City under the rate schedule as approved and hereafter approved by the City Council. The Gross Revenue shall be computed after deducting from the total billings of the Franchisee the total net write-off of uncollectable accounts. No expenses, encumbrances or expenditures shall be deducted from the Gross Revenue in determining the total Gross Revenue.
2. The compensation required by this section shall be due on or before the 30th day of each and every quarter for the quarter preceding. Within sixty (60) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last calendar year for which compensation has been paid.
3. The Franchisee shall furnish to the City with each payment of compensation required by this section a notarized statement, executed by an officer of the Franchisee, showing the amount of Gross Revenue of the Franchisee within the City for the period covered by the payment computed on the basis set out in Subsection 1 of this section. If the Franchisee fails to pay the entire amount of compensation due the City through error or otherwise within the times allotted for payment in Subsection 2 above, the amount of the fee due for that quarter and not timely paid shall be subject to a late penalty of an additional ten (10) percent plus interest of one (1) percent per month on the amount of fee due and unpaid from the date due until it is paid together with the late penalty.
4. Nothing contained in this franchise shall give the Franchisee any credit against any ad valorem property tax now or hereafter levied against real or personal property within the City, or against any local improvement assessment or any business tax imposed on Franchisee, or against any charges imposed upon the Franchisee, or against any charges imposed upon the Franchisee as provided in Section 7.5 of this ordinance, or reimbursement or indemnity paid to the City.

7.5 - Permit and Inspection Fees. Nothing in this ordinance shall be construed to limit the right of the City to require the Franchisee to pay the standard fees charged by the City for any of the activities covered by this ordinance as now in effect or hereafter amended.

7.6 - Special Provisions.

1. **Availability of the Facilities and Equipment for Programming.** Franchisee shall maintain a studio within the Corvallis Urban Growth Boundary with facilities and equipment for access program origination and shall also provide at least one

high-quality, color port-a-pak camera and video tape recorders with playback capacity.

2. Use of Facilities and Equipment for programming.

- a. The Franchisee's studio and equipment shall be made available upon reasonable request (a minimum of 72 hours in advance unless arrangements are made with the Franchisee's representative in special circumstances) to authorized representatives of the City or to persons or groups wishing to originate programming, except that in the event of public emergency, the City shall not be required to give any notice.
- b. Reasonable charges acceptable to the City may be levied for use of the aforesaid studio, studio facilities and equipment; and Franchisee shall be entitled to reimbursement from the party responsible for damages to any property of the Franchisee.
- c. Franchisee shall maintain studio, facilities and equipment in satisfactory condition both electronically and mechanically without charge to users, except as provided in subsection b above. User shall supply performers, production crew special properties, graphics, etc.
- d. Subject to the foregoing, the Franchisee shall, prepare and make available to users rules governing the use of its studio, facilities, and equipment such rules to be subjected to the approval of the City. The approval of the City shall not be unreasonably withheld.

7.7 - Public Access Programming.

1. Upon request by the City, and when system is capable of delivering 62 channels in accordance with section 7.2, one channel shall be provided and maintained by the educational institutions in this area. In addition one channel shall be maintained and provided for local access by the City and county governments, civic groups, and local organizations and by the Franchisee.
2. Franchisee and City jointly shall establish rules for the administration of the specially designated access channel. Notwithstanding anything to the contrary, however, Franchisee shall not exercise any editorial control over any access channel. Franchisee may use any unused time on the access channels for its own purposes. Notice will be given by Franchisee except during emergencies.
3. The City shall prescribe rules and procedures under which Franchisee is permitted to use the designated access channels for the provision of other services if the designated channels are not being used for the purposes designated and rules and procedures under which such permitted use shall cease.

**7.8 - Technical Standards.** Franchisee's cable system shall comply with all technical standards specified by Rules and Regulations of the Federal Communications Commission. Franchisee shall:

1. Supply to the City upon request a copy of each report of technical compliance it prepares in conformance with orders of the Federal Communications Commission. Upon request by City, Franchisee shall supply a qualified electronic technician who is satisfactory to the City to test the performance of Franchisee's technical facility. If the electronic technician selected is not an employee of Franchisee, then the Franchisee and City shall share equally in the costs incurred.
2. Limit system failure to minimum time duration by locating and correcting malfunctions promptly, but in no event longer than twenty-four (24) hours after occurrence, irrespective of holidays or other nonbusiness hours, excepting those occurrences excepted in Section 2.1.
3. When there have been similar complaints made or where there exists other evidence, which in the judgment of the City casts doubt on the reliability or quality of cable service, the City shall have the right and authority to require the Franchisee to test, analyze, and report on the performance of the system. Such test or tests shall be made, and the reports of such test or tests shall be delivered to the City within fourteen (14) days after the same have been requested by the City. Such report (s) shall include the following information: The nature of the complaint (s) which precipitated the special tests; and the method (s) in which such complaints were resolved. Any other information pertinent to the special test (s) shall be recorded and reported. Testing shall be conducted with reasonable notice to Franchisee and in a manner which does not unreasonably interfere with the normal business operations of the Franchisee or the cable system.
4. Render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible; such interruptions insofar as possible shall be preceded by notice given to subscribers twenty-four (24) hours in advance and shall occur during periods of minimum use of the system.
5. Maintain test equipment for routine and performance tests. In addition to testing under Section 7.8.3, the City may at any time employ at its own expense a registered qualified engineer to test, analyze and report on the performance of the system. Franchisee agrees to make all of its testing equipment available for joint testing with the Franchisee's engineer selected by the City to perform these tests.

**7.9 - City Right in Franchise.**

1. **City Supervision and Inspection.** The City shall have the right to supervise all construction or installation of Franchisee facilities subject to the provisions of this ordinance and to make such inspections as it shall find necessary to insure

compliance with governing laws, rules, and regulations. No construction shall be commenced prior to approval by the City.

2. Termination or Abandonment of franchise. Upon any termination of this franchise, whether before the expiration of the franchise or upon expiration, or by any abandonment of the franchise by Franchisee, all equipment installed or used by Franchisee shall be removed by the Franchisee at Franchisee's expense except underground buried cable which may be left in place and the property upon which said equipment was used reasonably restored by Franchisee to the condition it was in before installation or use by Franchisee.
3. City's Right to Purchase System. Subject to applicable laws, in the event that the franchise is terminated, the City shall have the right to purchase the cable television system within the City for a fair market value on a going-concern basis and to lease those technical facilities immediately outside the City which are necessary for operation and utilization of the system in the City which are used to receive microwave or other signals. The terms of said lease shall be agreed upon prior to the effective purchase date. Both parties agree to negotiate in good faith regarding the terms of the lease.

#### 7.10 - Complaint Procedures and Inquiries.

1. Franchisee shall maintain a local office which shall be open during all the usual business hours, with its telephone listed in directories of the telephone company serving the franchise territory, and be so operated that complaints and requests for repairs or adjustments may be received at anytime, day or night, seven days a week. The phone number and address of this office shall be furnished to each subscriber by the Franchisee. Upon complaint regarding the quality of service, equipment malfunctions, and similar matters, Franchisee shall investigate and resolve them promptly. Excluding those situations beyond its control, Franchisee shall respond to service interruptions promptly and in no event later than 24 hours. Franchisee will attempt to respond to customer requests for maintenance or repairs, Monday through Friday, within the same day. Other service problems will be responded to within 36 hours during the normal work week.
2. Original records, including service records pertaining to complaints received by the Franchisee and office procedures followed to satisfy those complaints, shall be maintained by the Franchisee for a period of not less than three years in Benton County, Oregon and made available for inspection by the City on reasonable notice to the Franchisee. This record shall be considered by the City in evaluating the system. Franchisee shall keep a log of all complaints received which will include the following information: a) What the complaint was, b) When the complaint was received, c) When the complaint was responded to, and d) Disposition of complaint.
3. Franchisee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system. A written log available for public

inspection shall be maintained for all service interruptions, except for those interruptions related to routine repair and maintenance activities.

4. Franchisee shall respond within twenty-four hours, seven days a week to the outage of one or more channels system-wide. Franchisee shall exercise its best efforts to respond to any such outage within the same day.
5. Maintenance personnel shall, at minimum be, on duty eight hours a day, Monday through Friday. Maintenance personnel shall be on-call to respond to system outages, as described in Section 7.10.4 above, which may occur outside normal business hours.
6. In the event a subscriber does not obtain a satisfactory response or resolution to their request for service, they may advise the City in writing of their dissatisfaction and, upon receipt of such writing, the City Manager shall immediately notify the Franchisee in writing of the subscriber's complaint. Upon referral of a complaint dealing with service outages in excess of thirty-six hours, the City may recommend that the Franchisee make appropriate adjustments in the service charges to the subscriber as a result of such outages.
7. Franchisee shall provide written information to its customers in each of the following areas at the time of installation and at any future time upon request:
  - Products and services offered
  - Prices and service options
  - Installation and service policies
  - How to use the cable service

Bills will be clear, concise and understandable.

Refund checks will be issued promptly, but no later than the earlier of 45 days or the customer's next billing cycle following the resolution of the request, and the return of the equipment supplied by the Franchisee if service is terminated.

Customers will be notified a minimum of 30 days in advance of any rate or channel change, provided the change is within the control of the Franchisee.

#### 7.11 - Misdemeanors.

1. No person, firm, or corporation shall make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised cable system within the City, for the purpose of taking or receiving signals, radio signals, pictures, programs, or sound.
2. No person, firm, or corporation shall make any authorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised cable system within the City, for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program, or sound without payment to the owner of said system.

3. No person, without consent of the owner, shall willfully tamper with, remove, or injure any cable wires or equipment used for distribution of television signals, radio signals, pictures, programs, or sounds.
4. It shall be a misdemeanor punishable by a fine of not to exceed \$500.00 (five hundred dollars) or by imprisonment not to exceed six (6) months, or both, for any person to violate any of the provisions of this section.

**7.12 - Rate Regulation.** If during the terms of this franchise there are changes in federal law which materially affect the City's ability to regulate rates, the City would exercise its authority to comply with federal law by meeting with the Franchisee to renegotiate rate regulation. The City shall exercise such authority only after first conducting a public hearing allowing the Franchisee and the public an opportunity to comment on the proposed re-regulation of rates.

**7.13 - Force majeure.** Prevention or delay of any performances under this franchise due to circumstances beyond the control of the Franchisee or the City, unforeseen circumstances or acts of God shall not be deemed to be non-compliance with or a violation of this franchise.

**7.14 - Non-Litigation.** Franchisee acknowledges and agrees that the franchise renewal proceedings have been undertaken consistent with the provisions of the Cable Act, including those contained in Section 626. Further, Franchisee stipulates that it will not commence, fund, or prosecute any litigation or administrative proceedings before any competent tribunal against the City, its officers, employees, agents, or representatives arising out of any alleged failure to comply with such provisions.

**7.15 - Nonenforcement by the City.** Franchisee shall not be relieved of its obligation to comply with any of the provisions of this franchise by reason of any failure of the City to enforce prompt compliance.

**7.16 - Descriptive Headings.** The paragraph captions and headings in this franchise are for the convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this franchise.

**7.17 - Calculation of Time.** Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

**7.18 - Written Notice.** All notices, reports or demands required to be given in writing under this franchise shall be deemed to be given when delivered personally to the person designated below, or when five days have elapsed after it is deposited in the United States mail postage prepaid thereon, or on the next addressed business day if sent by express mail or overnight air courier to the party to which notice is being given, as follows:

If to the City: City of Albany  
Attention: City Manager  
250 Broadalbin S.W.  
Albany, OR 97321

If to the Franchisee: TCI Cablevision of Oregon  
Attention: General Manager  
820 NW Cornell Avenue  
Corvallis, OR 97330

With a Copy to: TCI Cablevision of Oregon, Inc.  
Attention: Legal Department  
PO Box 91220  
Bellevue, WA 98009-9220

Such addresses may be changed by either party upon written notice to the other party given as provided in this section.

**SECTION VIII - REPEAL**

8.1 - Ordinance #3242 as amended is hereby repealed.

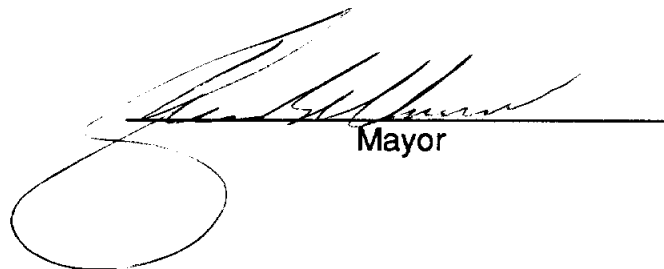
**SECTION IX - EFFECTIVE DATE**

9.1 - This ordinance shall take effect on the thirtieth day after its enactment by the Council, but shall become null and void unless within ten (10) days after such effective date the Franchisee shall file with the Recorder the Franchisee's written acceptance of the terms, conditions, and obligations to be complied with or performed by it hereunder.

PASSED by the Council this 22nd day of June, 1994.

APPROVED by the Mayor this 22nd day of June, 1994.

Effective this 22nd day of July, 1994.

  
Mayor



Approved as to Form:

ATTEST:

*[Signature]*  
City Recorder

*[Signature]*  
City Attorney

Accepted by Franchisee, subject to applicable federal, state and local law.

*[Signature]* EVP/COO  
Signature, Title

*June 28, 1994*  
Date