

COMMUNICATIONS SYSTEM FRANCHISE

9.13 Movement of Facilities. If someone is moving a building or other large object through the streets, the grantee may be required to temporarily rearrange its facilities to make way for the move, at the mover's expense.

9.14 Common User. The City may require the grantee to allow another utility agency to share its poles or conduits under certain circumstances, on a reasonable cost-sharing basis.

9.15 Filing of Pole User Agreement. Within 30 days of the effective date of the franchise, the grantee must file with the City all agreements it has with the telephone and power companies for using their poles.

9.16 Community Cable Corporation. The Community Cable Corporation (CCC) is acknowledged as the agency responsible for controlling and regulating community programming on the system. The City Council must first pass an ordinance authorizing the establishment of the Corporation.

9.17 Cable Communications Regulatory Commission. A Cable Regulatory Commission is acknowledged as the agency which may exercise cable regulatory power for the City. The City Council must pass an ordinance establishing the Commission.

Section 10. OPERATION AND MAINTENANCE

10.1 Open Books and Records. The City has the right to inspect all books and records of the grantee having to do with the construction and operation of the cable system.

10.2. Communications with Regulatory Agencies. The grantee must supply the City with copies of any communications it has with federal, state, or other regulatory agencies.

10.3 Reports. The grantee must submit quarterly reports to the City, containing an account of all its revenues and expenses, a balance sheet, and other financial information.

The grantee must also submit an annual report containing: a summary of all the previous year's activities in the development of the system; complete, audited financial statements; a record of services rendered to the City and other users, with the fees charged for service; construction costs; financial projections for the coming two years, with the assumptions necessary to an understanding of the projections; a reconciliation between previous projections and actual results; a summary of complaints and how they were handled; a current list of officers and members of the board of the grantee and parent corporations; and a list of all limited and general partners, with the ownership percentage of each indicated, along with a list of any parent corporations.

The City retains the right to specify the form of all reports, and may order the annual report presented at a public hearing.

Trade secrets and certain tax information regarding private investors in Cablesystems are exempted from public disclosure.

10.4 Maintenance and Complaints. The grantee agrees to have an office in the City, and a 24-hour telephone complaint line. Interruptions of service will be kept at a minimum. Request for service will receive a response from trained technicians within 24 hours, at no charge under normal circumstances. The City may require testing of the system to resolve complaints regarding signal quality, and may impose other methods or procedures for the settling of complaints.

10.5 Safety. In all its operations and construction, the grantee must abide by electrical and other city codes, and by community accepted standards of safety, so that no person or property is harmed by the grantee's activity.

Section 11. GENERAL FINANCIAL AND INSURANCE PROVISIONS

11.1 Security Fund. The grantee will deposit \$100,000 in a security fund to guarantee performance on the franchise. The City may withdraw portions of the fund to make up for any amounts owed by the grantee, or to remedy any franchise violation. The grantee must then replenish the fund to that it remains at \$100,000. If the franchise is forfeited, the City receives the entire fund. Otherwise, it is returned to the grantee when the franchise is terminated. An arbitration procedure is provided for settling any disputes about the disposition of the fund.

11.2 Faithful Performance Bond. As further guarantee of performance, the grantee will post a bond in the amount of \$500,000. The bond may be reduced to \$100,000 upon completion of system construction.

11.3 Damages and Defense. The City is not responsible for any claims or damages incurred in the award or exercise of the franchise, unless the City is expressly negligent in some way. The grantee agrees to pay the costs of defending the City if the City is sued over something the grantee is responsible for.

11.4 Liability Insurance and Indemnification. The grantee must be insured for \$100,000 for injury or death to any one person; \$300,000 for injury or death from any one accident; \$300,000 for property damage from any one accident, and \$1,000,000 for all other types of liability.

11.5 The grantee must pay the cost of publishing the franchise.

Section 12. RIGHTS RESERVED TO THE GRANTOR.

12.1 Right to Purchase the System. If the franchise is declared forfeit because of some franchise violation, or if it comes to its natural termination at the end of 15 years, then the City may buy the system, paying only the fair market value of the physical assets, less anything owed by the grantee at the time of termination.

In addition, the City may at any time, strictly at its own discretion, purchase the system from the grantee, so long as the City pays fair market value of all the system's assets including going concern value, less any amounts owed by the grantee.

For either of these types of purchase, detailed conditions are set out, and an arbitration procedure is provided for settling disputes over the value of the system.

12.2 Right of Inspection of Records. All records for the franchise will be kept in the City Auditor's office, open for public inspection.

12.3 Right of Inspection of Construction. The City retains the right to inspect the system at any time, and test it for compliance with the franchise.

12.4 Right of Intervention. The City may intervene in any suit in which the grantee is involved.

Section 13. RIGHTS OF INDIVIDUALS PROTECTED

13.1 Discriminatory Practices Prohibited. The grantee must not discriminate against anyone on the basis of race, color, religion, age, national origin, sex, sexual orientation or marital status. The grantee must meet federal equal employment opportunity requirements.

13.2 Cable Tapping Prohibited. Except for maintenance and performance testing, or the operation of regular two-way communication services, no monitoring or tapping into the system is permitted.

13.3 Privacy and Other Human Rights. Individuals' privacy is to be respected. No two-way communication devices may be installed or operated in a subscriber's home without written consent. Without the subscriber's consent the grantee may use the system to collect data only for billing or maintenance purposes. The grantee may not sell or release any data it collects, except to allow the City to enforce the privacy provisions of the franchise. The City must see that such data is not publicly disclosed.

13.4 Permission of Property Owner. The grantee must have the permission of the owner or tenant of a property before installing any equipment there, and if the permission is revoked, must remove it cleanly.

13.5 Sale of Subscriber Lists Prohibited. The grantee must not make its subscriber lists available to anyone. The one exception is that the City Council may direct that the lists may be used for mailings by the Community Cable Corporation.

13.6 Polling by Cable. If there is polling or other two-way response on any program, it must be made clear on the program what the results of the responses are to be used for. No commercial use of such results is allowed, and they may not be released for any reason without City Council consent.

13.7 Further Regulatory Powers Reserved. The City reserves the right to regulate further in all matters related to privacy and individual rights.

Section 14. termination and renewal

14.1 Revocation. The City may revoke the franchise if the grantee violates any material provision of the franchise; or the grantee's construction schedule is delayed over 18 months; or the grantee becomes insolvent or unable or unwilling to pay its debts or is declared bankrupt; or the grantee is found to have practiced any fraud or deceit upon the grantor; or the grantee fails to obtain and maintain any permit required by any federal or state regulatory body. The City must give 30 days written notice of the intended revocation, and if the grantee makes a good faith effort to remedy the violation, then the forfeiture of the franchise does not take place.

14.2 Receivership. If the franchise is in receivership for 120 days, the City may revoke the franchise and take over operation of the system, unless the receiver is meeting all terms of the franchise and an acceptable agreement is struck between the City and the receiver.

14.3 Expiration. When the franchise expires, the City may renew or extend the franchise; or invite additional proposals and award a franchise to another grantee; or terminate the franchise without further action; or take other action at its own discretion.

14.4 Continuity of Service Mandatory. The grantee agrees to do everything in its power to give continuous, uninterrupted service to its subscribers during the life of the franchise. Likewise, if for any reason the system is to be taken over by someone else, the grantee agrees to cooperate with the City by operating the system for a temporary period, if necessary, to maintain continuity of service.

14.5 Removal of Plant and Equipment. If the franchise terminates and is not renewed, or is revoked, or if the City buys the system, the grantee may be required to cleanly remove all its plants and equipment from the streets and public ways.

14.6 Additional Remedies for Franchise Violations. If the grantee violates the franchise, the City may, at its own discretion, impose financial penalties; reduce the duration of the franchise; require a reduction in the grantee's rates; require grantee to make payments to its customers; or require the grantee to correct any violation prior to a rate increase becoming effective. The City agrees to act reasonably, and to always impose a penalty if service is lessened or any material provision of the franchise is violated.

Section 15. MISCELLANEOUS PROVISIONS

15.1 Compliance with Laws. Grantee must comply with all applicable federal and state laws, and all City ordinances, resolutions, rules and regulations.

15.2 Separability. If any part of the franchise turns out to be invalid, or its enforcement is preempted by State or Federal government, the rest of the franchise agreement remains in force.

15.3 Captions. Captions used in the franchise are strictly for convenience; they are not meant to be used for interpreting the document.

15.4 No Resource Against the Grantor. The grantee can make no claims against the City because of any term of the franchise, or the enforcement of the franchise, or because any part of the franchise is held to be invalid.

15.5 Nonenforcement by the Grantor. The grantee's obligation to comply with the franchise continues even if the City does not actively enforce it.

15.6 Subsequent Action by State or Federal Agencies. If the Federal or State government require the grantee to act in a way that violates the franchise, the grantee must let the City know; it will be up to the City to decide whether to modify the franchise or to declare it forfeit on the grounds that substantial compliance has been frustrated by the Federal or State action.

15.7 Competitive Advantage. The grantee must not use its position as a cable operator under this franchise to gain a competitive advantage in the business of selling, leasing, renting, servicing or repairing radio or television sets or other equipment for receiving standard broadcast signals.

15.8 Prevailing Rate of Wage. The grantee agrees to pay the prevailing rate of wage for this area, as determined by the Commissioner of the Oregon Bureau of Labor and Industries.

15.9 Material Content. The grantee may not transmit any material that is obscene or indecent on channels over which it has programming control.

15.10 Equal Employment Opportunity/Affirmative Action and Minority Business Enterprise Program. The grantee must be certified as an EEO/Affirmative Action employer by the City, and comply with all applicable federal, State and City regulations regarding anti-discrimination. The grantee agrees to operate, establish and implement an affirmative action program that provides for 50% females in its work force, with 18% of the work force consisting of minorities, at every level of employment. Details of the program will be laid out in writing in the Auditor's office two weeks prior to the effective date of the franchise. The grantee must be certified by the City in its Minority Business Enterprise program. The grantee agrees to spend 20% of all contracted expenditures, excluding direct factory purchases and items purchased from a sole source, with minority business enterprises.

15.11 First Source Program. The grantee agrees to recruit for certain entry-level positions from the City's CETA training program for the economically disadvantaged. Details of the agreement between the grantee and the City

will be on file with the City Auditor's office before the franchise becomes effective.

15.12 Notice. For any circumstances requiring notice, registered or certified mail must be used by both the City and the grantee.

15.13 Force Majeure. If the grantee cannot carry out its obligations under the franchise because of circumstances out of its control, it will not be in violation of the franchise. A list of such circumstances (e.g., acts of God, earthquakes, riots, etc.) is provided.

15.14 Grantor to be Reasonable. The City agrees to act reasonably in every case where its judgement may affect the grantee under this franchise.

Section 16. MANDATORY PURCHASE OR SALE OF SYSTEM

16.1 Purchase of Liberty Communications, Inc. System. After 1990, if the City Council so directs after a recommendation from the Cable Regulatory Commission, the grantee must purchase Liberty Communications' west side system, and bring it up to the standards of this franchise within two years.

16.2 Sale of System to Liberty Communications. After 1990, if the City Council so directs after a recommendation from the Cable Regulatory Commission, the grantee must sell its system to Liberty Communications, Inc.. The Council may order the sale only if it is determined that the grantee's rates and services, as a package, are of significantly lesser benefit to its subscribers than are Liberty's rates and subscriber services to its subscribers. The price will be the fair market value of the system. An arbitration procedure for determining fair market value is provided in case there are disputes.

16.3 Acquisition of Video Electronics, Inc. System. If the grantee is permitted by the City Council to provide service to homes in the Luncheon area now under franchise to Video Electronic, Inc., the grantee must buy the Video Electronics system at fair market value before beginning operations there.

Section 17. REGULATION

The City retains the power and right to regulate in the public interest at all times, not only as specified in this franchise, but in the more general way guaranteed by the charter and ordinances of the City, and by the Oregon law.

Section 18. WRITTEN ACCEPTANCE.

18.1 The grantee must file written acceptance of this franchise ordinance within 30 days after its passage by the City Council, otherwise it does not go into effect. The grantee's parent corporations are bound by the obligations of the franchise once it is accepted, and they guarantee Cablesystems' performance.

18.2 Within 30 days after this ordinance becomes effective, the grantee will expand the Board of Cablesystems Investment, Inc., to include four residents of the City of Portland.

INVITATION TO BID ON EQUIPMENT TO BE FURNISHED CITY OF BEND, OREGON

The City of Bend, Deschutes County, OR, hereinafter called the Owner, through BECON, hereinafter called the Engineer, is inviting separate Proposals to furnish and deliver the following equipment:

Contract No. 36: Atomic Absorption Spectrophotometer

Sealed Proposals addressed to James W. Kerfoot, Recorder Treasurer of the City of Bend, Deschutes County, 710 Wall Street, Bend, OR 97701, will be received at the office of James W. Kerfoot, Recorder-Treasurer of the City of Bend, 710 Wall Street, Bend, OR 97701, until 10:00 a.m., local time, on the 12th day of February 1981, at which time they will be publicly opened and read in the City Commission Room at 720 Wall Street, Bend, OR 97701.

The Contract Documents for the Owner's purchase of equipment include the Bidding Requirements, the Proposal, the Contract forms, the General Conditions, the Supplementary Conditions, and the Specifications. Copies of the Contract Documents may be reviewed or obtained at the office of BECON (Bend Engineering Consultants), South Highway 97, Bend, OR 97701. Upon payment of \$10 for each Document. No refunds will be made. Questions about the content of these Contract Documents should be directed to Mark Lasswell, BECON, P.O. Box 1174, Bend, OR 97701, (503) 382-4114.

Each Proposal must be accompanied by a certified check or Bid Bond executed on the prescribed form, payable to the City of Bend, Deschutes County, Oregon, in an amount not less than 10 percent of the amount bid.

Prices quoted in the Proposal shall remain firm for a period of 90 days after the date stated for opening of Proposals.

Complete descriptive literature, as required by the Contract Documents, shall be submitted with the Bidder's Proposal for the Engineer's review and evaluation.

Prices quoted shall be f.o.b. factory with freight and full insurance paid by the Bidder to the City of Bend, Wastewater Treatment Plant Site, Bend, OR 97701.

The Successful Bidder for the Contract will be required to furnish a Performance and Payment Bond for faithful performance of the Contract in the full amount of the Contract price.

Bidders on this work will be required to comply with the provisions of the President's Executive Order No. 11246 and requirements issued thereunder. The requirements for bidders and contractors under this order are explained in the Contract Documents.

The right is reserved to reject any or all Proposals for each bid item, and to consider that Proposal for any individual item of equipment which is to the best interest of the Owner.

Dated this 9th day of January, 1981.

CITY OF BEND, OREGON

By: James W. Kerfoot
Recorder-Treasurer