



T I M E W A R N E R
C A B L E OF NEW YORK CITY

98-V-1258

September 24, 1998

John C. Crary, Secretary
State of New York Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

RE: Request for Approval by the Public Service Commission
of the Cable Television Franchise Agreement between the
City of New York and Paragon Communications, doing
business as Time Warner Cable of New York City
(Northern Manhattan franchise)

Dear Mr. Crary:

I write on behalf of Paragon Communications, doing business as Time Warner Cable of New York City ("Paragon"), pursuant to Article 11 of the New York Public Service Law, Section 222, to request the approval of the Public Service Commission with respect to the enclosed Cable Franchise Agreement between the City of New York and Paragon (Northern Manhattan franchise). The Franchise Agreement represents the renewal of Paragon's current franchise with the City of New York to provide cable television services in the Borough of Manhattan.

As required by 9 NYCRR 591.5, this application for renewal includes the following documents.

- i) a duly certified copy of the municipal resolution granting the renewal;
- ii) a fully executed copy of the new franchise agreement; and
- iii) a complete and accurate copy of the latest annual test data compiled pursuant to 9 NYCRR 596.5.

If the Commission requires any further information, please feel free to contact me or Robert Jacobs, Senior Vice President of Time Warner Cable of New York City, or our outside counsel, Allan Arffa, of Paul Weiss, Rifkind, Wharton & Garrison.

A copy of this application has also been served on the New York City Clerk, as required under 9 NYCRR 591.5(c). Proof of that service is enclosed.

I also respectfully request that the Commission consider this matter expeditiously, as Paragon's current cable television franchise agreement with New York City is set to expire on October 19, 1998.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barry Rosenblum', with a long horizontal flourish extending to the right.

Barry Rosenblum
President
Time Warner Cable of New York City

Enclosures

cc: Elaine Reiss, General Counsel, New York City Department
of Information Technology and Telecommunications
Bruce Regal, Esq., Office of the Corporation Counsel of
the City of New York (w/o enclosures)
Christopher Collins, Esq., New York City Council,
Land Use Division
Allan J. Arffa, Esq. (w/o enclosures)

**RESOLUTION
FRANCHISE AND CONCESSION REVIEW COMMITTEE**

September 16, 1998

(Cal. No.1)

[Northern Manhattan]

WHEREAS, on June 28, 1990, the City of New York ("the City") granted a franchise ("the Franchise") for the provision of cable television service, which franchise is currently held by Paragon Communications (doing business as Time Warner Cable of New York City) ("the Company"); and

WHEREAS, on October 16, 1995, the New York City Department of Information Technology and Telecommunications ("DoITT") received a letter from a representative of the Company invoking the Company's rights under federal law with respect to renewal of the Franchise as set forth in Title VI of the Communications Act of 1934, as amended ("the Cable Act"); and

WHEREAS, pursuant to an authorizing resolution designated Resolution No. 1639 (adopted by the New York City Council on October 13, 1993) and pursuant to the Cable Act and to applicable state law, DoITT (i) has exercised due diligence to review the performance of the Company under the Franchise and conducted proceedings and undertaken activities to ascertain the future needs and expectations of the community relative to cable television service and to determine whether and on what terms and conditions renewal of the Franchise should be granted, and (ii) on August 18, 1998, issued a Solicitation of Proposals for Renewals of the Existing Cable Television Franchises for Manhattan, Queens and Staten Island, and the Existing Cable Television Franchise for Brooklyn, held by Time Warner Cable of New York City (a division of Time Warner Entertainment, L.P.) (the "Solicitation"); and

WHEREAS, DoITT has completed its environmental review of the proposed renewal pursuant to the New York State Environmental Quality Act ("SEQRA") (Section 8-0101 *et seq.* of the New York State Environmental Conservation Law), the SEQRA regulations set forth as Part 617 of Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review ("CEQR") process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City New York), and has determined that the proposed renewal will have no significant effect on the quality of the environment; and

WHEREAS, this Committee held a Joint Public Hearing (the "Joint Public Hearing") regarding the proposed renewal of the Franchise on September 14, 1998, which hearing constituted a full public proceeding affording due process and was preceded by reasonable notice to the Company and the public, in accordance with the requirements of state law and the City Charter, and said hearing was closed on that date; and

WHEREAS, DoITT has reviewed the Company's response to the Solicitation and, after completion of negotiations with the Company and completion of the Joint Public Hearing, has determined that the Franchise should be renewed; and

WHEREAS, the Company's technical ability, financial condition, character, and plans for construction and operation of its cable television system have been considered and this Committee has determined that its approval of the renewal of the Franchise can be granted;

NOW, THEREFORE, BE IT

RESOLVED, that this Committee, in public session, and having determined that the Company and the City have negotiated a franchise agreement which is agreeable to both parties and which complies with 9 NYCRR Section 595.1 and otherwise fulfills the needs of the City with respect to cable television, does hereby consent to the grant to the Company of renewal of the Franchise, for a term of ten years, pursuant to the terms and conditions of said franchise agreement.

A TRUE COPY OF RESOLUTION ADOPTED BY

THE FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

September 16, 1998 (CAL. NO. 1)

Jacqueline Galoy
ACTING CLERK

Cable Television
Franchise Agreement
for the Borough of Manhattan
(Northern Manhattan Franchise)

between

The City of New York

and

*Paragon Communications, d/b/a
Time Warner Cable of New York City*

September 16, 1998

Table of Contents

	<u>Page</u>
Section 1	DEFINED TERMS 4
Section 2	GRANT OF AUTHORITY 12
2.1	Effective Date 12
2.2	Closing, Term and Termination of Agreement 12
2.2.01	Closing 12
2.2.02	Term of Agreement 14
2.2.03	Termination 15
2.2.04	Termination Not a Waiver 15
2.3	Nature of Franchise, Term, Renewal of Franchise, and Effect of Termination 15
2.3.01	Nature of Franchise 15
2.3.02	Franchise Term 15
2.3.03	Renewal 16
2.3.04	Effect of Termination 16
2.4	Conditions and Limitations on Franchise. 16
2.4.01	Not Exclusive 16
2.4.02	Public Works and Improvements 16
2.4.03	No Waiver 17
2.4.04	No Release 17
2.4.05	Not Transferable 17
Section 3	SERVICE OBLIGATIONS 18
3.1	Provision of Service 18
3.2	Service to All Persons 18
3.2.01	Obligation 18
3.2.02	Requests for Service 18
3.2.03	Continuous Service 19
3.3	No Interference 19
3.4	Programming Services 20
3.5	System and Channel Capacity 20
3.6	Service to All Residents 20
3.7	Commercial Access 20
3.7.01	Number of Leased Channels 20
3.7.02	Leased Channel Report 20
3.7.03	Subsequent Changes 21

3.8	Competition	21
3.8.01	Violation of Antitrust Laws	21
3.9	State of the Art	21
3.9.01	General Requirement	21
3.9.02	State-of-the-Art Report	21
3.9.03	Procedures for Maintaining State of the Art	22
3.9.04	Directive	22
Section 4	PUBLIC SERVICES	23
4.1	Access Channels	23
4.1.01	Minimum Channel Capacity	23
4.1.02	Expansion of Channel Capacity	24
4.1.03	(a) Interconnection of Access Channels	24
	(b) Interconnection Between the Company and Other Authorized Video Providers	25
	(c) Interconnect Fund	25
4.1.04	Use of Governmental Channels	25
4.1.05	(a) Community Access Organization (“CAO”)	26
	(b) Use of Public Channels	26
4.1.06	Fallow Time	26
4.2	Access Channels: Resources, Rules and Regulations, Replacement	28
4.2.01	Resources	28
4.2.02	Rules and Regulations	28
4.2.03	Replacement	29
4.2.04	Ratings	29
4.3	Institutional Network	29
4.3.01	Capital Grant	29
4.3.02	Use	29
4.3.03	Institutional Network Fund	30
4.4	Other Public Services	30
4.4.01	Services for Physically Challenged Persons	30
4.4.02	Emergency Alert System	30
4.4.03	Services to Municipal and Other Facilities	30
Section 5	FEES AND CHARGES	30
5.1	General Requirement	30
5.2	Notice of Change	30
5.3	No Discrimination	31
5.4	Discounts	31
5.5	Hearing Impaired	32
5.6	Subsequent Changes	32
5.7	No External Costs	32

Section 6	CONSTRUCTION AND TECHNICAL REQUIREMENTS	33
6.1	Upgrade Obligations	33
6.2	General Requirement	33
6.3	Quality	33
6.4	Licenses and Permits	33
6.5	New Grades or Lines	33
6.6	Protect Structures	33
6.7	No Obstruction	34
6.8	Movement of Wires	34
6.9	Safety Precautions	34
6.10	Performance Bond	34
6.10.01	Establishment	34
6.10.02	Amount	34
6.10.03	Indemnification	34
6.10.04	Form	35
6.10.05	Not a Limit on Liability	35
6.11	Technical Requirements	35
6.11.01	Testing Procedures; Technical Performance	35
6.11.02	Engineer; Technicians	35
6.11.03	Interconnection	35
6.11.04	Testing Vehicle and Equipment	36
Section 7	EMPLOYMENT AND PURCHASING	36
7.1	Right To Bargain Collectively	36
7.2	No Discrimination	36
7.3	Local Employment	36
7.4	City Vendors	37
7.5	Local Law Requirements	37
7.6	Enforcement	37
Section 8	ADDITIONAL SUBSCRIBER RIGHTS	38
8.1	Consumer Protection Standards	38
8.2	Privacy Protection	38
8.2.01	Scope	38
8.2.02	Information to City	38
8.2.03	No Interference	38
Section 9	COMPENSATION AND OTHER PAYMENTS	38
9.1	Compensation	38
9.1.01	Franchise Fees	38
9.1.02	Payment Due	39
9.1.03	Reservation of Rights	39
9.1.04	Ordinary Business Expense	39
9.1.05	Payments To Be Made to City	39
9.2	Other Payments	40

	9.2.01	Renewal Costs	40
	9.2.02	Intentionally Deleted	40
	9.2.03	Future Costs	40
	9.2.04	Future Renewal Costs	40
	9.3	Not Franchise Fees	41
	9.4	Interest on Late Payments	42
	9.5	Method of Payment	42
	9.6	Continuing Obligation	43
Section 10		OVERSIGHT AND REGULATION	43
	10.1	Oversight	43
	10.2	City Reservation of Authority	43
	10.3	Periodic Evaluation and Hearings	44
	10.3.01	Compliance Report	44
	10.3.02	Timing	45
	10.3.03	Designated Officers and Employees	45
	10.4	Other Reports	45
	10.4.01	Additional Information	45
	10.4.02	Upgrade/Construction Progress Reports	45
	10.4.03	Financial Reports	46
	10.4.04	Additional Filings	46
	10.4.05	Related Services Report	46
	10.4.06	Cable Services	47
	10.5	Books and Records/Audit	47
	10.5.01	Books and Records	47
	10.5.02	Uses and Suppliers of Service	47
	10.5.03	Right of Inspection	47
	10.5.04	Right of Examination	48
	10.5.05	File for Public Inspection	48
	10.6	Investigations	49
	10.6.01	Company Cooperation	49
	10.6.02	Failure To Testify	49
	10.6.03	Penalties for Failure To Testify	50
	10.6.04	Determination of Penalty	50
	10.6.05	Definitions	51
	10.6.06	Investigations Required	51
Section 11		RESTRICTIONS AGAINST ASSIGNMENT AND OTHER TRANSFERS	51
	11.1	Transfer of Interest	51
	11.2	Transfer of Control or Stock	52
	11.3	Petition or Other Written Request	52
	11.4	Public Hearing	53
	11.5	Conditions	53
	11.6	Permitted Encumbrances	53

11.7	Effect of Unauthorized Sale/Transfer	54
11.8	Consent Not a Waiver	54
Section 12	RESTRICTIONS ON THE COMPANY	54
12.1	Use of Existing Systems	54
12.2	Prohibition of Repair of Subscriber's Television Receiver	54
Section 13	LIABILITY AND INSURANCE	54
13.1	Liability and Indemnity	54
13.1.01	Company	54
13.1.02	City	55
13.1.03	Moving Wires	55
13.1.04	No Liability for Public Work, etc.	55
13.1.05	No Liability for Damages	55
13.1.06	Indemnification of the City	55
13.1.07	Limitations	56
13.2	Insurance	56
13.2.01	Specifications	56
13.2.02	Maintenance	56
13.2.03	Increased Insurance Coverage	57
13.2.04	Liability Not Limited	57
Section 14	SPECIFIC RIGHTS AND REMEDIES	57
14.1	Not Exclusive	57
14.2	Security Fund	58
14.2.01	Obligation to Maintain	58
14.2.02	Amount	58
14.2.03	Purpose	58
14.2.04	Withdrawals from Security Fund	59
14.2.05	Replenishment	59
14.2.06	Notice of Withdrawals	60
14.3	Liquidated Damages	60
14.3.01	Liquidated Damages	60
14.4	Material Breach	61
14.4.01	Remedies for Material Breach	61
14.4.02	Grounds	63
14.4.03	No Independent Failure To Comply	67
14.4.04	Procedures	67
14.5	Rights Upon Termination	68
14.5.01	Operation of System	68
14.5.02	Return of Security Fund	68
14.6	City's Right To Order Removal or To Acquire or Effect a Transfer of the System	69
14.6.01	Removal	69

	14.6.02	Acquisition or Transfer	70
	14.6.03	Price	70
	14.6.04	Valuation Date	71
14.7		Company's Obligations	71
14.8		Other Provisions	72
Section 15		SUBSEQUENT ACTION	72
15.1		Procedure for Subsequent Invalidity	72
15.2		Waiver	73
15.3		Reservation of Rights	73
15.4		Matching	74
	15.4.01	Matching Provision	74
	15.4.02	Procedure	74
	15.4.03	Additional Matching Provision	75
Section 16		MISCELLANEOUS	75
16.1		Appendices	75
16.2		Action Taken by City	75
16.3		Compliance with Agreement	76
16.4		Entire Agreement	76
16.5		Delays and Failures Beyond Control of Company	76
16.6		Notices	76
16.7		Questionnaires	77
16.8		Additional Representations and Warranties	78
	16.8.01	Organization, Standing and Power	78
	16.8.02	Authorization; Non-Contravention	78
	16.8.03	Consent	79
	16.8.04	Compliance with Law	79
	16.8.05	Litigation; Investigations	79
	16.8.06	Full Disclosure	80
	16.8.07	Fees	80
	16.8.08	Licenses and Permits	80
	16.8.09	Ownership Interests	81
16.9		Additional Covenants	81
	16.9.01	Compliance with Laws; Licenses and Permits	81
	16.9.02	Maintain Existence	81
	16.9.03	Financial Condition	82
	16.9.04	Good Faith Negotiations	82
	16.9.05	Compliance with Agreement	82
	16.9.06	Condition of System	83
	16.9.07	Restriction on Advertisements	83
16.10		Binding Effect	83
16.11		No Waiver; Cumulative Remedies	83
16.12		Other Cable Communications System	83
16.13		No Opposition	84

16.14 Partial Invalidity 85
16.15 Headings 85
16.16 No Agency 85
16.17 Operating Authorizations 85
16.18 Governing Law 85
16.19 Survival of Representations and Warranties 86
16.20 Delegation of City Rights 86
16.21 Claims Under Agreement 86
16.22 Modification 86
16.23 Third-Party Beneficiaries 86

SCHEDULE OF APPENDICES

- A System Characteristics and Technical Performance/Testing Requirements
- B Construction Terms, Schedule and Sequence
- C Initial Cable Services and Rate Report
- D Community Access Organization
- E Institutional Network and Government Access Support
- F Subscriber Services to Governmental Facilities
- G Ownership Interests and Approved Mortgages, Pledges, and Leases
- H Intentionally Deleted
- I Consumer Protection Standards
- J Form of Guaranty

THIS AGREEMENT, executed in duplicate this 16th day of September, 1998, by and between THE CITY OF NEW YORK, (hereinafter referred to as the "City"), by the Mayor of the City, party of the first part, and PARAGON COMMUNICATIONS, d/b/a TIME WARNER CABLE OF NEW YORK CITY (hereinafter referred to as the "Company"), party of the second part:

W I T N E S S E T H:

WHEREAS, Pursuant to Article 11 of the New York Public Service Law and the purposes articulated therein, the City has the power to grant and renew franchises for Cable Services (as defined in Section 1 hereof) within the City; and

WHEREAS, Pursuant to the Cable Act (as defined in Section 1 hereof), the Congress established certain cable franchise renewal procedures and standards in order to, among other purposes, encourage the growth and development of cable systems, assure that cable systems are responsive to the needs and interests of the local community, assure that cable communications provide and are encouraged to provide the widest possible diversity of information services and services to the public and assure that access to cable service is not denied to any Person (as defined in Section 1 hereof); and

WHEREAS, On June 28, 1990, the City granted the Company (as defined in Section 1 hereof), or the predecessor in interest of the Company, a franchise for the provision of cable television services (the "Existing Franchise"); and

WHEREAS, The Existing Franchise is scheduled to expire on October 19, 1998; and

WHEREAS, Pursuant to Section 363(a) of the City Charter (adopted pursuant to a referendum on November 7, 1989), franchises are to be awarded by the City in accordance with the provisions of authorizing resolutions adopted by the City Council of the City (the "City Council"); and

WHEREAS, The City Council adopted Resolution No. 1639 on October 13, 1993 (the "Resolution") which authorizes, until October 13, 1998, the Department of Telecommunications and Energy ("DTE") to grant nonexclusive franchises for the provision of cable television services and the installation of cable television facilities and associated equipment on, over, and under the inalienable property of the City; and

WHEREAS, Pursuant to Local Law 24 of 1994 passed by the City Council on June 22, 1994 and approved by the Mayor on July 5, 1994, the powers and duties of DTE, including the authority to grant franchises pursuant to the Resolution were transferred to the Department of Information Technology and Telecommunications ("DoITT"); and

WHEREAS, In response to a renewal petition submitted by the Company, the City, pursuant to the terms of the Cable Act, reviewed the performance of the Company under its franchise and identified the future cable-related community needs and interests and issued a request for renewal proposals for the cable television franchises to which the Company responded; and

WHEREAS, In response to that request for renewal proposals, the Company offered to provide certain facilities and equipment as well as various Services (as defined in Section 1 hereof) and to perform certain additional undertakings and the Company and the City completed arm's-length negotiations regarding the terms and conditions of a proposed renewal franchise; and

WHEREAS, The City has, with respect to the proposed renewal franchise, complied with the New York State Environmental Quality Act ("SEQRA") (Section 8-0101 *et seq.* of the New York State Environmental Conservation Law), the SEQRA regulations set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York); and

WHEREAS, The Department of City Planning determined pursuant to Section 363(c) of the City Charter that the renewal of the franchise would not have land use impacts or implications and therefore is not subject to the Uniform Land Use Review Procedure ("ULURP") set forth in Section 197-c of the City Charter; and

WHEREAS, The Company has completed all required submissions under the City's VENDEX and ICCIS processes, and the City's review thereof has been completed; and

WHEREAS, Pursuant to Section 371 of the City Charter, the Franchise and Concession Review Committee (the "FCRC") held a public hearing on a proposed renewal franchise agreement memorializing the terms and conditions of the proposed franchise; and

WHEREAS, Said hearing before the FCRC was held within 30 days of the date that DoITT filed the proposed franchise agreement with the FCRC; and

WHEREAS, A notice of said hearing and a summary of the terms and conditions of the proposed renewal agreement were published in the City Record; and

WHEREAS, At least 15 days, excluding Sundays and legal holidays, elapsed between publication of said hearing notice and summary in the City Record and the commencement of such hearing before the FCRC; and

WHEREAS, Before the FCRC hearing, the Mayor designated two newspapers published in the City (one daily newspaper circulating in the Borough in which the affected property of the City is located and one weekly newspaper circulating in the

community districts in which the affected property of the City is located), for publication of a notice of such hearing, indicating the place where copies of the proposed renewal agreement may be obtained, and such hearing notice was published twice in the designated newspapers at the expense of the proposed franchisee; and

WHEREAS, The FCRC has approved the grant to the Company of the franchise as described herein; and

WHEREAS, Pursuant to Section 595.1 of Title 9 of the New York Code of Rules and Regulations, the Company's technical ability, financial condition, and character were considered and approved by the City in a full public proceeding affording due process; the Company's plans for constructing and operating the cable television system were considered and found to be adequate and feasible in a full public proceeding affording due process; the franchise complies with the franchise standards of the PSC (as defined in Section 1 hereof); and the franchise is nonexclusive; and

WHEREAS, The City and the Company have determined that this Agreement granting the Company's nonexclusive franchise complies with the franchise standards set forth in the Resolution, Section 363 of the City Charter, Section 626 of the Cable Act as amended, Section 222 of the Public Service Law, the regulations of the Public Service Commission, and all other applicable laws and regulations; and

WHEREAS, Said hearing was a full public proceeding affording due process at which the City reviewed the Company's character and its financial, legal and technical ability to carry out its obligations pursuant to this Agreement; reviewed the Company's plan for constructing, operating, maintaining and upgrading the System (as defined in Section 1 hereof); and

WHEREAS, The City, following said public hearing, determined that this Agreement granting the Company a nonexclusive franchise complies with the franchise standards set forth in the Cable Act, the Resolution, the aforementioned Public Service Law, the regulations of the PSC (as defined in Section 1 hereof) and all other applicable laws and regulations; and

WHEREAS, The City intends to exercise the full scope of its municipal powers, including both its police power and contracting authority, to promote the public interest, to protect the health, safety, and welfare of its citizens, and to assure the widespread availability of cable television services; and, in pursuit of these goals, among other purposes, desires to maximize the diversity of programming provided over the System and access to the System by Persons other than the Company; to develop innovative programming by the City and its institutions for delivery to the public over the System; to experiment with and implement uses for Cable Communications Systems (as defined in Section 1 hereof), including the System, in connection with the City's operations; and to explore the full potential of an Institutional Network (as defined in Section 1 hereof); and

WHEREAS, The City has determined that competition in the delivery of Services is in the public interest and that appropriate action should be taken to stimulate such competition; and

WHEREAS, The Company, through its response to the City's request for renewal proposals, and the arm's-length negotiation of the terms and conditions of this Agreement (as defined in Section 1 hereof) between the Company and the City, has knowingly and voluntarily agreed to such terms and conditions, and, to the maximum extent permitted by law, has waived any claim that it may now or hereafter have as to the invalidity or unenforceability of such terms and conditions;

NOW, THEREFORE, In consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

Section 1 **DEFINED TERMS**

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section 1.

1.1 "Abandonment" means: (i) the cessation, by act or failure to act of the Company or any Affiliated Person, of the provision of all, or substantially all, of the Services then being provided over the System to Subscribers or the City for twenty-four (24) or more consecutive hours, except if due to an event beyond the control of the Company as set forth in Section 16.5 hereof; or (ii) the completion of any action described in Sections 11.1 or 11.2 hereof without the prior written consent of the City, provided that a change of Control described in Section 11.2 which is not initiated or participated in by the Company or any Affiliated Person or, if applicable, is opposed actively and publicly by the Company and all applicable Affiliated Persons shall not be considered an Abandonment.

1.2 "Access Channel" means a Government Channel and/or a Public Channel.

1.3 "Affiliated Person" means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Company; (ii) each Person in which the Company has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, limited

partner holding an interest of ten percent (10%) or more, joint venturer or joint venture partner, of the Company; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common Control with, the Company; provided that "Affiliated Person" shall in no event mean the City, the Community Access Organization, any limited partner holding an interest of less than ten percent (10%) of the Company, or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management, or common Control with, the Company.

1.4 "Agreement" means this Agreement, together with the Appendices attached hereto and all amendments or modifications hereof.

1.5 "Audio Channel" means a band of frequencies on the System which is capable of carrying one FM audio Signal (mono or stereo) or digital or other technological equivalent.

1.6 "Basic Service" means a group or groups of Cable Services distributed over the Subscriber Network, consisting of any Service tier which includes the retransmission of local television broadcast signals.

1.7 "Borough President" means the President of the Borough of Manhattan, the Borough President's designee, or any successor thereto.

1.8 "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)) and any amendments thereto.

1.9 "Cable Communications System" means any facility operating by means of coaxial cable, optical fiber, or other transmission lines or forms of transmission, and associated equipment and devices, the primary function of which is to provide Cable Services, by receiving, through any means, including, without limitation, coaxial cable, optical fiber, antenna, or satellite or microwave transmission, and distributing video, audio, voice, or data Signals, whether originating within the City or elsewhere. The foregoing definition of "Cable Communications System" shall not be deemed to circumscribe the valid authority of any governmental body, including the City, to regulate the activities of any other communications system or provider of communications services.

1.10 "Cable Service" means: (A) the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, which includes, for purposes of this Agreement, Internet access service and other two-way interactive services. If the Cable Act is amended to expand the activities which constitute "Cable Service" as defined in the Cable Act, then the parties shall negotiate a mutually agreeable revision

of the definition of Cable Service for purposes of this Agreement to reflect such expansion.

1.11 "Channel" means a band of frequencies in the electromagnetic spectrum, or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video Signal, an audio Signal, a voice Signal, or a data Signal, provided that the spectrum capacity of each such Channel and the technical specifications of each such Signal shall be as defined in Appendix A to this Agreement.

1.12 "City" means the City of New York or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, the City of New York, or any officer, official, employee, or agent thereof, any designee of any of the foregoing, or any successor thereto.

1.13 "Closing" means the date on which this Agreement is executed, as further defined in Section 2.2 hereof.

1.14 "Commercially Impracticable" means that the Company is unable to provide any facility or equipment, or to undertake any other activity or fulfill any other obligation as provided for in this Agreement, any Appendix hereto, or any amendment to this Agreement or Appendix hereto, as a result of a change in conditions which is beyond the control of the Company due to unforeseen supervening circumstances not within the contemplation of the Company as of the date hereof and the nonoccurrence of which was a basic assumption on which the requirement for such facility, equipment, other activity, or obligation was based, consistent with the definition of commercial impracticability in Section 2-615 of the Uniform Commercial Code as in effect in the State of New York.

1.15 "Commissioner" means the Commissioner of DoITT, the Commissioner's designee or any successor thereto.

1.16 "Community Access Organization" or "CAO" means the nonprofit corporation that has been designated pursuant to Appendix D to this Agreement.

1.17 "Company" means Paragon Communications, d/b/a Time Warner Cable of New York City.

1.18 "Comptroller" means the Comptroller of the City, the Comptroller's designee, or any successor thereto.

1.19 "Control" of or "Controlling Interest" in a Person or in the System or the franchise granted herein, means working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt

instruments, or negative control, as the case may be, of such Person or of the System or of the franchise granted herein. A rebuttable presumption of the existence of Control of, or a Controlling Interest in, a Person or the System or the franchise granted herein shall arise from the beneficial ownership, directly or indirectly, by any Person or group of Persons acting in concert (other than underwriters during the period in which they are offering securities to the public) of ten percent (10%) or more of such Person or the System or the franchise granted herein. "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

1.20 "Corporation Counsel" means the Corporation Counsel of the City, the Corporation Counsel's designee, or any successor thereto.

1.21 "Dial Location" means the position on a television receiver, tuner, converter, or other device which is selected to receive a specific Channel or Service.

1.22 "District" means all areas within Community Board District 7 in the Borough of Manhattan north of the center line of West 79th Street, all areas within Community Board District 8 in the Borough of Manhattan north of the center line of East 86th Street (Fifth Avenue dividing east from west) and all areas within Community Board Districts 9, 10, 11 and 12 in the Borough of Manhattan, and including Randall's Island, Wards Island and Marble Hill, provided, however, that the Company may, in response to a request for Service on Randall's Island or Wards Island, with the Director's prior written approval, provide such Service by means other than coaxial cable.

1.23 "DoITT" means the Department of Information Technology and Telecommunications, or any successor thereto.

1.24 "Downstream" means the direction of Signals originating from the headend or hubs of the System and going toward a Subscriber.

1.25 "Economically and Technically Feasible and Viable" means capable of being provided: (i) through technology which has been demonstrated to be feasible for its intended purpose; (ii) in an operationally workable manner; and (iii) in a manner which ensures that the System has a reasonable likelihood of being operated on a reasonably profitable basis over the term of the franchise.

1.26 "Effective Date" means the date on which this Agreement shall take effect, as further defined in Section 2.1 herein.

1.27 "Enhanced Service" means any Cable Service other than Basic Service distributed over the System.

1.28 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.29 "FCRC" means the Franchise and Concession Review Committee of the City of New York.

1.30 "Governmental Channel" means an Access Channel on the Subscriber Network which the Company shall make available to the City, at no charge, as provided in Section 4.1 hereof and in Appendix E to this Agreement.

1.31 "Gross Revenue" means all revenue as determined in accordance with generally accepted accounting principles which is received, directly or indirectly, by the Company and by each Affiliated Person from or in connection with the distribution of any Service on the System or the provision of any Service Related Activity in connection with the System, including, without limitation, the value of any free services provided by the Company (other than those authorized or required by this Agreement or provided at the discretion of the Company as a contribution to a charitable or other organization exempt from taxation as an entity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended) which value of free services shall include, in the case of free Cable Services, the retail value of all tiers of service actually provided. Gross Revenue shall also include all revenue of any other Person, including, without limitation, Leased or Access Channel programmers, which is received directly or indirectly, from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity in connection with the System. Gross Revenue, for purposes of Section 9.1 hereof, shall also specifically include: (i) the fair market value of any nonmonetary (i.e., barter) transactions between the Company and any Person, other than an Affiliated Person, but not less than the customary prices paid in connection with equivalent transactions; (ii) the fair market value of any nonmonetary (i.e., barter) transactions between the Company and any Affiliated Persons but not less than the customary prices paid in connection with equivalent transactions conducted with Persons who are not Affiliated Persons; and (iii) any revenue received by the Company or by any Affiliated Person, as reasonably determined from time to time by the Comptroller, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the franchise granted herein. Gross Revenue shall also include all advertising revenue which is received directly or indirectly by the Company, any Affiliated Person or any other Person from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity in connection with the System, but shall not include advertising revenue from national advertising spots carried over the System. Gross Revenue shall not include: (i) the revenue of any Person, including, without limitation, a supplier of programming to the Company, to the extent that said revenue is also included in Gross Revenue of the Company; (ii) the revenue of the Company or any other Person which is received directly from the sale of any merchandise through any Service distributed over the System (other than that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the System for the sale of such merchandise (such as, for example, the portion of such payment attributable to a commission for the Company or an Affiliated Person), which portion shall be included in Gross Revenue); (iii) taxes imposed by

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to the extent such advertising revenue is not part of the revenue of the Company

law on Subscribers which the Company is obligated to collect; (iv) amounts collected by the Company from Subscribers on behalf of Leased or Access Channel programmers, other than Affiliated Persons, to the extent that all of the amounts collected (in excess of the amounts deducted pursuant to Section 9.1.05 hereof and paid to the City) are passed on by the Company to said programmers; (v) any investment income earned by the Company; (vi) the revenue of any Affiliated Person which represents standard and reasonable amounts paid by the Company to said Affiliated Person for ordinary and necessary business expenses of the Company, including, without limitation, professional service fees and insurance or bond premiums; (vii) any revenues, including subscription fees and advertising receipts, received by the Company or any Affiliated Person in connection with the sale to Subscribers of any cable programming guide, provided that the Company or an Affiliated Person provides to all Subscribers, without charge, a written program guide or other information, on at least a monthly basis, listing all Services and specific programs then being distributed over the System including, without limitation, the programs and Services currently being carried on all Access Channels, if made available by the City and the Community Access Organization, as applicable, within the same time schedule used by the Company for its own programming; (viii) advertising commissions deducted by advertising agencies before advertising revenues are paid over to the Company; and (ix) to the extent consistent with generally accepted accounting principles, consistently applied, bad debt write-offs.

1.32 "Guarantor" means Time Warner Inc.

1.33 "Institutional Network" means the cable or cables, electronics and ancillary equipment provided pursuant to Section 4.3 hereof and Appendix E to this Agreement.

1.34 "Leased Channel" means a Channel on the Subscriber Network designated by the Company pursuant to Section 612 of the Cable Act (47 U.S.C. § 532) or as otherwise provided in accordance with Section 3.7 hereof.

1.35 "Liability" or "Liabilities" means any and all encumbrances, defects of title, easements, mortgages, security interests or agreements, pledges, liens, charges, damages, expenses, penalties, fines, costs, conditional sales agreements, title retention agreements, claims, assessments, restrictions, liabilities, obligations, debts, commitments, undertakings, taxes, covenants and responsibilities of every kind and character, known and unknown, contingent or otherwise, or arising or existing by operation of law, by judicial decree or judgment, by contract or otherwise, including, without limitation, those evidenced by contracts, agreements, memoranda, indentures, mortgages and security agreements, and conditional sales and other title retention agreements. "Liability" or "Liabilities" shall also mean any damage or loss to any real or personal property of, or any injury to or death of, any Person or the City.

1.36 "Mayor" means the chief executive officer of the City, the Mayor's designee, or any successor to the executive powers of the present Mayor.

1.37 "Noncable Service" means any service which is distributed over the System, other than a Cable Service.

1.38 "Non-Residential Subscriber" means a Subscriber, other than a Residential Subscriber, who lawfully receives in exchange for a fee any Service the Company provides through its System.

1.39 "Person" shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the City.

1.40 "Physically Challenged" shall mean any individual with a physical disability or handicap.

1.41 "PSC" means the New York State Public Service Commission, its designee, or any successor thereto.

1.42 "Public Channel" means an Access Channel on the Subscriber Network which the Company shall make available to the Community Access Organization, at no charge, for use as provided in Section 4.1 hereof.

1.43 "Resident" means an occupant who: (i) resides in a dwelling which has or is entitled to receive from the City a residential certificate of occupancy, including, without limitation, a private dwelling, class A multiple dwelling, or an interim multiple dwelling; or (ii) has continuously resided in the same building as a permanent resident for at least six (6) months or who takes occupancy pursuant to a lease (or other similar arrangement) of at least six (6) months duration, including, but not limited to, occupants of any buildings not included in subsection (i) above, and including occupants of hotels, apartment houses, one-to-two family dwellings, apartment hotels, motels, lodging or rooming houses, rectories, convents, school dormitories, hospitals, prisons, reformatories, nursing homes, mental institutions, clinics, orphanages, day nurseries, homes for the aged and sanitariums, whether or not such buildings have or are entitled to receive from the City residential certificates of occupancy; provided, however, that (a) with respect to occupants of prisons, reformatories and mental institutions, the Company's obligation shall be to provide Service to common areas in such facilities, to the extent that the Facility at issue requests and negotiates for the provision of such services and (b) in the case of any other institutional facility (such as a dormitory, a hospital, a nursing home, etc.), the Company shall negotiate with the institution in order for the Company to serve the Resident requesting Service, and the Company may be relieved of its obligation to such Resident upon a showing of good cause to the Commissioner. For purposes of this Agreement, the terms "private dwelling," "class A multiple dwelling," and "interim multiple dwelling" shall have the same meaning as they have or may have in the New York State Multiple Dwelling Law, as such Law may from time to time be amended.

1.44 "Residential Subscriber" means a Resident who lawfully receives any Service on the Subscriber Network, except to the extent that such Services are used by such Subscriber in connection with a trade, business, or profession, either directly or indirectly.

1.45 "Security Fund" means the fund established in Section 14.2 hereof.

1.46 "Service" means any Cable Service, including any Basic Service, or any other service, whether originated by the Company or any other Person, which is offered to any Person in conjunction with, or distributed over, the System.

1.47 "Service Related Activity" means any activity or function conducted by the Company, or by an Affiliate of the Company on behalf of the Company, that is associated with the production or distribution of any Service over the System, including, without limitation, use of studio or other facilities or equipment, billing, audience promotion, or installation or lease of equipment.

1.48 "Signal" means any transmission of radio frequency energy or of optical information.

1.49 "State-of-the-Art" or "State of the Art," as applicable, means that level of technical or service performance, capacity and capability (including, but not limited to, plant or other equipment; Access and other production equipment or facilities; construction techniques; consumer service; facilities, equipment, systems and operations; and any performance standards) which has been developed and demonstrated in the cable industry or other comparable industry that provides services to the public under similar conditions and is Economically and Technically Feasible and Viable.

1.50 "Streets" means the surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds and public places or waters within and belonging to the City and any other property within the City to the extent to which there exist public easements or public rights of way.

1.51 "Subscriber" means any Person lawfully receiving any Service provided by the Company by means of or in connection with the System, whether or not a fee is paid for such Service.

1.52 "Subscriber Network" means that portion of the System over which Services are provided primarily to Residential Subscribers.

1.53 "System" means the Cable Communications System which is to be constructed, operated, maintained and upgraded, as necessary, by the Company pursuant to this Agreement, including, without limitation, all real property, all tangible and intangible personal property, buildings, offices, furniture, Subscriber

lists, cables, amplifiers and all other electronic devices used in connection therewith and all rights, contracts and understandings with regard to any matter related thereto.

1.54 "Two-way" means that the headend, trunk cables, distribution plant, amplifiers, and other technical components of the System have the requisite equipment in place to pass video, audio, voice and/or data Signals in both directions simultaneously.

1.55 "Upgrade" means the construction of the System as described in the Engineering Analysis and System Architecture plan set forth in Appendix A.

1.56 "Upstream" means the direction of Signals on the Subscriber Network or the Institutional Network going toward the headend or hubs of the System.

1.57 "Video Channel" means a Channel on the System which is capable of carrying one video Signal, consisting of picture and sound information of a character similar to traditional television programming.

1.58 "Voice Channel" means a band of frequencies on the System which is capable of carrying one or more voice Signals.

Section 2 **GRANT OF AUTHORITY**

2.1 Effective Date. The franchise granted to the Company pursuant to this Agreement, which as provided in Section 2.4.01 hereof is a nonexclusive franchise, shall commence upon completion of the Closing hereof (hereinafter referred to as the "Effective Date") described in the following Section 2.2.01 hereof, provided that the Company meets each of the conditions precedent set forth in such Section.

2.2 Closing, Term and Termination of Agreement

2.2.01 Closing. This Agreement shall be executed and the obligations herein shall commence on the closing of this Agreement (herein referred to as the "Closing"). The Closing shall be held on September 16th, 1998 at City Hall, New York City, or such other date as may be specified by the Mayor. At the Closing, the Mayor and the Company shall execute, by signing, this Agreement, provided that prior to such execution by the Mayor (the signature of the Mayor to constitute the approval of the Mayor to this Agreement required pursuant to Section 372 of the New York City Charter):

(i) FCRC Resolution. The FCRC shall have adopted a resolution approving this Agreement;

(ii) Certified Copies of Resolutions. The Company shall have furnished the City with a certified copy of the resolution(s) duly adopted by the

Board of Directors or other governing body of the Company, and, where applicable, the Guarantor, approving the execution, delivery and performance of this Agreement and approving the execution, delivery and performance of all other documents, certificates, guarantees, and other instruments required to be furnished to the City by and pursuant to the terms of this Agreement;

(iii) Opinion of Company's Counsel. The City shall have received an opinion dated as of the date of the Closing from outside counsel to the Company in form and substance reasonably satisfactory to the Commissioner and the Corporation Counsel;

(iv) Representations and Warranties. The Company shall have provided the City with a certificate of a senior officer of the Company certifying that the representations and warranties made by the Company in this Agreement are true and correct as of the Closing;

(v) Government Approvals. The Company shall have provided the City with evidence of approval of the transactions contemplated by this Agreement from any necessary governmental authorities, and all notice periods and waiting periods required by law to pass in connection with such transactions shall have passed, except the certificate of confirmation to be issued or renewed by the PSC pursuant to Section 591.4 of the PSC regulations;

(vi) Adverse Proceedings. The Company shall have provided the City with a certificate of a senior officer of the Company certifying that, after due inquiry, to the best of the Company's knowledge, no action or proceeding by or before any court or other governmental body shall have been instituted or threatened by any governmental body or other Person which seeks to restrain, prohibit or invalidate any transaction(s) or undertaking(s) contemplated by this Agreement, except as may be disclosed in the certificate and approved by the Commissioner and the Corporation Counsel;

(vii) Leased Channel Report. The Commissioner shall have approved the Company's report described in § 3.7.02 regarding Leased Channels;

(viii) Obligations to Upgrade. The Company shall have fulfilled all of its obligations to upgrade the System pursuant to the Social Contract for Time Warner Cable, FCC 95-478 ("Social Contract") between Time Warner Cable and the Federal Communications Commission, and its existing franchise agreement that are required to have been fulfilled as of the Closing;

(ix) Performance Bond. The Company shall have furnished to the City the performance bond, pursuant to Section 6.10.04 hereof;

(x) Local Employment Plan. The Company shall have submitted to the Commissioner and the Division of Labor Services any plan for the

recruitment, education, training and employment of residents of the City, with a preference for City residents, required pursuant to Section 7.3 hereof;

(xi) Payment of Initial Portion of Renewal Costs. The Company shall have paid to the City an initial portion of the City's renewal costs, pursuant to Section 9.2.01 hereof;

(xii) Related Services Report. The Company shall have submitted to the Commissioner the Related Services Report, pursuant to Section 10.4.05 hereof;

(xiii) Liability Insurance Policy. The Company shall have secured its liability insurance policy pursuant to Section 13.2.01 hereof and shall have delivered to the Comptroller, the Commissioner and the Corporation Counsel, proof thereof, in the form of an insurance certificate or insurance binder, together with evidence that the premiums for such policy have been paid, that such policy shall be in effect on or before the Effective Date, and that such policy is in accordance with Section 13.2 hereof;

(xiv) Security Fund. The Company shall have deposited with the Comptroller the Security Fund, pursuant to Section 14.2.01 hereof;

(xv) Engineering Analysis and System Architecture. The Company shall have submitted to the Commissioner the Company's Engineering Analysis and System Architecture, pursuant to Appendix A to this Agreement;

(xvi) Guaranty. The Company shall have secured and delivered to the Commissioner and the Comptroller a guaranty executed by the Guarantor in the form set forth at Appendix J to this Agreement, which guaranty shall have been authorized, executed and delivered by the Guarantor;

(xvii) VENDEX/ICCIS. The Company has completed all required submissions under the City's VENDEX and ICCIS processes, and the City's review thereof has been completed; and

(xviii) The Company shall have delivered such other documents as may be reasonably requested by the City.

Any of the above Closing conditions may be waived by the Commissioner.

2.2.02 Term of Agreement. This Agreement shall remain in effect from the Effective Date of this Agreement to the termination of this Agreement, as provided in Section 2.2.03 hereof, which period of time is herein referred to as "the term of this Agreement."

2.2.03 Termination. The termination of this Agreement shall occur upon the earliest to occur of: (i) the revocation of the franchise and this Agreement as provided in Section 14.4 hereof; (ii) an Abandonment of the System; or (iii) the expiration of the term of the franchise, by acceleration pursuant to Section 14.4.01(iii) hereof, or upon the scheduled expiration date set forth in Section 2.3.02, or otherwise.

2.2.04 Termination Not a Waiver. The termination of this Agreement and/or the franchise granted pursuant to the terms of this Agreement shall not, for any reason, operate as a waiver or release of any obligation of the Company or any other Person, as applicable, for any Liability: [(i) pursuant to Section 13.1 hereof, which arose or arises out of any act or failure to act prior to the termination; (ii) which exists pursuant to Sections 8.2 [Privacy], 9 [Compensation] (but only to the extent that the payments required by Section 9 relate to activities of the Company prior to the termination), 10.5.03 [Right of Inspection], 10.5.04 [Right of Examination], 10.6 [Investigations], 14.5 through 14.8 [Termination], 16.18 [Governing Law] and 16.21 [Claims under Agreement] hereof]; (iii) to maintain in full force and effect the performance bond required by Section 6.10 hereof and coverage under the liability insurance policies required by Section 13.2 hereof for a reasonable period following the date of termination for any reason, but in no event less than one (1) year following such date; or (iv) to maintain in full force and effect the Security Fund required by Section 14.2 hereof pursuant to the terms of Section 14.2.03 hereof. If the Company continues to operate all or any part of the System after the expiration of the term of the franchise, without renewal, then the Company shall comply with and be obligated under such reasonable additional terms and conditions the City may reasonably and lawfully impose with respect to such period of operation, provided, however, that this provision shall not apply if such continuation of operations is pursuant to Section 14.8 hereof.

2.3 Nature of Franchise, Term, Renewal of Franchise, and Effect of Termination

2.3.01 Nature of Franchise. On the Effective Date, the Company's nonexclusive franchise for the occupation and use of the Streets within the District for the construction, operation, maintenance, upgrade, repair, and removal of the System, for the purpose of providing Cable Services in accordance with the provisions of this Agreement, shall be deemed to have been renewed and granted for the duration of the Franchise Term described in Section 2.3.02 below, provided that the Closing shall have occurred and the Company shall have fulfilled each of the conditions set forth in Section 2.2.01 hereof. The franchise granted herein does not authorize the Company to provide any Noncable Services (except that this limitation is not intended to limit the City's use of the Institutional Network).

2.3.02 Franchise Term. Unless sooner revoked or such expiration is accelerated pursuant to Section 14.4.01(iii) hereof, and subject to the matching provisions specified in Section 15.4, the franchise shall remain in effect

from the Effective Date until the tenth anniversary of the Effective Date, which period of time is herein referred to as "the term of the franchise." The franchise shall be revoked automatically upon any termination of this Agreement.

2.3.03 Renewal. Subject to Section 626 of the Cable Act (47 U.S.C. § 546), the City reserves the right to grant or deny renewal of the franchise granted herein; provided that any renewal may be based upon the Company's agreement to comply fully with all amendments or other modifications to this Agreement as may be specified in any such renewal; and, provided further, that nothing in this Agreement shall be construed as a presumption in favor of a renewal of this Agreement or the franchise granted herein.

2.3.04 Effect of Termination. In the event that: (i) the City does not grant a renewal of the franchise at the expiration of the term of the franchise; (ii) an Abandonment of the System occurs; or (iii) this Agreement is terminated for any other reason prior to the tenth anniversary of the Effective Date, then the term of the franchise shall expire, all rights of the Company in the franchise shall cease, with no value allocable to the franchise itself, and the rights of the City and the Company to the System, or any part thereof, shall be determined as provided in Sections 14.5 through 14.7 hereof.

2.4 Conditions and Limitations on Franchise.

2.4.01 Not Exclusive. Nothing in this Agreement shall affect the right of the City to grant to itself or any Person a franchise, consent, or right to occupy and use the Streets, or any part thereof, for the construction, operation, or maintenance of all or any part of a Cable Communications System within the District or elsewhere in the City or for any other purpose.

2.4.02 Public Works and Improvements. Nothing in this Agreement shall abrogate the right of the City (or any board, authority, commission or public benefit corporation) to perform any public works or public improvements of any description, including, without limitation, all work authorized by the New York State Rapid Transit Law. In the event that the System interferes with the construction, operation, maintenance, or repair of such public works or public improvements, the Company shall, at its own cost and expense, protect or promptly alter or relocate the System, or any part thereof, as directed by the City. In the event that the Company refuses or neglects to so protect, alter, or relocate all or part of the System, the City shall have the right to break through, remove, alter, or relocate all or any part of the System without any Liability to the Company and the Company shall pay to the City the costs incurred in connection with such breaking through, removal, alteration, or relocation.

In the event the Company believes that it has been significantly and adversely affected by the operation of this Section by reason of having to pay materially excessive amounts to have the Company's System protected when public

works and improvements are being performed, the Company may submit to the Commissioner a statement describing the Company's complaints and proposed solution, and the Commissioner shall forward such statement to the appropriate City agencies with jurisdiction over the applicable public works or public improvements. In addition, within one year after the Effective Date, the Company may prepare and submit a report to the Commissioner describing the status of the Company's concerns with respect to procedures and costs regarding public works or public improvements, any progress which has been made, and any recommendations. The Commissioner, at the request of the Company, shall submit the Company's report to the Mayor's Office of Construction or other appropriate City agency.

2.4.03 No Waiver. Nothing in this Agreement shall be construed as a waiver of any codes or ordinances of the City or of the City's right to require the Company or any Person utilizing the System to secure the appropriate permits or authorizations for such use, provided that no fee or charge may be imposed upon the Company for any such permit or authorization, other than the standard fees or charges generally applicable to all Persons for such permits or authorizations, and any such standard fee or charge shall not be considered a "franchise fee" under Section 622(g)(1) of the Cable Act (47 U.S.C. § 542(g)(1)), shall fall within the exception to such term pursuant to Section 622(g)(2)(A) of the Cable Act (47 U.S.C. § 542(g)(2)(A)) and shall not be an offset against the compensation the Company is required to pay to the City pursuant to Section 9.1 hereof.

2.4.04 No Release. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Streets. In the event that all or part of the Streets within the District are eliminated, discontinued or closed, all rights and privileges granted pursuant to this Agreement with respect to such Streets, or any part thereof so eliminated, discontinued or closed, shall cease upon the effective date of such elimination, discontinuance or closing, provided that, if such elimination, discontinuance or closing of any Street is undertaken for the benefit of any private Person, the City shall, as appropriate, condition its consent to such elimination, discontinuance or closing of such Street on the agreement of such private Person to (i) grant the Company the right to continue to occupy and use such Street or (ii) reimburse the Company for the reasonable costs to relocate the affected part of the System.

2.4.05 Not Transferable. As provided in Section 11 hereof, the franchise granted herein to the Company shall not be transferred, assigned or encumbered, in whole or in part, in any manner, directly or indirectly, nor shall title therein, either legal or equitable, or any right, interest or property or assets relating to the franchise or the System (other than conveyances of real or personal property in the ordinary course of the operation of the System), pass to or vest in any Person without the express approval of the City, except as provided in Section 11 hereof and Appendix G to this Agreement. The completion of any such action without the approval of the City shall constitute an Abandonment of the System.

Section 3 SERVICE OBLIGATIONS

3.1 Provision of Service. The Company has offered to and shall continuously construct, operate, maintain, and, if required pursuant to Section 3.9 hereof, upgrade the System in accordance with the State of the Art, so as to provide, at a minimum, the full range of Services, facilities and equipment required by this Agreement (including the Appendices to this Agreement). The Company currently believes that the provision of all such Services, facilities and equipment as delineated herein is Economically and Technically Feasible and Viable. In addition, the Company, after thoroughly considering all foreseeable economic and business risks, currently believes that such Services, facilities and equipment as delineated herein in such Appendices will remain Economically and Technically Feasible and Viable during the term of the franchise, and will not become, during the term of the franchise, Commercially Impracticable.

3.2 Service to All Persons

3.2.01 Obligation. Throughout the term of this Agreement, the Company covenants and agrees to construct, operate, maintain and upgrade the System so as to make all Services distributed over the System available to any Person within the District that submits a request for Service to the Company within the time periods and pursuant to the procedures described in Section 3.2.02. In offering Services on the Subscriber Network, neither the Company nor any Affiliated Person shall discriminate, nor permit discrimination between or among any Persons, in the availability of Services or in the rates, terms and conditions thereof, except to the extent that such discrimination is expressly permitted pursuant to (a) Federal law which preempts local regulation of such discrimination or (b) Sections 5.3 and 5.4 hereof. It shall be the right of all Subscribers to receive continuously all available Services insofar as their financial and other obligations to the Company are honored. The obligations set forth in the preceding three sentences shall include, without limitation, the obligation to ensure that access to any Service is not denied to any group of potential Residential Subscribers because of the income of the residents of the area in which such group resides, geographic location or any other criteria, except as expressly permitted pursuant to (a) or (b) above. The Company shall not enter into or maintain any "bulk rate" agreements, except as may be permitted under applicable law, pursuant to Section 5.4 hereof. The Company shall continuously monitor the implementation of the commitments set forth in this Section 3.2.01.

3.2.02 Requests for Service. The Company shall fulfill all requests for Service within the time periods set forth in Section 2.3.03 of Appendix I. If the Company is unable to fulfill any such request within ninety (90) days, it shall promptly notify the Person requesting Service, in writing, and shall provide monthly updates to that Person. The Company shall aggressively pursue access to all blocks and buildings which are not currently wired for Service, but the Company shall have the right to petition the Commissioner for an exception from such requirement on a

temporary basis when there is no pending or reasonably expected likelihood of a request for Service from any such block or building and the Commissioner is satisfied that the Company has thoroughly advertised the availability of Service to each such block or building in a manner consistent with the advertising plan described in Section 3.2.04 hereof. In each case in which the Company needs to obtain access to property for providing or upgrading its Service, the Company shall undertake (and document in written form) the following steps within the following time periods: (i) send promptly (but in no event later than thirty (30) days after receipt of a request for Service) to the property owner or managing agent notice of its intention to wire for Service; (ii) attempt to negotiate a survey date and wiring method with the property owner or agent; (iii) if not yet successful in obtaining access, send a second notice of intent to wire and a letter from counsel regarding the Company's access rights, and attempt to wire; (iv) if the property owner or agent prevents wiring, request assistance from the Commissioner and/or the PSC; and (v) institute and reasonably and diligently pursue legal action if the requested Service(s) is (are) not provided within one hundred eighty (180) days of first notice to the property owner or agent of intention to wire. In each case where it is having difficulty obtaining access to a block or part of a block, the Company shall, within ninety (90) days, aggressively pursue an alternate point of entry so as to ensure that it complies with this Section 3.2.02 and shall redesign its wiring plans to permit it to utilize such alternate point of entry to the maximum extent feasible consistent with sound design and construction practices. The Commissioner may waive, or extend the dates for complying with, the requirements of this Section upon a showing of good cause by the Company.

3.2.03 Continuous Service. In the event the Company, with the consent of the City, sells or otherwise transfers the System or Control thereof, or in the event the franchise terminates, the Company shall ensure that all Subscribers receive continuous, uninterrupted Service. In the event of an acquisition of the System by the City or a transfer of the System by the Company, on its own initiative or at the direction of the City in accordance with Section 14.6 hereof or otherwise, the Company shall cooperate with the City to operate the System in the manner set forth in Section 14.7 hereof, in order to maintain continuity of Service to Subscribers.

3.3 No Interference. Without the prior consent of the Commissioner and in compliance with applicable law, including, without limitation, New York Public Service Law Section 228, Subsection 3, in the operation of the System, the Company shall not interfere in any way with, nor utilize, any master antenna systems, satellite master antenna system or any other similar system within any building. The Company shall promptly terminate the use of any such systems and shall comply with any order of the Commissioner to restore the prior use of any such systems to the extent the Commissioner determines that such restoration is appropriate in the circumstances, including, but not limited to, the replacement of such systems, as soon as practicable, in a manner which does not interrupt Service to any Subscriber, which plans shall include appropriate notices to all residents of such buildings.

3.4 Programming Services. The Company shall endeavor to offer to all Subscribers a diversity of video programming services; provided, however, that nothing contained in this Agreement shall be interpreted as a requirement for provision of any specific video programming services. The Company shall not make any significant programming change or network change (as such terms are defined in Section 212 of the New York Public Service Law) to the Services offered or rates therefor without first providing the Commissioner, the Comptroller and the Borough President with written notice of such change at least forty-five (45) days prior to the change (or within five (5) business days after the Company first knows of the change if compliance with such forty-five (45) day time period is not possible) and meeting all other applicable requirements of law or this Agreement.

3.5 System and Channel Capacity. Upon completion of the current System upgrade being implemented in accordance with Appendices A and B hereof, the System shall have a capacity of 862 MHz as further described in Appendix A hereof. The Subscriber Network shall contain a minimum of seventy-seven (77) activated Downstream Video Channels until completion of the current System upgrade, at which point the minimum number of activated Downstream Video Channels shall be increased to ninety-two (92). The Subscriber Network shall also contain a minimum Upstream capacity of 5 MHz to 40 MHz to be allocated among Voice and Data Channels as provided in this Agreement.

3.6 Service to All Residents. Subject to Section 5 of this Agreement, the Company shall provide Service to each Resident at the same rates charged to all other Residential Subscribers, without regard to whether a building owner agrees to pay the costs of bringing Cable Service to the building, provided that the Company's obligation to wire shall extend only to such Residents requesting Service and not to the entire building in which they reside. The Company shall be entitled to a delay in providing such Service for any period during which, after diligently pursuing all steps required in Section 3.2.02 hereof, a building owner continues to refuse access and legal remedies are unavailable.

3.7 Commercial Access

3.7.01 Number of Leased Channels. The Company shall maintain no less than the number of Leased Channels required by Section 612 of the Cable Act (47 U.S.C. § 532). In the event Section 612 no longer applies, the number of Leased Channels shall be determined at that time in accordance with the formula set forth in Section 612(b)(1) of the Cable Act (47 U.S.C. § 532(b)(1)) as such Section was in effect on the Effective Date.

3.7.02 Leased Channel Report. The Leased Channels shall be administered by the Company as required by Section 612 of the Cable Act (47 U.S.C. § 532) (or if Section 612 is no longer applicable, then, to the extent permitted by law, pursuant to the provisions of Section 612 as of the Effective Date). From time to time, upon the City's request, the Company shall make available for the City's review

at the Company's premises information and documentation listing the Leased Channels, the current lessees of such channels (other than lessees of channels made available on an hourly or other similar short-term basis), and describing how the Company is administering the Leased Channels in a manner consistent with Section 612 of the Cable Act.

3.7.03 Subsequent Changes. To the extent that applicable law may in the future permit the City to regulate Leased Channels and the terms and conditions with respect thereto to an extent greater than provided for in the Cable Act as of the Effective Date, the Commissioner may make reasonable rules and regulations governing Leased Channels and the terms and conditions with respect thereto in accordance with Section 15.3 hereof.

3.8 Competition

3.8.01 Violation of Antitrust Laws. If at any time it is finally determined by a court of competent jurisdiction (not subject to further appeal) that any action pursuant to this Agreement in connection with the acquisition or distribution of any Cable Service for ultimate delivery to consumers in any part of the City by the Company or any Affiliated Person has tended to create a monopoly or to restrain trade in violation of law (including, without limitation, 47 U.S.C. § 536 or § 548 and rules promulgated thereunder), such determination shall be deemed to be a material breach of this Agreement under Section 14.4.02.

3.9 State of the Art

3.9.01 General Requirement. Throughout the term of this Agreement, the Company shall, provided that the technology is reasonably available with reasonable delivery schedules (and the applicable level of technical or service performance, capacity and capability have been demonstrated to be workable as well as Economically and Technically Feasible and Viable), construct, operate, maintain and upgrade the System in order to ensure that it continuously conforms to the State of the Art in accordance with the requirements of this Section 3.9, taking into account, in determining whether the level of technical or service performance is Economically and Technically Feasible and Viable, unique costs or other unique features of the franchise area and the remaining term of the Franchise.

3.9.02 State-of-the-Art Report

(a) Upon the City's request, but in no event prior to the first anniversary of the Effective Date and no more than once in any thirty-six (36) month period, the Company shall provide to the Commissioner, the Comptroller and the Borough President, in a form satisfactory to the Commissioner, a report setting forth the Company's review and assessment of the current State of the Art of cable systems and its plans, if any, for upgrading the System to conform to the State of the Art. The report shall address, at a minimum: technological advances making possible

enhanced Signal quality, publicly available equipment for the receipt of Services or greater channel capacity and interactive systems; a comparison of the services, facilities and technologies utilized in, and the terms and conditions of the agreements governing, the Cable Communications Systems in areas of the City outside the franchise area; a representative sample of jurisdictions in which new technologies have been or are being used and a description of the experience those jurisdictions have had with such new technologies; an assessment of the costs associated with implementing such new technologies into the System; a discussion of additional technological advances anticipated during the remainder of the term of the franchise, along with (if appropriate) a projection of the costs and timetable for the Company offering such advances as part of or over the System; a discussion of what improvements (if appropriate) the Company anticipates making in its customer service facilities, equipment, systems and operations during the remainder of the term of the franchise, along with a projection of the costs and timetable for the implementation of such improvements; and, generally, the steps the Company or any Affiliated Person is undertaking to continuously construct, operate, maintain and upgrade the System in accordance with the provisions of Section 3.9.01; and such additional information as the City may request. The Company acknowledges and agrees that the State-of-the-Art report submitted pursuant to this Section 3.9.02 is only one resource that the City will consider in evaluating the Company's obligation pursuant to the terms and conditions of this Agreement to continuously construct, operate, maintain and upgrade the System in accordance with Section 3.9.01, and the Commissioner may, at the City's own expense, commission third parties, as necessary, to ascertain the current State of the Art in Cable Communications Systems generally.

3.9.03 Procedures for Maintaining State of the Art. Upon receiving the report required pursuant to Section 3.9.02 hereof, the Commissioner will evaluate such report and assemble any additional data necessary to ascertain whether the System or any aspect thereof needs to be upgraded under the provisions of Section 3.9.01.

3.9.04 Directive. Upon completing the evaluation contemplated by Section 3.9.03 hereof, and after providing notice to the Company and an opportunity for the Company to comment, the Commissioner may issue a reasonable directive to the Company to upgrade the System in accordance with Section 3.9.01. The Commissioner may issue such a reasonable directive not more frequently than two (2) times during the term of the franchise, provided that no such directive may issue during the last three (3) years of the franchise term. Absent a judicial challenge to the directive, the Company shall have ninety (90) days after receipt of such a directive within which to submit plans, as specified by the Commissioner, describing how it intends to complete such upgrade. In the event of a judicial challenge to the directive issued by the Commissioner, the Company will have ninety (90) days after any final determination upholding the directive not subject to further appeal within which to submit plans. Upon approval of such plans by the Commissioner, the Company shall commence and diligently pursue implementation of the required upgrade.

Section 4
PUBLIC SERVICES

4.1 Access Channels

4.1.01 Minimum Channel Capacity. The Company shall supply to the City, without charge, five (5) activated Video Channels (and access to Upstream capacity as specified in Appendix A to this Agreement) as Government Channels. The Company shall supply to the Community Access Organization, without charge, four (4) activated Video Channels (and access to Upstream capacity as specified in Appendix A to this Agreement) as Public Channels. Except with the written consent of the Commissioner (acting in his or her sole discretion), all such Government Channels and Public Channels shall be provided on the Basic Service tier of channels, provided, however, that so long as the Company or Affiliated Persons holding cable television franchises in the City is offering to at least 10,000 subscribers in the City at least ninety (90) analog and/or digital channels of service, the Company may offer one of the above-referenced five (5) Governmental Channels on an Enhanced Service tier of channels so long as such Enhanced Service tier includes at least ten (10) other analog and/or digital channels offered on a twenty-four (24) hour (i.e., not pay-per-view) basis and the conditions set forth in Section 3(b)(i), (ii) and (iii) of an agreement between the Company (and certain Affiliated Persons) and the City dated July 22, 1997 are being met. Upon the later of (i) the first day the Company is offering at least ninety (90) channels (analog and/or digital) of service to fifty percent (50%) of homes passed by the Company in the District or (ii) January 1, 2001, then the Company shall supply an additional channel (to be allocated by the Commissioner, in consultation with the Comptroller and the Borough President(s), as a Governmental Channel or a Public Channel), which shall be available on the same service tier as the tier on which the Government Channel referred to in the proviso in the preceding sentence is provided. The parties recognize that in the event the System uses primarily or entirely digital technology, traditional concepts of Basic Service tiers or Enhanced Service tiers may no longer be applicable, and the foregoing shall be interpreted to apply in such a situation to most closely approximate the agreement of the parties as set forth above. In any event, the foregoing nine (9) or ten (10) analog Access Channels may be converted to digital technology upon the approval of the Commissioner not to be unreasonably withheld, and in the event of such conversion the City shall be entitled to the full digital capacity (and not simply nine (9) digital Channels) into which the foregoing nine (9) or ten (10) analog Access Channels are converted.

The Company shall retain current Channel assignments for Access Channels, unless the Commissioner in the Commissioner's reasonable discretion approves other Dial Locations upon a written request by the Company (with supporting documentation) and after consultation with the CAO in the case of Public Channels.

All additional Access Channels supplied pursuant to Section 4.1.02 hereof, shall be distributed at frequency allocations, Channel assignments and Dial Locations to be set by mutual agreement of the Commissioner and the Company, provided that the location of the Access Channels shall, to the extent feasible, take into account the Company's existing and proposed Channel lineup, and provided further that the parties shall take into consideration the Dial Locations of such channels in the other Boroughs and shall use reasonable efforts to assign the Access Channels to contiguous Dial Locations within available Channels or bandwidth, and provided further that, if the Company's System uses digital technology or other technology in which concepts of "Channels" are not applicable, the Access Channels shall be placed in locations contiguous to the locations of the Company's regular, traditional cable programming. To the extent applicable technology allows allocation to the Basic tier without interfering with or affecting in any way an existing Channel, the Commissioner shall have the right to allocate such additional Access Channels between Basic and Enhanced Services or tiers of such Services, including pay-per-view Services, from time to time, provided, however, that to the extent Subscriber access to additional Channel or other capacity described in Section 4.1.02 requires for technological reasons Subscriber premises equipment which is required for receipt of the separate service option from Basic Service, then the availability of additional Access Channels (or additional capacity for Access Channel-type use) required pursuant to Section 4.1.02 as the result of such additional Channel or other capacity may at the Company's option be limited to those Subscribers who choose to subscribe to or purchase such service option.

4.1.02 Expansion of Channel Capacity. In addition to the Access Channel requirements described in Section 4.1.01, when the Upgrade has been completed (assuming the upgraded portion of the System operates entirely or primarily through digital technology) and digital programming services (excluding straight pass through of broadcast digital programming) are made available on the System, whether or not all digital Channels or Services are activated, then an additional nine (9) MHZ of the upgraded portion of the upgraded System shall be Access Channels. The Commissioner, in consultation with the Comptroller and the Borough President(s), shall have the authority to allocate each such additional Access Channel or capacity between Public Channels and Governmental Channels. If the System is upgraded such that total activated bandwidth is greater than 862 MHZ, then the City and the Company shall engage in good faith negotiations to determine the extent to which such additional capacity should be made available as Public, Educational and/or Governmental Access Channels.

4.1.03 (a) Interconnection of Access Channels. All Access Channels shall be capable of being interconnected throughout the City (i.e., capable of sending one transmission from each Community Access Organization to the Community Access Organization in Manhattan, and one transmission from the Community Access Organization in Manhattan simultaneously to all of the Community Access Organizations).

(b) Interconnection Between the Company and Other Authorized Video Providers.

(i) Upon a request from a Person that has a franchise agreement with the City to provide cable television services, the Company shall make the System capable of interconnecting the Access Channels to such Person's system so that such Person is capable of simultaneously transmitting the Access Channels (i.e., capable of sending a number of transmissions equal to the number of Access Channels to be provided under this Agreement), and actual interconnection shall be implemented pursuant to an order of the Commissioner, provided, however, that the costs of such interconnection shall be borne by the Person requesting such interconnection. Notwithstanding the foregoing requirement regarding allocation of costs of interconnection, the Company's existing agreement regarding allocation of such costs with Cablevision Systems New York City Corporation may continue to the extent agreed upon between the Company and Cablevision Systems New York City Corporation with respect to allocation of such costs.

(ii) Upon a request from a Person that has an agreement with the City to provide open video service as set forth in Section 653 of the Telecommunications Act of 1996 (47 U.S.C. Section 573), the Company shall provide interconnection capability as set forth in 47 CFR 76.1505(d)(3) & (4).

(c) Interconnect Fund. Within ninety (90) days after the date hereof, the City will refund to the Company unspent amounts contributed by the Company or its predecessor to the Interconnection Working Group pursuant to the Existing Franchise. The amount contributed by the Company or its predecessor is set forth in a letter from the Company to the Commissioner dated January 13, 1998.

4.1.04 Use of Governmental Channels. The Governmental Channels shall be placed under the jurisdiction of the Mayor and used for (a) any use for which such Channels were being used as of July 1, 1998 ("existing use") and/or (b) any purpose permitted by applicable law (it being agreed that neither the Company nor the City shall be deemed to have waived any rights to challenge or otherwise assert its interpretation of applicable law in connection therewith). Notwithstanding the preceding, however, existing use of the Governmental Channels for foreign language and other ethnic community leased time programming (as originally agreed upon in a letter agreement dated June 25, 1996 between the City and the Company) shall not be implemented on more than one of the Governmental Channels or for more than twenty (20) hours per day on such Governmental Channel. The Company shall provide to the City, pay-per-view or similar capability with respect to Governmental Channel(s) as specified by the Commissioner, which will, at a minimum, allow for the selection of programs on a daily basis and, to the extent practicable, on a program-by-program basis or for periods shorter than an entire day. The timing, terms and conditions of such capability shall be developed by the Commissioner and the Company in consultations to be undertaken promptly upon request by the Commissioner. The Company shall assist the programmer in arranging

for, but shall not be responsible for the direct costs associated with, Subscriber ordering or billing for such pay-per-view Services, although the Company will be responsible for taking, at its own cost, whatever steps are necessary to authorize and ensure receipt of such Services by Subscribers entitled to them. So long as such Channel is being used for the purposes authorized herein and except where the Company is utilizing any such Channel pursuant to Section 4.1.06 hereof, the Company shall not exercise editorial control over programming or distribution of Services over any Governmental Channel used by any Person(s).

4.1.05 (a) Community Access Organization ("CAO"). The Borough President shall designate an independent, not-for-profit, nonmembership corporation, organized pursuant to the New York Not-for-Profit Corporation Law, to serve as the Community Access Organization ("CAO") for the Borough, under whose jurisdiction the Public Channels shall be placed for purposes of Section 4.1.05 of this Agreement. The CAO shall undertake such activities and shall adopt such rules and regulations as are required, and may adopt rules and regulations not inconsistent with this Agreement, the Grant Agreement attached as Appendix D to this Agreement, the Certificate of Incorporation of the CAO, the By-Laws of the CAO, the rules and regulations of the Public Service Commission, and applicable law. The CAO shall maintain tax-exempt status under Section 501(c) of the Internal Revenue Code of 1986, as amended.

(b) Use of Public Channels. The Public Channels shall be under the jurisdiction of the Community Access Organization. Such Public Channels shall be used for the purpose of distributing noncommercial Services by the public, any other charitable, nonprofit purpose or other similar purpose, including, without limitation, the generation of revenues by activities reasonably related to such uses and purposes, or any other purpose agreed to between the Company and the CAO. The Company shall provide to the CAO pay-per-view or similar capability with respect to at least one Public Channel that will, at a minimum, allow for the selection of programs on a daily basis and, to the extent practicable, on a program-by-program basis or for periods shorter than an entire day. The timing, terms and conditions of such capability shall be developed by the Commissioner and the Company upon request by the Commissioner. The Company shall assist the programmer in arranging for, but shall not be responsible for the direct costs associated with, Subscriber ordering or billing for such pay-per-view Services, although the Company will be responsible for taking, at its own cost, whatever steps are necessary to authorize and ensure receipt of such Services by Subscribers entitled to them. The Company shall not exercise editorial control over programming or distribution of Services over any Public Channel used by any Person(s), so long as such Channel is being used for the purposes authorized herein and except where the Company is utilizing any such Channel pursuant to Section 4.1.06 hereof. Subject to the requirements set forth in Section 4.1.06, in the event there is any fallow time on any Public Channel, such Channel(s) shall revert to the Company.

4.1.06 Fallow Time. The CAO, in consultation with the Commissioner, in the case of Public Channels, and the Commissioner, in the case of

Governmental Channels, shall prescribe rules and regulations regarding the use of fallow time on Access Channels by the Company consistent with this Section. Subject to Sections 4.1.04 and 4.1.05 hereof, if there is any unused time on any Access Channel and the Company or any Affiliated Person desires to distribute any Service over such Channel during such unused time, then the Company or Affiliated Person shall so notify the Commissioner, in writing, and as far in advance as practicable, with a copy of such notice to the Community Access Organization in the case of any Public Channel. The Company's notice to the Commissioner and, if applicable, to the Community Access Organization shall describe the Company's or Affiliated Person's plans for the use of the Channel and shall demonstrate that there then exists no demand by any other Person, including the Community Access Organization, in the case of a Public Channel, and the City in the case of a Governmental Channel, for the unused time. The Company or Affiliated Person may, at the end of the thirtieth (30th) day following receipt of such notice, commence the distribution of the planned service over the Channel during the unused periods specified in the notice unless (i) a shorter period is authorized by the Commissioner, or (ii) within such thirty (30) day period, the Commissioner, in the case of a Governmental Channel, or the Commissioner in consultation with the Community Access Organization in the case of a Public Channel, notifies the Company, in writing, that the Commissioner does not consent to the planned use of the Access Channel by the Company or any Affiliated Person (the Commissioner's determination may be based on the City's or other Person's proposed use of the Channel and the Commissioner's review of such planned use may include, without limitation, consideration of whether the planned use is consistent with the potentially temporary nature of the availability of fallow time). In the event that the Commissioner, in consultation with the Community Access Organization, in the case of a Public Channel, authorizes the Company or any Affiliated Person to utilize any Access Channel, the Company or Affiliated Person so authorized shall relinquish such use promptly, but in no event later than ninety (90) days following written request, consistent with any rules and regulations established with respect to fallow time use, by the Commissioner, in the case of any Governmental Channel, or the Commissioner and Community Access Organization, in the case of any Public Channel. At all times during which a Public Channel or Government Channel is not being used for the distribution of any Service, the Company shall, at the request of the Commissioner, cause a notice, in a form and with such frequency and at such times to be approved by the Commissioner, to appear on such Channel on a continuous basis to the effect that such Public Channel(s) is (are) available for use in accordance with Section 4.1 hereof and in the case of a Government Channel, providing notice that the Channel is subject to reversion to use by the City. In the case of a fallow Public Channel, the Company shall also cause a notice, in form and with such frequency to be approved by the Commissioner to appear on a continuous basis in each of the Company service centers and Company offices, advising all Persons that such Public Channel(s) is (are) available for use in accordance with Section 4.1 hereof. Such notice shall also be posted in the appropriate area(s) designated for public notice postings in the District. All costs associated with the provision of such notices shall be borne by the Company.

4.2 Access Channels: Resources, Rules and Regulations, Replacement

4.2.01 Resources. The Company shall, at the Company's expense, provide switching and other technical assistance necessary to transmit programming, including interactive programming, on the Access Channels. Further, the Company shall, at the Company's expense, transmit access programming on the Access Channels as directed by the Community Access Organization or the City, as applicable, on an as-needed basis (including provision of facilities necessary to pick up Access Channel programming from locations within the franchise area at which such programming is produced and deliver such programming to whatever Company facilities are necessary to enable the Company to transmit such programming over the System and to interconnect pursuant to Section 4.1.03). The Company shall provide capital grants to the City and/or the Community Access Organization for the acquisition, lease or other provision of Access Channel facilities and equipment, and ongoing annual support payments for the use of public access facilities and equipment, as provided in Appendices D and E to this Agreement. All such facilities and equipment shall be for the benefit of the City and its residents and shall be subject to the sole control of the Community Access Organization, in the case of Public Channels, or the City, in the case of the Governmental Channels. The Company acknowledges that all contributions, services, equipment, facilities, support, resources, and other activities to be paid for or supplied by the Company pursuant to or in connection with its performance under this Section 4 and Appendices D and E to this Agreement are for the benefit of all Subscribers and the public. The Company agrees that such contributions, services, equipment, facilities, support, resources, and other things of value are not within the meaning of the term "franchise fee" as defined by Section 622(g)(1) of the Cable Act (47 U.S.C. § 542(g)(1)) and are within one or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-(D)). The Company further agrees that such contributions, services, equipment, facilities, support, resources and other things of value shall not be deemed to be: (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof, or (ii) part of the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof. The Company and the CAO shall agree upon the terms of a grant agreement ("Grant Agreement"), separate from this Agreement, which, upon execution, shall be attached to this Agreement as Appendix D and shall govern the obligations of the Company with respect to the CAO and the relationship between the Company and the CAO. The Grant Agreement shall not be modified or amended without the prior approval of the Company, the Commissioner, the Borough President, and the CAO.

4.2.02 Rules and Regulations. Rules and regulations adopted by the Community Access Organization shall govern the use of Public Channel time, equipment, facilities, and other services. Such rules and regulations shall ensure that: (i) the Public Channels shall be available for the purposes set forth in Section 4.1.05 hereof; (ii) at least a portion of the capacity on the Public Channels shall be available for use by the general public on a first come, first served; nondiscriminatory basis,

subject to appropriate time, place and manner requirements and no charges shall be imposed for Channel time or playback of prerecorded programming on such Channels; and (iii) charges, if any, for production costs shall be set at the lowest reasonable level necessary to cover the Community Access Organization's costs for the provision of such services. Such rules and regulations may be modified by the Community Access Organization during the term of this Agreement. The Commissioner may review and may modify or establish such rules to ensure compliance with the provisions of this Section 4.2.02. A failure by the Community Access Organization to comply with such rules and regulations shall not constitute a default by the Company of this Agreement.

4.2.03 Replacement. Unless otherwise agreed between the Company and the CAO in their grant agreement attached to Appendix D, the Company shall, throughout the term of this Agreement, be responsible for ensuring that all Access Channel equipment is replaced, as necessary, as promptly as possible and in no event later than ten (10) business days without providing adequate justification for such delay to the Commissioner, and, as applicable, the CAO such that such equipment continues to be useful for the function(s) for which it is intended, provided, however, that the Company shall only be responsible for replacement of equipment due to normal wear, and shall not be responsible to replace such equipment where such replacement is necessitated by gross negligence or intentional misuse.

4.2.04 Ratings. The Company shall promptly provide (A)(i) to the City copies of any ratings information it obtains concerning viewership of Access Channels or Services provided on Access Channels, and (ii) to the Community Access Organization copies of any ratings information it obtains concerning viewership of Public Channels; and (B)(i) to the City results and analyses of that portion of any Subscriber surveys conducted by or at the request of the Company which deal with programming on Access Channels or Services provided on Access Channels, and (ii) to the Community Access Organization copies of results and analyses of that portion of any Subscriber survey conducted by or at the request of the Company which deal with programming on Public Channels, provided, however, that with respect to any such ratings and results and analyses, the Company shall redact any personally identifiable information prior to providing such information to the City and/or the Community Access Organization, as applicable.

4.3 Institutional Network

4.3.01 Capital Grant. The Company's obligations with respect to the Institutional Network shall be in accordance with Appendix E to this Agreement.

4.3.02 Use. The Institutional Network may be used for public, educational and governmental use for the provision of Cable Services and Noncable Services. The City may utilize the Institutional Network for use by educational, governmental and institutional entities as a means to develop and distribute municipal

services to the public over the Subscriber Network, to develop plans for, test, and implement the use of Cable Communications Systems, including the System, as an integral part of the City's operations, and for any other lawful purpose. The parties acknowledge that the Institutional Network is not intended to be a residential Subscriber network and is not intended to entitle the City to sell or otherwise transfer capacity, such as data transmission services, on the Institutional Network to third parties as a commercial enterprise.

4.3.03 Institutional Network Fund. In addition to and not in lieu of the grant provided for in Appendix E, the Company and the City agree that funds existing as of the Effective Date in the Institutional Network Fund established in accordance with the Existing Franchise may be used and spent by the City, at the direction of the Commissioner, for construction, use and/or support of the Institutional Network, consistent with Section 4.3.02 hereof.

4.4 Other Public Services

4.4.01 Services for Physically Challenged Persons. The Company shall comply with all applicable federal, state and local laws regarding accessibility of Services to handicapped persons.

4.4.02 Emergency Alert System. To the extent not prohibited by applicable law, in the event of an emergency, as determined by the Mayor, the Mayor may order that Signals being distributed over the System shall be interrupted for the delivery of appropriate Signals necessitated by such emergency. The procedures for such emergency alert system shall be determined as set forth in Appendix A to this Agreement.

4.4.03 Services to Municipal and Other Facilities. The Company shall provide Services to the municipal and other facilities specified in Appendix F to this Agreement under the conditions set forth in said Appendix.

Section 5 **FEES AND CHARGES**

5.1 General Requirement. No fee, charge, deposit, or associated term or condition shall be imposed by the Company or any Affiliated Person for any Service which is inconsistent with the requirements of 47 U.S.C. § 543 (or any successor thereto) and the rules and regulations issued in connection therewith. A schedule of the Company's fees, charges, deposits, terms and conditions as of the Effective Date is set forth in Appendix C to this Agreement.

5.2 Notice of Change. Not less than thirty (30) days prior to the effective date of any change in any such fee, charge, or deposit (other than changes which solely reduce fees, charges or deposits with no corresponding reduction in or replacement of Services or Service Related Activities), the Company shall provide

written notice of such change to the Commissioner, the Comptroller and the Borough President. The Company shall further provide notice of such change to each Subscriber using any reasonable written means at its sole discretion. The Company shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, the State of New York, or the City or any transaction between the Company and the Subscriber. The Company shall not make any change in any such fee, charge or deposit unless it has provided the notice required by this Section 5.2 and any other documentation or notice required by applicable law and regulation.

5.3 No Discrimination. Except to the extent permitted pursuant to Federal law that preempts local regulation of such discrimination (or upon prior approval of the Commissioner upon a petition from the Company if permitted under Federal law but where there is no preemption), the Company shall not discriminate among Subscribers, including Residential and Non-Residential Subscribers, of any Service with respect to any fee, charge, deposit, or other term or condition respecting any Service, provided that this requirement shall not prevent the use of: (i) different charges for Residential Subscribers than for Non-Residential Subscribers; (ii) short-term sales promotions and other short-term discounts or reduced charges; (iii) bulk rates pursuant to Section 5.4 hereof; (iv) other special discounts or reduced charges to identifiable classes of Subscribers or potential Subscribers to the extent approved by the Commissioner pursuant to Section 5.4 hereof; (v) to the extent applied on a nondiscriminatory basis, normal credit practices and practices designed to prevent unauthorized reception of any Service or to protect Company property, to the extent consistent with Appendix I to this Agreement; (vi) different charges among Non-Residential Subscribers; or (vii) discounts or promotions in response to geographically confined competition from another multichannel video programming distributor, to the extent permitted by applicable law. Every six (6) months after the Effective Date, the Company will report to the Commissioner, with copies to the City's Corporation Counsel, the Comptroller and the Borough President, about any discounts or promotions it has adopted or used pursuant to item (vii) above during the preceding six (6) months, together with a certification (together with other information reasonably requested by the City) from the Company and nationally recognized outside counsel to the Company demonstrating to the satisfaction of DoITT and the City's Corporation Counsel, in their reasonable discretion, that such discounts and promotions are consistent with applicable law and this Agreement. The Company's report and the City's review of same shall be structured to preserve the confidentiality of the Company's confidential information to the maximum extent permitted by law.

5.4 Discounts. Except as provided in Section 5.3 hereof, all fees, charges, deposits and associated terms and conditions imposed by the Company with respect to any Subscriber shall be nondiscriminatory, provided, however, that, (i) the Company may utilize bulk rate arrangements to the extent permitted by federal law or regulation, and (ii) subject to the prior written approval of the Commissioner, other

special discounts or reduced charges for identifiable classes of Subscribers pursuant to Section 5.3(iii). The Commissioner may approve such other special discounts or charges (referred to herein as "Discounts") if the Commissioner finds that they are designed to meet the public interest. In order to initiate such Discounts, the Company must submit a written plan to the Commissioner detailing the terms of the Discounts, and describing the common characteristics of the Subscribers who will receive such Discounts under the plan. In connection with such Discounts, the Company shall ensure that no Residential Subscriber is charged any fee, charge or deposit for Services in excess of those permitted by applicable law or regulation or set forth in the most recent Cable Services and Rate Report.

5.5 Hearing Impaired. The Company shall provide equipment which facilitates the reception of Services by hearing impaired individuals or information about the availability of such equipment.

5.6 Subsequent Changes. To the extent that applicable law may in the future permit the City to regulate fees, charges, deposits and the terms and conditions with respect thereto to an extent greater than currently provided in the Cable Act, the Commissioner may make reasonable rules and regulations governing fees, charges, deposits and terms and conditions with respect thereto in accordance with Section 15 of this Agreement. In making such rules and regulations, the Commissioner shall take into account whether the substantive changes made by such rules and regulations (as opposed to any additional regulatory burden) would have a significant economic impact on the ability of the Company to earn a reasonable rate of return in connection with its operation of the Company and shall also take into account the Company's rate of return prior to any new rules and regulations; if the Commissioner determines that such rules and regulations would have such impact, then the Commissioner and the Company shall engage in good faith negotiations to adjust the provisions of this Agreement so as to put the parties in a position reasonably equivalent to that which existed immediately prior to the imposition of such rules and regulations, to the maximum extent consistent with said rules and regulations.

5.7 No External Costs. The Company agrees not to pass through to Subscribers as external costs: (i) amounts, money, facilities, equipment and other contributions for capital support for Governmental Access provided for in this Agreement, (ii) money, facilities, equipment and other contributions for capital support for the Institutional Network provided for in this Agreement and (iii) the costs of legal and other consulting services incurred by the Company or incurred by the City and reimbursed by the Company pursuant to this Agreement. In addition, the fact that the Upgrade is a requirement in this Agreement is not intended to, and shall not, give the Company any independent rights to pass through as external costs the capital costs associated with the Upgrade, provided that the foregoing is not intended to waive any other rights or positions the Company may have with respect to passing through the capital costs associated with the Upgrade as external costs.

Section 6
CONSTRUCTION AND TECHNICAL REQUIREMENTS

6.1 Upgrade Obligations. The Company shall fulfill the obligations set forth in Appendix A with respect to upgrading the System.

6.2 General Requirement. The Company agrees to comply with each of the terms set forth in this Section 6 and Appendix B to this Agreement governing construction and technical requirements for any construction, operation, repair, maintenance and upgrade of the System, in addition to any other requirements or procedures reasonably specified by the Commissioner and consistent with this Agreement.

6.3 Quality. All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

6.4 Licenses and Permits. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, repair or upgrade the System, or any part thereof, prior to commencement of any such activity.

6.5 New Grades or Lines. If the grades or lines of any Street within the District are changed at any time during the term of this Agreement, then the Company shall, at its own cost and expense and upon the request of the City, protect or promptly alter or relocate the System, or any part thereof, so as to conform with such new grades or lines. In the event that the Company refuses or neglects to so protect, alter, or relocate all or part of the System, the City shall have the right to break through, remove, alter, or relocate all or any part of the System without any Liability to the Company and the Company shall pay to the City the costs incurred in connection with such breaking through, removal, alteration, or relocation.

6.6 Protect Structures. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Company shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks, as well as all other structures within any designated landmark district. The Company shall obtain the prior approval of the City before altering any water main, sewerage or drainage system, or any other municipal structure in the Streets required because of the presence of the System in the Streets. Any such alteration shall be made by the Company, at its sole cost and expense, and in a manner prescribed by the City. The Company agrees that it shall be liable, at its

own cost and expense, to replace or repair and restore to serviceable condition, in a manner as may be specified by the City, any Street or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

6.7 No Obstruction. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Company shall not obstruct the Streets, subways, railways, passenger travel, river navigation, or other traffic to, from, or within the District without the prior consent of the appropriate authorities.

6.8 Movement of Wires. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, temporarily move its wires to permit the moving of said structure. The Company may impose a charge on any Person other than the City for any such movement of its wires.

6.9 Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting.

6.10 Performance Bond

6.10.01 Establishment. To guarantee the timely construction of any upgrade required by this Agreement, to ensure that the operation of the System continues in an orderly and uninterrupted manner in the event of a default by the Company, and for the other purposes specified in Section 6.10.03 hereof, the Company shall arrange for, and shall maintain throughout the term of this Agreement, a performance bond solely for the protection of the City, with a corporate surety and trust company acceptable to the Comptroller, as provided in Sections 6.10.02 through 6.10.05 hereof.

6.10.02 Amount. The amount of the performance bond shall be in a face amount of not less than Four Hundred Thousand Dollars (\$400,000). Such bond shall remain in effect during the term of this Agreement and such later date as provided in Section 2.2.04 hereof.

6.10.03 Indemnification. The performance bond shall indemnify the City, up to the full face amount of the bond, for: (i) the cost to continue any upgrade of the System in the District and to maintain operation of the System following a termination of this Agreement up to the date upon which the face amount of the bond, plus all net revenue actually received through the continued operation of the System during said period, have been exhausted; (ii) any loss or damage to any municipal structure during the course of any construction of the System; (iii) any other costs, or loss or damage actually incurred by the City as a result of the

Company's failure to perform its obligations pursuant to this Agreement; and (iv) the removal of all or any part of the System from the Streets; provided, however, that the City may not seek recourse against such bond for any costs or damages for which the City has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company or its Guarantor.

6.10.04 Form. The initial performance bond shall be in a form approved by the Comptroller and shall be furnished to the Comptroller on or before the Closing. Such initial bond and the replacement bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until at least ninety (90) days' written notice to the City of surety's intention to cancel or not renew this bond."

6.10.05 Not a Limit on Liability. The faithful performance by and the Liability of the Company pursuant to this Agreement shall not be limited by the acceptance of the bond required by this Section 6.10.

6.11 Technical Requirements

6.11.01 Testing Procedures; Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the System in accordance with the FCC's technical performance standards and testing requirements to be determined by the City after consultation with the Company. Without limiting the foregoing, the City shall have the right, after consultation with the Company, to determine reasonable testing standards for portions of the System using digital technology or providing Services other than the analog Channels to be provided pursuant to this Agreement, which testing standards shall be in accordance with any applicable FCC standards (if the FCC has not adopted any such standards, the City shall consider whether the FCC expressly intended that municipalities not adopt such testing standards). The Company shall give prior written (or oral, if the Commissioner approves) notice to the Commissioner or his designee of any scheduled System test performed in accordance with Appendix A so that the City may arrange to have an engineer observe the Company's engineer or other Person performing such test.

6.11.02 Engineer; Technicians. The Company shall employ an individual with appropriate engineering experience and expertise, and a service and repair force of competent technicians capable of maintaining the System in accordance with Appendix A hereto.

6.11.03 Interconnection. The Company shall construct, operate, maintain and upgrade the System such that it is capable of transmitting and receiving Signals to and from any other Cable Communications Systems or Open Video Systems (defined in 47 U.S.C. § 573 and rules promulgated thereunder) in the City, the New York Metropolitan Area, the State of New York, and elsewhere in the

United States, and, at the request of the Commissioner, to the extent Economically and Technically Feasible and Viable, outside the United States. With respect to connection with cables or cable systems outside the City, the Company shall not be required to incur costs beyond those associated with the normal transmission from and receipt of Signals to and from the Company's facilities.

6.11.04 Testing Vehicle and Equipment. In order to enable the Company to test the ability of the System to perform in accordance with Exhibit 1 to Appendix A to this Agreement, the Company shall secure and continuously maintain: (i) all necessary testing and monitoring equipment as specified in Exhibit 4 to Appendix A to this Agreement, or its equivalent; (ii) any other equipment necessary to monitor the performance of the System; and (iii) a mobile testing vehicle capable of containing and having all such equipment installed therein promptly, and which shall be used for the purpose of such tests.

Section 7

EMPLOYMENT AND PURCHASING

7.1 Right To Bargain Collectively. The Company shall recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or any other terms, conditions, or privileges of employment. The Company shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

7.2 No Discrimination. The Company shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. The Company agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the term of this Agreement.

7.3 Local Employment. The Company shall, at its own cost and expense, develop and maintain a plan for the recruitment, education, training, and employment of residents of the City, with a preference for City residents, for the opportunities to be created by the construction, operation, maintenance and upgrade of the System. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City departments or agencies responsible for encouraging employment of City residents. Such plan shall be designed so as to ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company. Upon request of the

Commissioner, the Company shall submit such plan to the Division of Labor Services of the City for its review and approval and to the Commissioner, which plan shall be updated from time to time as reasonably necessary. The Company shall, throughout the term of this Agreement, implement such plan, at its own cost and expense, by ensuring, to the maximum feasible extent, the recruitment, education, training, and employment of City residents, to the extent permissible under applicable law.

7.4 City Vendors. To the maximum feasible extent under applicable law, and with due regard to price and quality considerations, the Company shall utilize vendors located in the City in connection with the construction, operation, maintenance and upgrade of the System. The Company shall, in the purchase of comparable materials, equipment, or supplies of any nature, give effect to a preference for such items which are assembled, manufactured, or otherwise produced, in whole or in part, within the City. Upon request of the Commissioner, the Company shall submit a written plan describing how the Company is complying with the requirements of this Section 7.4 to the Director of the Division of Economic and Financial Opportunity of the City's Department of Business Services and shall submit a copy of such plan to the Commissioner for the Commissioner's review and approval. Such plan shall be updated from time to time as reasonably necessary throughout the term of this Agreement.

7.5 Local Law Requirements. The Company agrees to comply in all respects with the provisions of the Mayor's Executive Order No. 50 (April 25, 1980) (codified at Title 10 Sections 1-14 of the Rules of the City of New York) and City Administrative Code 6-108.1 (1984) and all rules and regulations promulgated thereunder (collectively, the "EEO Requirements"), as such EEO Requirements may be amended, modified or succeeded throughout the term of this Agreement. Notwithstanding the fact that the EEO Requirements do not apply on their face to the Company as a franchisee of the City, the Company shall comply in all respects with the provisions of such EEO Requirements and successor and replacement laws, orders and regulations adopted following the date of this Agreement. As required by said Executive Order No. 50, the provisions of sections 50.30 and 50.31 of the Final Rule implementing said Order are incorporated herein by this reference.

7.6 Enforcement. The Company shall take steps to ensure that the requirements of this Section 7 are adhered to by each union with which the Company deals, each officer, employee, agent, contractor or subcontractor of the Company, and each other Person performing work pursuant to this Agreement for, on behalf of, or at the direction of, the Company. The requirements of this Section 7 shall apply to every material contract between the Company and: (i) any union; (ii) any contractor; (iii) any subcontractor; or (iv) any Person with which any of the foregoing Persons has a relationship in connection with any aspect of the System. To comply with the obligations of this Section 7.6, the Company shall include, in all contracts described in the foregoing sentence which are entered into following the Effective Date of this Agreement (which shall include any renewals, amendments and modifications of existing contracts), the following language, stating that such party: "has received a

copy of Section 7 of a certain agreement by and between the City of New York and Paragon Communications, d/b/a Time Warner Cable of New York City granting to Paragon Communications, d/b/a Time Warner Cable of New York City, a nonexclusive franchise to construct, operate, maintain and upgrade a cable television system in Manhattan and dated as of September 16th, 1998, and agrees to comply with each term, condition and requirement of Section 7 of such agreement, which terms, conditions and requirements are deemed to be incorporated herein by this reference." The term "material contract" as used herein shall refer to any contract in excess of Fifty Thousand Dollars (\$50,000).

Section 8 **ADDITIONAL SUBSCRIBER RIGHTS**

8.1 Consumer Protection Standards. The Company agrees to comply in all respects with the requirements of the consumer protection standards set forth in Appendix I to this Agreement.

8.2 Privacy Protection

8.2.01 Scope. The Company shall operate the System in a manner that protects against invasions of any Person's privacy. In addition to the provisions of this Section 8 governing privacy, the Company shall comply with the provisions of Section 631 of the Cable Act (47 U.S.C. § 551) and any other applicable law, including any additional local standards established in accordance with applicable law.

8.2.02 Information to City. The Company shall cooperate with the City so as to ensure the City's ability to enforce the terms and conditions of this Agreement and, upon the City's request, shall provide subscriber information requested by the City, to the extent the provision of such information does not violate the Cable Act.

8.2.03 No Interference. The Company shall not interfere with the ability of each Subscriber to utilize his or her television receiver for any normal purpose.

Section 9 **COMPENSATION AND OTHER PAYMENTS**

9.1 Compensation

9.1.01 Franchise Fees. As compensation for the franchise, the Company shall pay to the City an amount equal to five percent (5%) of the Company's Gross Revenue, with due allowance for a deduction in the amount of the payment currently paid by the Company to the PSC in accordance with state law as in effect on the date of this Agreement. All such payments pursuant to this Section

9.1.01 shall be made on a quarterly basis and shall be remitted simultaneously with the submission of the Company's quarterly report required pursuant to Section 9.1.02 hereof.

9.1.02 Payment Due. The Company shall submit to the Department of Finance, with a copy to the Comptroller and the Commissioner, a report, in such form and containing such detail as the Comptroller shall require, not later than thirty (30) days after the last day of each March, June, September, and December throughout the term of this Agreement setting forth the Gross Revenue for the quarter ending on said last day of such month. In the event of any transfer of the System to any Person pursuant to this Agreement, the Company shall remit to the City the balance due of the payment required by Section 9.1.01 as of the date of the transfer as a condition to the approval of any such transfer.

9.1.03 Reservation of Rights. No acceptance of any such payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the City.

9.1.04 Ordinary Business Expense. Nothing contained in this Section 9.1 or elsewhere in this Agreement shall prevent the Company or any Affiliated Person from treating the compensation and other payments that it, they, or either of them, may pay pursuant to this Agreement as an ordinary expense of doing business and, accordingly, from deducting such payments from gross income in any City, state, or federal income tax return.

9.1.05 Payments To Be Made to City. If the Company collects from Subscribers any amounts to be paid to any Person for the provision of Services on the System, the Company shall deduct five percent (5%) from such amounts and include such deducted amounts in its payment to the City pursuant to Section 9.1.01 hereof and include such payments in its report pursuant to Section 9.1.02 hereof. If any Person other than the Company directly collects such amounts from Subscribers that would constitute Gross Revenue if received directly by the Company, the Company shall include in its contract, or other arrangement with such Person, a provision (which must be approved in advance by the Commissioner) which provides that such Person shall remit to the City on a quarterly basis an amount equal to five percent (5%) of such amounts collected from Subscribers, together with a quarterly report similar in form and content to the report referred to in Section 9.1.02 hereof, and that the City may enforce such provision directly against such Person, but shall have no right of action against the Company for a breach of such provision by such Person.

9.2 Other Payments

9.2.01 Renewal Costs. In accordance with the letter agreement between the City and the Company dated November 7, 1997, at or prior to the Closing and as a condition precedent to the Closing, the Company shall arrange to pay to the City, in a manner acceptable to the Commissioner, certain costs incurred by the City for the services and expenses of third parties (including, but not limited to, attorneys and other consultants), in connection with the preparation, negotiation and execution of this franchise to the extent such amount has not been previously paid. The payments made pursuant to this Section 9.2 shall not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be: (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof, or (ii) part of the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof.

9.2.02 Intentionally Deleted

9.2.03 Future Costs. The Company shall pay to the City an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renegotiation, transfer, amendment or other modification of, this Agreement or the franchise (where such action is initiated by the Company or an Affiliated Person), or request or application therefor, at such time and in such manner as the Commissioner shall specify. Payments of such costs and expenses shall not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof, or (ii) part of the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof.

9.2.04 Future Renewal Costs. The Company shall pay to the City an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal of this Agreement or the franchise granted herein. In connection with any such renewal, the City and the Company shall engage in good faith negotiations as to whether such reimbursements by the Company in connection with such renewal should be deemed to be "franchise fees" within the meaning of the Cable Act (47 U.S.C. § 542) such that such reimbursements should be deemed part of the compensation to be paid to the City by the Company for the franchise pursuant to any such renewal agreement. The City and the Company agree that there shall be no presumption as to whether or not such reimbursements shall be deemed to be "franchise fees" or otherwise part of the compensation to be paid to the City by the Company for the franchise.

9.3 Not Franchise Fees. The Company expressly acknowledges and agrees that:

(i) Except for the payments expressly required by Section 9.1 hereof, none of the payments or contributions made by, or the Services, equipment, facilities, support, resources, or other activities to be provided or performed by the Company at the direction of the City or otherwise pursuant to this Agreement, or otherwise in connection with the construction, operation, maintenance or upgrade of the System (including specifically, but not by way of limitation, such payments, contributions, Services, equipment, facilities, support, resources, or other activities as described in or provided for in Sections 3.9.04, 4, 6.3, 6.4, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11.03, 6.11.04, 7.3, 9.2, 10.3, 10.4, 11.5, 13.1, 13.2, 14.2, 14.3, 14.4, 14.6, 14.7, 15 and 16.7 hereof and in Appendices A, B, D, E, F, I and J to this Agreement) are franchise fees chargeable against the compensation payments to be paid to the City by the Company pursuant to Section 9.1 hereof; and

(ii) As applicable, except for the compensation payments expressly required by Section 9.1 hereof, each of the payments or contributions made by, or the Services, equipment, facilities, support, resources, or other activities to be provided by the Company, are within the exclusions from the term "franchise fee" set forth in Section 622(g)(2) of the Cable Act (47 U.S.C. § 542(g)(2)); and

(iii) The compensation payments due from the Company to the City pursuant to Section 9.1 hereof, shall take precedence over all other payments, contributions, Services, equipment, facilities, support, resources, or other activities to be paid or supplied by the Company pursuant to this Agreement; and

(iv) The compensation and other payments to be made pursuant to this Section 9 of this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Company or any Affiliated Person shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company and Affiliated Persons; and

(v) Neither the Company nor any Affiliated Person shall have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Agreement from or against any City or other governmental taxes of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers or income taxes) or other fees or charges which the Company or any Affiliated Person is required to pay to the City or other governmental agency; and

(vi) Neither the Company nor any Affiliated Person shall apply or seek to apply all or any part of the amount of the compensation or other

payments to be made pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Company and Affiliated Persons; and

(vii) Neither the Company nor any Affiliated Person shall apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges (except those paid to the PSC and referred to in Section 9.1.01 hereof) of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers) as a deduction or other credit from or against any of the compensation or other payments to be made pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and Affiliated Persons; and

(viii) The Company expressly relinquishes and waives its right to a deduction or other credit pursuant to Section 626 of the New York State Real Property Tax Law or any successor or amendment thereto; and

(ix) In the event that the Company or any Affiliated Person applies or seeks to apply all or any part of the amount of said compensation payments as a deduction or other credit from or against such City or other governmental taxes of general applicability or other fees or charges, or in the event that the Company or any Affiliated Person applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against said compensation obligations, regardless of whether any court, agency, or official of the City, any state, or the federal government sustains the validity or propriety of said deductions or other credits, then, in any such event, the City may terminate this Agreement for cause due to a material breach, pursuant to Section 14.4 hereof without any Liability or compensation to the Company or any Affiliated Person.

9.4 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date at a rate equal to the then prevailing prime rate of interest charged by the Chase Manhattan Bank (or other national bank selected by the Comptroller) (the "Prime Rate") for commercial loans, plus four percent (4%) per annum, such rate to be compounded daily, except as provided in Section 14.3 hereof with respect to a withdrawal from the Security Fund. Notwithstanding the foregoing, in the event additional sums are determined to be owed to the City by the Company and such amounts owed were not paid due to a good faith dispute as to whether such amounts were owed, such sums owed shall accrue interest only at the Prime Rate.

9.5 Method of Payment. All payments by the Company to the City pursuant to this Agreement shall be made to the Department of Finance of the City

and shall be delivered to the office designated therefor by such Department, provided that the payment required by Section 14.2 hereof shall be paid to the Comptroller and shall be delivered to the office designated therefor by the Comptroller.

9.6 Continuing Obligation. In the event the Company continues to operate all or any part of the System after the term of this Agreement, then in addition to its obligations pursuant to Section 2.2.04 of this Agreement, the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the franchise granted pursuant to this Agreement.

Section 10 **OVERSIGHT AND REGULATION**

10.1 Oversight. The City shall have the right to oversee, regulate, and periodically inspect the construction, operation, maintenance and upgrade of the System, and all parts thereof, in accordance with the provisions of this Agreement. The Company shall establish and maintain managerial and operational standards, procedures, records and controls to enable the Company to be, at all times throughout the term of this Agreement, in compliance with each term and condition of this Agreement and to ascertain promptly any failure to be in compliance with each such term or condition. Notwithstanding the foregoing provision, but subject to Section 10.5.03 with respect to documents pertaining to financial matters, the Company need not retain such records after six (6) years following their creation, unless the Commissioner otherwise directs.

10.2 City Reservation of Authority. The City, including the Commissioner, reserves the right to adopt or issue such rules, regulations, orders, or other directives governing the Company or the System as it shall find necessary or appropriate in the exercise of its police power, and the Company expressly agrees to comply with all such rules, regulations, orders, or other directives, provided that such orders by the Commissioner are not materially in conflict with the provisions of this Agreement and do not impose new, additional, material obligations on the Company not expressly contemplated by this Agreement. In addition, the Commissioner may, from time to time, issue such orders governing the Company or the System as the Commissioner shall find necessary or appropriate pursuant to and in furtherance of the purposes of this Agreement, provided that such orders by the Commissioner are not materially in conflict with the provisions of this Agreement and do not impose new, additional, material obligations on the Company not expressly contemplated by this Agreement and the Company expressly agrees to comply with all such rules, regulations, orders, or other directives. No rule, regulation, order, or other directive issued pursuant to this Section 10.2 shall constitute an amendment to this Agreement.

10.3 Periodic Evaluation and Hearings

10.3.01 Compliance Report. In accordance with Section 10.3.02 hereof, the Company shall submit a report, in reasonable detail, specifically addressing, at a minimum, the following areas, and shall state in such report whether there has been any substantial change from information or plans regarding such areas from that previously provided to the City:

(i) compliance with, and any modification necessary with respect to, the financial plan required by Section 16.9.03 hereof;

(ii) compliance with the requirements regarding System characteristics and technical performance and testing requirements, as provided in Appendix A to this Agreement;

(iii) compliance with any plans or specifications submitted by the Company in connection with the construction terms, schedule, and sequence for construction of System upgrades, as provided in Section 6 hereof and Appendix B to this Agreement;

(iv) compliance with the Company's Leased Channel plan, as provided in Section 3.7.02 hereof, including, without limitation, the availability and use of Leased Channel time;

(v) compliance with the Company's interconnection requirements, as provided in Section 4.1.03 hereof;

(vi) compliance with all requirements related to support for Public and Governmental Channels, as provided in Sections 4.1 and 4.2 hereof and Appendices D and E to this Agreement;

(vii) compliance with Section 4.3 and Appendix E to this Agreement;

(viii) compliance with Section 4.4.01 hereof;

(ix) compliance with the Company's employment and purchasing obligations, as provided in Section 7 hereof, including, without limitation, the plans required by Sections 7.3 and 7.4 hereof;

(x) compliance with the privacy protection requirements of Section 8.2 hereof;

(xi) compliance with the additional covenants set forth in Section 16.9 hereof; and

(xii) compliance with the consumer protection standards, as provided in Section 8.1 hereof and Appendix I to this Agreement.

10.3.02 Timing. The Company shall submit to the Commissioner the report required by Section 10.3.01 hereof on the second, fifth and seventh anniversaries of the Effective Date of this Agreement. The Commissioner may specify the form and content of any such report, provided that the failure of the Commissioner to so specify shall not relieve the Company of its obligation to submit such report to the Commissioner on the dates specified in the preceding sentence. The Company shall also submit such report at such time to the Borough President and to the Chairperson of each of the Community Boards where the Company provides Services in the District.

10.3.03 Designated Officers and Employees. Throughout the term of this Agreement, the President of the Company, or such other person(s) whom the President designates in writing to the Commissioner, shall be responsible for overseeing the Company's reporting obligations pursuant to this Agreement and for responding to the City's questions regarding the Company's compliance with the terms and conditions of this Agreement. The President must, within ten (10) days of a change in any such designation, notify the Commissioner in writing of such change.

10.4 Other Reports

10.4.01 Additional Information. In connection with the City's oversight, review or enforcement of the Company's compliance with any term or condition of this Agreement, upon the reasonable request of the Comptroller, the Borough President, or the Commissioner, the Company shall, subject to the provisions of Section 10.5.03 hereof with respect to proprietary information, promptly submit to the requesting party any information regarding the Company, its compliance with any term or condition of this Agreement, its business and operations, or those of any Affiliated Person, with respect to the System or its operation, any Service distributed over the System, or any Service Related Activity, in such form and containing such information as the requesting party shall specify with respect to the subject matter of this Agreement. The Company shall transmit to the City's computer system, upon request, via e-mail or by such other mutually acceptable method, all information the Commissioner is entitled to receive pursuant to this Agreement, including, without limitation, the information required by Appendix I to this Agreement and the information required by Section 3.2.02 of this Agreement, in order to enable the Commissioner to have computer access to such information.

10.4.02 Upgrade/Construction Progress Reports. The Company shall submit to the Commissioner, the Comptroller and the Borough President quarterly progress reports describing, in detail, the construction and upgrade status of the System pursuant to Section 6.1 hereof and Appendix A to this Agreement. All such reports including the report required pursuant to Section 6.1 hereof shall be submitted within thirty (30) after the end of each calendar quarter during the upgrade.

Such reports shall be in addition to the Company's obligation pursuant to Section 6.1 hereof.

10.4.03 Financial Reports. The Company shall submit to the Comptroller and the Commissioner, not later than three (3) months after the end of each annual fiscal period, with respect to the period just ended: (i) a copy of the Company's Annual Financial Report submitted to the PSC with respect to the fiscal year; (ii) a copy of the Company's annual financial statements or other appropriate financial statements as reasonably determined by the Comptroller, which statements need not be audited but which shall be signed by the treasurer or chief financial officer of the Company and shall have been prepared in accordance with generally accepted accounting principles; and (iii) if requested by the Comptroller, which request shall not be made more frequently than every two (2) years throughout the term of this Agreement, an update of the financial plan required by Section 16.9.03 hereof.

10.4.04 Additional Filings. Within thirty (30) days after the Company has received from or submitted to any municipal, state, county, or federal agency or official any material communication, public report, petition, or other filing which is in writing or is reduced to writing (in manual or computer form but not internal file memoranda) and which pertains to any material aspect of operations or the financial arrangements of the System or this Agreement or which in any way materially affects the System or any Service or the Company's representations and warranties set forth herein, but not including tax returns or other filings which are confidential, the Company shall submit to the Commissioner a copy of such material report, petition, or other communication. A copy of each material response thereto, in writing or reduced to writing (in manual or computer form but not internal file memoranda), submitted to or received from such municipal, state, county, or federal agency or official by the Company, shall likewise be submitted promptly to the Commissioner and in no case later than thirty (30) days after its receipt.

10.4.05 Related Services Report. The Company shall submit to the Commissioner a list of all Cable Services owned, controlled or operated, in whole or in part (excluding interests of less than ten percent (10%)), by the Company or any Affiliated Person (other than local origination services to Cable Communications Systems outside the City). The first such report shall be submitted no later than the Closing and shall be updated annually as of the end of each calendar year and submitted no later than June 1 of the next calendar year. Such updated report shall indicate any such Cable Service which is discontinued, any new Cable Service which is added, or any change in the extent of any of the Company's or any Affiliated Person's ownership interest in Control of any such Service. The Commissioner may permit the Company to exclude information that would otherwise be required, upon a showing by the Company that inclusion of such information would be excessively burdensome in comparison to the relevance of the information.

10.4.06 Cable Services. On an annual basis at the end of each calendar year, the Company shall provide to the Commissioner, the Comptroller and the Borough President a written report providing an updated list of all programming services offered on the System, and a listing of all fees, charges, deposits, and associated terms and conditions for Services, and highlighting any changes to such information from the last such report.

10.5 Books and Records/Audit

10.5.01 Books and Records. Throughout the term of this Agreement, the Company shall maintain (subject to the last sentence in Section 10.1 hereof), either in the service center(s) required by Appendix I to this Agreement or elsewhere within the City, or shall make available at such service center within two (2) business days after receipt of a request by the Comptroller or the Commissioner, for purposes of the City's oversight, review or enforcement of the Company's compliance with any term or condition of this Agreement, complete and accurate books of account and records of the business, ownership, and operations of the Company with respect to the System, its operation, any Service distributed over the System, and each Service Related Activity (or, with the approval of the Commissioner and the Comptroller in appropriate circumstances, such fewer materials as may be available under the circumstances within such two (2) business day time frame, with the remainder of the materials to be made available within such other time frames as may be approved by the Commissioner and the Comptroller), including, without limitation, books of account and records adequate to enable the Company to demonstrate, at all times throughout the term of this Agreement that it is, and has been, in compliance with each term and condition of this Agreement. Such information shall be maintained and made available in a manner reasonably acceptable to the Comptroller and the Commissioner.

10.5.02 Uses and Suppliers of Service. The Company shall maintain accurate and complete records indicating all uses of, and suppliers of Services on, all Channels on the System, including all Access Channels and all other Channels, in a manner to be developed in consultation with the Commissioner.

10.5.03 Right of Inspection. For purposes of the City's oversight, review or enforcement of the Company's compliance with any term or condition of this Agreement, the Comptroller, the Commissioner, or their designated representatives, shall have the right to inspect, examine, or audit within the City, during normal business hours and upon notice to the Company, all documents, records and other information which pertain to the Company or any Affiliated Person with respect to the System, its operation, its employment and purchasing practices, each Service distributed over the System, and each Service Related Activity and all such documents, records and other information shall be made available within the City in order to facilitate said inspection, examination, or audit, as provided in Section 10.5.01 hereof. The Company shall maintain an office in the City where the above books and records shall be maintained and where the Company's accounting,

billing information and clerical functions pertaining to the franchised operations shall be performed. All such documents which pertain to financial matters which may be the subject of an audit by the City shall be retained by the Company for a minimum of six (6) years following termination of this Agreement. Access by the City to any of the documents, records or other information covered by this Section 10.5.03 shall not be denied by the Company on grounds that such documents, records or information are alleged by the Company to contain proprietary information, provided that this requirement shall not be deemed to constitute a waiver of the Company's right to assert that the proprietary information contained in such documents, records or other information, should not be disclosed and to withhold such information upon the agreement of the City. In order to determine the validity of such assertion and withholding by the Company, the City agrees to review the alleged proprietary information at the Company's premises and, in connection with such review, to limit access to the alleged proprietary information to those individuals who require the information in the exercise of the City's rights under this Agreement. If the Corporation Counsel concurs with the Company's assertion regarding the proprietary nature of such information, the City will not disclose such information to any Person and will not remove from the Company's premises the proprietary portion of any document or other tangible thing that contains such proprietary information. If the Corporation Counsel does not concur with such assertion, then the Company shall promptly provide such documents, including the alleged proprietary portion thereof, to the City, provided that the Company shall not be required to provide the proprietary portion thereof during the pendency of any court challenge to such provision. Further, during normal business hours and upon notice to the Company, the Comptroller, the Commissioner or their designated representative(s) may inspect and examine any other aspect of the System, including facilities and equipment thereof.

10.5.04 Right of Examination. The Commissioner, the Comptroller, the Commissioner of Investigation of the City, or their designated representative(s), may examine, under oath, the Company's general partners, directors, officers or persons occupying similar positions or other employees with respect to (i) all documents referred to in Sections 10.5.01 and 10.5.03 hereof or (ii) any aspect of the System.

10.5.05 File for Public Inspection. Throughout the term of this Agreement, the Company shall maintain, in a file available for public inspection during normal business hours at its service centers required by Appendix I to this Agreement, the following documents:

(i) the initial version of all plans and other documents as submitted by the Company or, as applicable, by any other Person as provided in this Agreement, all updates to such plans and other documents, and any modifications to such plans or other documents that have become effective;

(ii) summaries of all Subscriber complaints received by the Company during the prior six (6) years, and the action taken by the Company in response to such complaints, as provided in Appendix I to this Agreement, provided that the name and address of each Subscriber appearing on such summaries shall not be disclosed to any Person, and provided further that the Company shall make the records of the complaints and other information (but not the name and address of Subscribers) available to Subscribers upon request; and

(iii) all periodic reports to be submitted by the Company, as provided in Section 10.3.01 hereof.

10.6 Investigations

10.6.01 Company Cooperation. The Company agrees to cooperate fully and faithfully with any investigation, audit, or inquiry conducted by a State of New York or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party-in-interest to the transaction, submitted bid, submitted proposal, agreement, franchise, contract, lease, permit, or license that is the subject of the investigation, audit, or inquiry.

10.6.02 Failure To Testify. If: (i) any general partner, director, officer, principal, employee, or agent (or person occupying a similar position) of the Company or any Affiliated Person (hereinafter "requested person"), who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding, refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, franchise, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or (ii) any requested person refuses to testify for a reason other than the assertion of his or her privileges against self-incrimination in an investigation, audit, or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party-in-interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, franchise, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City; then, the commissioner or agency head whose agency is a party-in-interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a

person to testify. If any nongovernmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, agreement, franchise, or license pending the final determination pursuant to Section 10.6.04 hereof, without the City incurring any penalty or damages for delay or otherwise.

10.6.03 Penalties for Failure To Testify. The penalties which may attach for a failure to testify after a final determination by the commissioner or agency head pursuant to Section 10.6.02 hereof may include, but shall not exceed: (i) the disqualification, for a period not to exceed five (5) years from the date of an adverse determination, of any requested person, or any entity of which such person was a member at the time the testimony was sought, including, but not limited to, the Company or any Affiliated Person, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit, franchise, agreement, or license with or from the City; and/or (ii) the cancellation or termination of any and all existing City contracts, leases, permits, franchises, agreements, or licenses that the refusal to testify concerns and that have not been assigned nor the proceeds of which pledged, pursuant to this Agreement, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any Liability, penalty or damages on account of such cancellation or termination, provided that any monies lawfully due from the City directly for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

10.6.04 Determination of Penalty. The commissioner or agency head shall, in reaching his or her determination and in assessing an appropriate penalty, consider and address the factors set forth in the following subsections (i) and (ii) of this Section 10.6.04 and may also consider, if relevant and appropriate, the criteria set forth in the following subsections (iii) and (iv) of this Section 10.6.04, in addition to any other information which may be relevant or appropriate:

(i) the good faith endeavors or lack thereof by the requested person, the Company, or an Affiliated Person, to cooperate fully and faithfully with any governmental investigation or audit, including, but not limited to, the discipline, discharge, or disassociation of any requested person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees, or fiduciaries whose testimony is sought;

(ii) the relationship of the requested person who refused to testify to any entity, including, but not limited to, the Company or any Affiliated Person, that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in said entity and/or the degree of authority and responsibility said person has within the entity;

(iii) the nexus of the testimony sought to the subject entity and its contracts, leases, permits, agreements, franchises, or licenses with the City;

(iv) the effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 10.6.03 hereof, provided that such unaffiliated and unrelated party or entity has given actual notice to the commissioner or agency head upon the acquisition of such interest or, at the hearing called for in Section 10.6.02 hereof, gives such notice and proves that such interest was previously acquired. Under either circumstance, such unaffiliated and unrelated party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on said person or entity.

10.6.05 Definitions. For purposes of this Section 10.6: (i) the terms "franchise" or "agreement" as used herein shall include this Agreement, the franchise granted pursuant to this Agreement, and any license, permit, franchise, or concession not granted as a matter of right; (ii) the term "person" as used herein shall include any natural person doing business alone or in association with another person or entity as a general partner, director, officer, principal, employee, or agent or a person occupying a similar position; (iii) the term "entity" as used herein shall include any firm, partnership, corporation, association, joint venture, or other person that receives any money, benefit, license, lease, franchise, permit or consent from or through the City or otherwise transacts business with the City; and (iv) the term "member" as used herein shall include any person associated with another person or entity as a general partner, director, officer, principal, employee or agent or a person occupying a similar function.

10.6.06 Investigations Required. The foregoing provisions of this Section 10.6 are required by the Mayor's Executive Order No. 16 (1978).

Section 11

RESTRICTIONS AGAINST ASSIGNMENT AND OTHER TRANSFERS

11.1 Transfer of Interest. Except as provided in Section 11.6 hereof and Appendix G to this Agreement (and excepting conveyances of real or personal property in the ordinary course of the operation of the System), neither the franchise granted herein, nor any rights or obligations of the Company in the System or pursuant to this Agreement, nor any guaranty of the performance of the Company's obligations pursuant to this Agreement, nor any part of the capacity of the System, shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any Person, either by act of the Company, by act of any Person holding Control of or any interest in the Company or in the System or the franchise granted herein, by operation

of law, or otherwise, without the prior written consent of the City, provided that the City shall consider any such action in accordance with its usual procedural rules.

11.2 Transfer of Control or Stock. The Company represents that, notwithstanding any other provision of this Agreement, except as provided in Section 11.6 hereof and Appendix G to this Agreement, no change in Control of the Company, the System or the franchise granted herein shall occur after the Closing, by act of the Company, by act of any Person holding Control of the Company, the System or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City. The requirements of Section 11.3 hereof shall also apply whenever any change is proposed of ten percent (10%) or more of the ownership or Control of the Company, the System, the franchise granted herein or of any Person holding Control of the Company or in the System or in the franchise (but nothing herein shall be construed as suggesting that a proposed change of less than ten percent (10%) does not require consent of the City if it would in fact result in a change in Control of the Company, the System or the franchise granted herein), and any other event which could result in a change in ownership or Control of the Company, regardless of the manner in which such ownership or Control is evidenced (e.g., stock, bonds, debt instruments or other indicia of ownership or Control). Notwithstanding the foregoing, the City reserves the right, on a case-by-case basis, to accept, hear and/or grant petitions or other written requests for the transfer of Control of the Company, the System or the franchise granted herein from Persons seeking to obtain Control of the Company. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall not be liable to the Company or any other Person for exercising its rights herein. The Company shall be entitled to rely upon publicly filed reports to which it has access in connection with its determination of the applicability of this Section 11.2, except to the extent the Company knows or has reason to believe that any such report is or may be incorrect, or is aware of the information which is the subject of this Section otherwise than as a result of publicly filed reports.

11.3 Petition or Other Written Request. The Company shall promptly notify the City of any proposed action requiring the consent of the City pursuant to Sections 11.1 or 11.2 hereof or to which this Section 11.3 applies by submitting to the Commissioner, with a copy to the Corporation Counsel, a petition or other written request requesting the approval of the City or requesting a determination that no such consent is required and its argument that the consent of the City is not required. The Company shall also promptly notify the Commissioner, with a copy to the Corporation Counsel, of, and describe, any proposed action pursuant to Part II of Appendix G to this Agreement. The petition or other written request shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, its argument as to why such action would not involve a change in Control of the Company, the System or the franchise, and such additional supporting information as the City may reasonably require in order to review and evaluate the proposed action. Upon review of the petition or other written request, the

Commissioner shall notify the Company in writing of the Commissioner's determination whether the consent of the City is required.

11.4 Public Hearing. After receipt of the petition or other written request the City may, as it deems necessary or appropriate, schedule a public hearing on the petition or other written request. For the purpose of determining whether it shall or needs to grant its consent, the City may inquire into: (i) the qualifications of each Person involved in any action described in Sections 11.1 or 11.2 hereof, (ii) all matters relevant to whether said Person will adhere to all applicable provisions of this Agreement, and (iii) all other matters the City deems relevant in evaluating the petition. Further, the City may perform a comprehensive audit of the Company's performance under the terms and conditions of this Agreement. The Company shall provide all requested assistance to the City in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

11.5 Conditions. As a condition to the granting of any consent required by Sections 11.1 or 11.2 hereof, the City may: (i) upon a determination that the Company did not execute this Agreement under a good faith belief that it would itself carry out the obligations of the Company pursuant to this Agreement, require the Company or any Affiliated Person to pay to the City part or all of the profits earned or to be earned by such Person in connection with, upon the completion of, or as a result of, any of the actions described in Sections 11.1 or 11.2 hereof with respect to any of such actions which occur within four (4) years after the Closing of this Agreement; and (ii) require that each Person involved in any action described in Sections 11.1 or 11.2 hereof shall execute an agreement, in a form and containing such conditions as may be specified by the City, providing that such Person assumes and agrees to be bound by all applicable provisions of this Agreement and such other conditions which the City deems necessary or appropriate in the circumstances. The execution of such agreement by such Person(s) shall in no way relieve the Company, the Guarantor or any other transferor involved in any action described in Section 11.1 or 11.2 hereof, of its obligations pursuant to this Agreement.

11.6 Permitted Encumbrances. Nothing in this Section 11 shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the System, or any right or interest therein, for financing purposes, provided that each such assignment, pledge, lease, sublease, mortgage, or other transfer shall be subject to and subordinate to the rights of the City pursuant to this Agreement and applicable law. The consent of the City shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Company of all or any part of the System pursuant to the rights of such secured creditor under Article 9 of the Uniform Commercial Code, as in effect in the State of New York, and, to the extent that the collateral consists of real property, under the New York Real Property Law; provided, further that, the City's rights are in no way adversely affected or diminished.

11.7 Effect of Unauthorized Sale/Transfer. The completion of any action described in Section 11.1 or 11.2 hereof, except to the extent provided in Section 1.1(ii) hereof, without the prior written consent of the City shall be deemed to be an Abandonment of the System for purposes of Section 2.2.03 and Sections 14.5 through 14.8 hereof.

11.8 Consent Not a Waiver. The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City.

Section 12 **RESTRICTIONS ON THE COMPANY**

12.1 Use of Existing Systems. The use by the Company of its own or an existing master antenna system, satellite master antenna system, multipoint distribution service, direct broadcast satellite or other system in any building or other structure for the distribution of any Service which would otherwise be distributed over the System is permitted under this Agreement, provided that such use shall not relieve the Company of its obligation to construct, operate, maintain and upgrade the System in such building or other structure pursuant to this Agreement.

12.2 Prohibition of Repair of Subscriber's Television Receiver. Except (i) in connection with the installation of the Company's internet access service authorized as a Cable Service under this Agreement or (ii) with the prior written approval of the Commissioner, neither the Company nor any Affiliated Persons shall repair or otherwise service any Subscriber's television receiver, video cassette recorder or other equipment not provided by the Company.

Section 13 **LIABILITY AND INSURANCE**

13.1 Liability and Indemnity

13.1.01 Company. As between the City and the Company, except as provided in Section 13.1.07 hereof, the Company shall be responsible for any Liability of the City or any Person, including, without limitation, any officer, employee, or agent of the City, arising out of or in connection with the construction, operation, maintenance, repair, upgrade or removal of the System, any Service Related Activity, or the distribution of any Service over the System. The Company shall, at its own cost and expense, replace, repair, or restore any damaged property to its prior condition and shall pay appropriate compensation in the event of any injury to or death of any individual Person occasioned by any act or failure to act of the Company, any Affiliated Person, or any officer, employee, agent or subcontractor thereof, in connection with the construction, operation, maintenance, repair, upgrade or removal of the System.

13.1.02 City. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall not be liable for any Liability of the Company, any Affiliated Person or any other Person, arising out of or in connection with the construction, operation, maintenance, repair, upgrade or removal of, or other action or event with respect to, the System, any Service Related Activity, or the distribution of any Service over the System.

13.1.03 Moving Wires. The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the System, in which event the City shall not incur any Liability to the Company, any Affiliated Person or any other Person. When possible, the Company shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the System shall be borne by the Company.

13.1.04 No Liability for Public Work, etc. Neither the City nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any Liability to the Company or any Affiliated Person for any Liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the System by or on behalf of the Company or the City in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Street, or the elimination, discontinuation, and closing of any Street, as provided in Section 2.4.02 [Public Works and Improvements], 2.4.04 [No Release], 6.5 [New Grades or Lines], 6.6 [Protect Structures] or 13.1.03 [Moving Wires] hereof.

13.1.05 No Liability for Damages. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall have no Liability to the Company, any Affiliated Person or any other Person for any special, incidental, consequential, punitive, or other damages as a result of the exercise of any right of the City pursuant to this Agreement or applicable law, including, without limitation, the rights of the City to grant, terminate, amend, or otherwise modify all or any part of this Agreement or the franchise granted herein.

13.1.06 Indemnification of the City. The Company and each Affiliated Person shall: (i) defend, indemnify, and hold harmless the City, its officers, employees, agents, attorneys, consultants and independent contractors from and against all Liabilities, special, incidental, consequential, punitive, and all other damage, cost, and expense (including reasonable attorneys' fees) arising out of or in connection with: (a) the award of this franchise, except for suits between City agencies or bodies over the award of this franchise; (b) the construction, operation, maintenance, repair, upgrade or removal of, or any other action or event with respect to, the System or any Service Related Activity; or (c) the distribution of any Service over the System, except as provided in Section 13.1.07 hereof; and (ii) cooperate with

the City, by providing such nonfinancial assistance as may be requested by the City, in connection with any claim arising out of or in connection with the selection of franchisees for, or the negotiation or award of, this Agreement.

13.1.07 Limitations. As between the City and the Company or any Affiliated Person, the foregoing Liability and indemnity obligations of the Company pursuant to this Section 13.1 shall not apply to: (i) any willful misconduct or gross negligence of any City officer, employee, agent, attorney, consultant or independent contractor; (ii) any Liability arising out of the distribution of Services over the Governmental Channels or the portion of the Institutional Network available to and used by the City to the extent that such claim does not arise out of an act or failure to act by the Company; or (iii) any Liability arising out of the distribution of Services over Public Channels to the extent that such claim does not arise out of an act or failure to act by the Company.

13.2 Insurance

13.2.01 Specifications. At or before the Closing, the Company shall, at its own cost and expense, obtain a liability insurance policy or policies, in a form acceptable to the Comptroller, together with evidence acceptable to the Comptroller, demonstrating that the premiums for said policy or policies have been paid and evidencing that said policy or policies shall take effect and be furnished on or before the Effective Date. Such policy or policies shall be issued by companies duly licensed to do business in the State of New York and acceptable to the Comptroller, but the Comptroller's consent may not be withheld based on the fact that the policy or policies are merged in a policy or policies maintained by an Affiliated Person or Persons adequate to cover the minimum limitations stated below. Unless the Commissioner approves otherwise, such companies must carry a rating by Best of not less than "A". Such policy or policies shall insure (i) the Company and (ii) the City and its officers, boards, commissions, elected officials, agents and employees (through appropriate endorsements if necessary) against each and every form of Liability of the Company referred to in Section 13.1 hereof in the minimum combined amount of Fifty Million Dollars (\$50,000,000.00) for bodily injury and property damage. The foregoing minimum limitation shall not prohibit the Company from obtaining a liability insurance policy or policies in excess of such limitations, provided that the City, its officers, boards, commissions, elected officials, agents and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by the Company.

13.2.02 Maintenance. The liability insurance policies required by Section 13.2.01 hereof shall be maintained by the Company throughout the term of this Agreement and such other period of time during which the Company operates or is engaged in the removal of the System. Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice of such

intent to cancel or not to renew." Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Company shall obtain and furnish to the Comptroller, with a copy to the Commissioner, replacement insurance policies in a form reasonably acceptable to the Comptroller.

13.2.03 Increased Insurance Coverage. The City may, in the event of any changed circumstances which the City reasonably believe materially increases the risks associated with the Company's obligations or operations under this Agreement, following the Effective Date of this Agreement, unilaterally alter the minimum limitation of the liability insurance policy or policies required in Section 13.2.01 hereof, to the extent reasonable and customary within the practices of the cable industry.

13.2.04 Liability Not Limited. The legal Liability of the Company and any Affiliated Person to the City and any Person for any of the matters which are the subject of the liability insurance policies required by this Section 13.2, including, without limitation, the Company's indemnification obligation set forth in Section 13.1.06 hereof, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Company or its Guarantor.

Section 14 **SPECIFIC RIGHTS AND REMEDIES**

14.1 Not Exclusive. The Company agrees that the City shall have the specific rights and remedies set forth in this Section 14. These rights and remedies are in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any Liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company or its Guarantor. In addition to the remedies available for material breaches of this Agreement, the City shall have the rights and remedies set forth in this Agreement and all other rights and remedies available to it under applicable law with respect to breaches which do not constitute material breaches of this Agreement.

14.2 Security Fund

14.2.01 Obligation to Maintain. Throughout the term of this Agreement, or for as long as the Company operates the System, whichever period is longer, and for at least ninety (90) days thereafter, the Company shall maintain the Security Fund in the amount specified in Section 14.2.02 hereof or such other amount as may from time to time be reasonably specified by the City in accordance with Section 14.2.02 hereof.

14.2.02 Amount. On or before the Closing, and as a condition precedent to the Closing, the Company shall deposit (to the extent such is not already on deposit) with the Comptroller the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000.00), Eighty-five Thousand Dollars (\$85,000.00) of which shall be provided in cash or City bonds, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Comptroller and the Corporation Counsel of the City, which letter of credit or other instrument shall in no event require the consent of the Company prior to the collection by the City of any amounts covered by such letter of credit or other instrument. The amount of such cash or City bonds and such letter of credit to be provided to the Comptroller shall constitute the Company's Security Fund. The Company shall be entitled to interest on the cash portion of the Security Fund and to the interest or dividends on any City bonds deposited in lieu of cash at a rate equal to whatever rate the City is actually earning on such cash and/or bonds. At any time during the term of this Agreement, the City may, in its reasonable discretion, require the Company to increase the amount of the Security Fund to an amount it deems appropriate if it finds that additional risk factors exist which necessitate an increase in the amount of the Security Fund, such as an increase in the amount of compensation payments to be made pursuant to Section 9.1 hereof or the failure of the Company to perform any of its obligations pursuant to this Agreement.

14.2.03 Purpose. The Security Fund shall serve as security for: (i) the faithful performance by the Company of all terms and conditions of this Agreement; (ii) any expenditure, damage, or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits, and other directives of the City and the Commissioner issued pursuant to this Agreement; (iii) the payment by the Company of all Liabilities which the City has been compelled to pay or incur by reason of any act or default of the Company, and all other payments due the City from the Company pursuant to this Agreement; (iv) the loss of any payments required to be made by the Company to the City which would have been received by the City but for the Company's failure to perform its obligations pursuant to this Agreement, during the period of time between the Company's unexcused or uncured failure to perform and the date on which the City takes over, or authorizes any other Person to take over, the construction, operation, or maintenance of a Cable Communications System in the District necessitated by such failure; (v) any costs incurred by the City in connection with the award of any franchise for, or other authorization to, construct, operate, maintain or upgrade, a Cable

Communications System in the District necessitated by such failure; (vi) any costs, losses or damages incurred by the City or any other Person as a consequence of the Company's performance or nonperformance pursuant to the terms and conditions of this Agreement; and (vii) costs, losses or damages incurred by the City as a result of termination for cause due to a material breach pursuant to Section 14.4.02, provided, however, that such costs, losses or damages, to the extent they are actually paid by the Company or its Guarantor to the City, shall not also be considered in determining "equitable price" pursuant to Section 14.6.03 hereof. The withdrawal of amounts from the Security Fund shall constitute a credit against the amount of the applicable Liability of the Company to the City but only to the extent of said withdrawal.

14.2.04 Withdrawals from Security Fund. If (A) the Company fails: (i) to make any payment required by this Agreement within the time fixed herein; (ii) to pay to the City, within ten (10) business days after receipt of notice, any Liability payable to the City and relating to the System that is due and unpaid; (iii) to pay to the City, within ten (10) business days after receipt of notice from the Commissioner, any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any act or default of the Company; or (iv) to comply, within ten (10) business days after receipt of notice from the Commissioner, with any provision of this Agreement which the Commissioner determines can be remedied by an expenditure of an amount in the Security Fund; and (B) to cure within ten (10) business days after receipt of notice from the Commissioner any of said failures or present written comments contesting the validity of the withdrawal, then the Comptroller may withdraw the amount thereof from the Security Fund and pay it to the City.

14.2.05 Replenishment

(a) Within fifteen (15) business days after receipt of notice from the Comptroller that any amount has been withdrawn from the Security Fund, as provided in Section 14.2.04 hereof, the Company shall restore the Security Fund to the amount specified in Section 14.2.02 hereof, provided that said restoration obligation shall be suspended during the period of any judicial challenge by the Company to the propriety of said withdrawal from the Security Fund. If a court determines that said withdrawal by the City was improper, the City shall restore the improperly withdrawn amount to the Security Fund, together with interest from the date of the withdrawal at a rate equal to whatever rate the City actually earned on the improperly withdrawn amounts during the period from such withdrawal until such restoration.

(b) Interest due on any payment required to be made by the Company pursuant to Section 14.2.05(a) shall not begin to accrue for a period of thirty (30) business days after receipt by the Company of the notice of withdrawal from the Security Fund of the principal amount due, as provided in Section 14.2.05(a). Thereafter, if the Company has not made the required restoration to the Security Fund, interest on said amount shall accrue at the rate specified in

Section 9.4 hereof. The Comptroller may withdraw from the Security Fund and pay to the City such interest periodically up to the date on which the Company makes the required principal payment, provided that the Company shall not be obligated to pay such interest with such principal payment to the extent such interest has been already withdrawn by the Comptroller.

14.2.06 Notice of Withdrawals. Within one (1) week after each of the foregoing withdrawals, the Comptroller shall notify the Company of the date and amount thereof. The Company shall have the right to contest any such withdrawal and any determination of the City in connection with such withdrawal.

14.3 Liquidated Damages

14.3.01 Liquidated Damages. The Company shall be liable to the City for the amounts specified in this Section 14.3.01 for any of the following failures by the Company to comply with the provisions of this Agreement, unless, within fifteen (15) business days after receipt of notice by the Company from the Commissioner, or such longer period as the Commissioner shall specify, the Company has cured the alleged failure, presented facts and arguments in refutation or excuse of each such alleged failure that reasonably satisfies the Commissioner, or provided a cure plan and schedule that reasonably satisfies the Commissioner. At the option of the Comptroller, such amounts may be withdrawn from the Security Fund and paid to the City (in addition to the withdrawals authorized by any other Section of this Agreement and Appendix I to this Agreement) or shall be paid in such other manner as may be reasonably determined by the Comptroller:

(i) Failure to upgrade the System in accordance with the then current sequence and schedule: Three Cents (\$0.03) per day, per affected household for each day that such delay continues;

(ii) Failure to furnish, maintain, and continue to offer all requested Services to any household within the District as required by this Agreement: Three Cents (\$.03) per day, per affected household, for each day that such failure continues;

(iii) Willful or persistent failure to provide data, documents, records, reports or information to the City, pursuant to the terms of this Agreement: Two Hundred Fifty Dollars (\$250.00) per day, for each day that such failure continues;

(iv) Failure to support the Institutional Network as provided in Section 4.3.03 hereof and Appendix E to this Agreement: for failure to provide required trunk lines, Five Hundred Dollars (\$500.00) per day, for each day that such delay continues, and Five Dollars (\$5.00) per day, per drop, for failure to provide required drops, for each day that such delay continues;

(v) Substantial failure to construct, operate and maintain and upgrade the System to offer the full range of Services, facilities and equipment provided for in accordance with Section 3.9 hereof: Six Thousand Five Hundred Dollars (\$6,500) per day for each day that such delay continues;

(vi) Failure to provide the capital grants, equipment and other support for the Access Channels pursuant to Section 4 hereof and Appendices D, E and F to this Agreement: Seven Hundred and Fifty Dollars (\$750.00) per day for each day that such failure occurs or continues, as to Public Channels, and Five Hundred Dollars (\$500.00) per day for each day that such failure occurs or continues, as to Governmental Channels;

(vii) Failure to substantially comply with a material requirement of Appendix I to this Agreement: One Thousand Five Hundred Dollars (\$1,500) per day for each day that such failure occurs or continues.

The Company agrees that each of the foregoing failures set forth in this Section 14.3.01 shall result in injuries to the City and its residents, businesses and institutions, the compensation for which will be difficult to ascertain and to prove. Accordingly, the Company agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such injuries. The Company agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-(D)). Further, the payment of such liquidated damages shall not be deemed to be:

(i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof, or (ii) part of the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof. Nothing contained in this Section shall be construed to permit duplicative recovery from or payment by the Company or its Guarantor.

14.4 Material Breach

14.4.01 Remedies for Material Breach

(a) In the event that the Company fails to comply with a material provision of this Agreement, as provided in Section 14.4.02 hereof, then, in accordance with the procedures provided in Section 14.4.04 hereof, the City may, at any time during the term of this Agreement, to the extent lawful and in addition to any other remedies the City may have under this Agreement or at law or in equity:

(i) Require the Company to take such actions which the City deems appropriate in the circumstances; and/or

(ii) Seek money damages from the Company as compensation for such material breach (it being acknowledged that seeking money

damages for a material breach does not preclude seeking money damages for a breach which is not material); and/or

(iii) Accelerate the expiration of the term of this Agreement by decreasing the term of the franchise provided in Section 2.3.02 hereof; provided that the remaining term of the franchise as accelerated pursuant to this Section 14.4.01(iii) shall not be less than thirty-six (36) months; and/or

(iv) Revoke the franchise granted pursuant to this Agreement by termination of this Agreement pursuant to Section 14.5 hereof, provided that, if the City does not elect to purchase the System, then such revocation and termination shall not take effect for a period of one hundred eighty (180) days after notice thereof is given to the Company if the Company notifies the City in writing (within thirty (30) days of receipt of the notice of termination and revocation) that it shall seek, during such period, to find a purchaser for the System which purchaser shall be subject to the approval of the City pursuant to Section 11 hereof.

(b) The Company expressly waives any right to stay or otherwise limit the availability of the City's remedies as a consequence of the Company's breach of any term or condition of this Agreement that occurred prior to or during, any renewal of, or modification of any term or condition of, this Agreement, and any effort by the Company, if the Company has theretofore received a notice of breach pursuant to Section 14.4.04(i) and has received, prior to such notice, prior reasonable notice of the City's concerns, to invoke the procedures of Sections 625 or 626 of the Cable Act (47 U.S.C. § 545 or § 546) shall not stay or otherwise limit the availability of the City's remedies due to the Company's breach of any term or condition of this Agreement at any time during the term of this Agreement. Notwithstanding the foregoing, in the event the Company invokes the procedures of Section 625 of the Cable Act, the City agrees that during the period from the date of the Company's request, to the date the City completes action on the Company's request, the City will not commence enforcement action with respect to breaches which are the subject of the Section 625 proceeding. However, such agreement by the City is to be construed narrowly and neither the invocation of such procedures nor the City's agreement not to commence enforcement action until the expiration of such period, nor anything else, shall be deemed to limit or impede the availability of the City's remedies as a consequence of, or the City's right and ability (i) to continue to prosecute enforcement action or to exercise any remedies with respect to breaches as to which enforcement action or the exercise of remedies was commenced prior to the invocation of the Section 625 procedures or (ii) upon the expiration of such period, to commence and thereafter prosecute an enforcement action, and/or to exercise remedies with respect to, breaches of any term or condition of this Agreement that occurred prior to the invocation of such procedures that relate to the matter which is the subject of the Section 625 proceeding, and the Company expressly waives any right to so limit such action or remedies.

(c) Further, in addition to all other remedies granted or available to the City, the City shall be entitled, to the extent appropriate under law, to the restraint by injunction of the violation, or attempted or threatened violation, by the Company of any terms or provisions of this Agreement, or to a decree compelling performance by the Company of any term or provision therein.

14.4.02 Grounds. The Company agrees that a failure to comply with a material provision of this Agreement shall include, but shall not be limited to, any of the following acts or failures to act, or any of the following events, unless such acts, failures to act or events are waived or otherwise excused in writing by the City:

(i) Failure to comply with a material obligation under Section 16.9.03 [**Financial Condition**] or Section 16.9.05 hereof [**Compliance with Agreement**] hereof;

(ii) Substantial failure to satisfy the requirements regarding the System, as provided in Appendix A to this Agreement;

(iii) Substantial failure to comply with the terms, schedule, or sequence for construction of any upgrade of the System, provided that such failure shall not arise in the event of a delay of less than one hundred twenty (120) days in meeting the schedule for construction (such one hundred twenty (120) days to be inclusive of any grace periods built into the terms, schedule or sequence);

(iv) Substantial failure to comply with the requirements of Sections 3.1 [**Provision of Service**], 3.2 [**Service to All Persons**] or 3.7 [**Commercial Access**] hereof;

(v) Substantial failure to supply the Access Channels and related capital grants, equipment, and other support to the Community Access Organization, in the case of Public Channels, and the City, in the case of Governmental Channels, within thirty (30) days after the date by which such items must be supplied, as provided in Sections 4.1 and 4.2 hereof and in Appendices D, E and F to this Agreement or substantial failure to comply with any of the provisions set forth in Appendices D, E and F;

(vi) Substantial failure to supply the capital grants and other support for the Institutional Network, as provided in Appendix E to this Agreement;

(vii) Any willful or material or persistent discrimination in connection with the provision of Services to Subscribers or the imposition of any rate, charge, deposit or other term and condition of Service, to Subscribers in violation of Sections 3.2, 5.3 or 5.4 of this Agreement, or the offering or failure to offer any Service, or the imposition of any rate, charge, deposit or

associated term or condition, which is materially inconsistent with that set forth in the then-current report or filing made pursuant to this Agreement;

(viii) Failure to notify the Commissioner of any material change in the construction schedules and specifications of any upgrade of the System pursuant to this Agreement or undertaking such a material change without the written approval of the Commissioner;

(ix) Failure to furnish or maintain, throughout the term of this Agreement, the performance bond, as provided in Section 6.10 hereof;

(x) Substantial failure to comply with the interconnection requirements hereof;

(xi) Substantial failure to comply with the Company's employment and material purchasing obligations, as provided in Section 7 hereof;

(xii) Substantial failure to comply with any material requirement set forth in Section 8 hereof or Appendix I to this Agreement or repeated failure to comply with any requirement of Section 8 hereof or Appendix I to this Agreement;

(xiii) Failure to comply with the provisions of Sections 11 and 12 hereof, except that the completion of certain actions described in Section 11 without the approval of the City shall be deemed to be an Abandonment of the System, as provided in Section 1.1 hereof;

(xiv) Substantial failure to make any of the compensation or other payments, as provided in Section 9 hereof, or to maintain and replenish the Security Fund pursuant to Sections 14.2.01 and 14.2.05 hereof;

(xv) Substantial failure to comply with the material terms of the rules, regulations, orders, or other directives of the City or the Commissioner;

(xvi) Any failure to comply with the provisions of Section 9.3 [**Not Franchise Fees**] hereof;

(xvii) Substantial or repeated failure to comply with the provisions of Section 10 [**Oversight and Regulation**] hereof;

(xviii) The taking of any action which requires the approval or consent of the City without having first obtained said approval or consent;

(xix) Substantial or repeated failure to comply with Section 16.9 [**Additional Covenants**] hereof;

(xx) Failure to furnish and maintain, throughout the term of this Agreement, the liability insurance policy or policies, as provided in Section 13.2 hereof;

(xxi) Willful or persistent or material failure to furnish or update, as applicable, each plan which requires approval or acceptance by the City pursuant to Sections 3.7.02 [Leased Channel Report], [4.4.01 [Services Plan for Physically Challenged Persons]], 5.4 [Discounts], 7.3 [Local Preference], 7.4 [City Vendors], 10.4.02 [Upgrade Report], 10.4.05 [Related Services Report], and 16.9.03 [Financial Report] hereof;

(xxii) Engaging in a course of conduct intentionally designed to practice any fraud or deceit upon the City, any Subscriber, or any other user of the System;

(xxiii) Any material misrepresentation, either oral or written, intentionally or negligently made by or on behalf of the Company in connection with the negotiation or renegotiation of, or any representation or warranty contained herein or any amendment, or other modification to, this Agreement;

(xxiv) The conviction, guilty plea or plea of nolo contendere of the Company, any Person holding a Controlling Interest in the Company, any director or officer of the Company or of any Controlling Person, or any employee or agent of the Company or of any Controlling Person acting under the express direction or with the actual consent of any of the foregoing, of any offense, including, without limitation, bribery or fraud, arising out of or in connection with this Agreement or any other agreement to construct, operate, or maintain a Cable Communications System in the City or elsewhere, the award of the franchise granted pursuant to this Agreement, or any act to be taken following the Effective Date of this Agreement by the City, its officers, employees, or agents relating or pursuant to this Agreement, provided that the right to terminate this Agreement in the event of such convictions or guilty pleas shall arise only with respect to any of the foregoing convictions of the Company itself and, in the event of the conviction or guilty plea of any of the other Persons specified in this subsection (xxiv), the City shall have the right to order the Company to disassociate itself from, or terminate the employment of, said other Persons with respect to activities in the City or any other activities affecting the System pursuant to this Agreement;

(xxv) The conviction or guilty plea of any City officer, employee, or agent of the offense of bribery or fraud with respect to this Agreement which arises out of or in connection with any act of the Company, of any Person holding a Controlling Interest in the Company, or of any agent or employee thereof acting under the express direction or actual consent of the foregoing;

(xxvi) Any false entry knowingly made in the books of account or records of the Company, or any false statement knowingly made in any

report, document or other filing to the City or otherwise by the Company, any director, officer, or person occupying a similar position, or other Person holding a Controlling Interest in the Company, any Affiliated Person, or any employee or agent of the Company acting under the express direction or with the actual consent of any of the foregoing;

(xxvii) The material breach by the Company or any Affiliated Person of, or any termination for cause of, any other agreement to construct, operate, maintain or upgrade a Cable Communications System in the City;

(xxviii) The occurrence of any event which may reasonably lead to the foreclosure or other similar judicial or nonjudicial sale of all or any material part of the System, including, but not limited to, any of the following events: (a) default under any loan or any financing arrangement material to the System or the obligations of the Company under this Agreement; (b) default under any contract material to the System or the obligations of the Company under this Agreement; or (c) termination of any lease or mortgage covering all or any material part of the System;

(xxix) The condemnation by a public authority other than the City, or sale or dedication under threat or in lieu of condemnation, of all or any part of the System, the effect of which would materially frustrate or impede the ability of the Company to carry out its obligations, and the purposes of this Agreement;

(xxx) In the event that: (a) the Company shall suspend or discontinue its business, shall make an assignment for the benefit of creditors, shall fail to pay its debts generally as they become due, shall become insolvent (howsoever such insolvency may be evidenced), shall be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any part of the System; or (b) a writ or warrant of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; or (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or of any substantial parts of the assets of the Company under the law of any jurisdiction, whether now or hereinafter in effect, and an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings; or (d) any order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company;

(xxxi) If there shall occur any denial, forfeiture or revocation by any federal, state or local governmental authority of any authorization required by law or the expiration without renewal of any such authorization, and such events either individually or in the aggregate, materially jeopardize or could reasonably be expected to materially jeopardize the System or its operation;

(xxxii) If any judgment(s) for the payment of money (other than in respect of indebtedness for borrowed money) aggregating in excess of Ten Million Dollars (\$10,000,000) be rendered against the Company and such judgment(s) remains either unstayed or unsatisfied for a period of sixty (60) days;

(xxxiii) Substantial failure by the Company to establish and maintain managerial and operational standards, procedures, records and controls to enable the Company to demonstrate, at all times throughout the term of this Agreement, that it is, or has been, in compliance with each material term and condition of this Agreement (subject to the final sentence in Section 10.1 hereof);

(xxxiv) A persistent failure by the Company, its Affiliated Persons or its Guarantor, as applicable, to comply with any of the provisions, terms or conditions of this Agreement or with any rules, regulations, orders or other directives of the City or the Commissioner after having received notice of a failure to comply, provided that no persistent failure shall be deemed to have occurred by reason of actions or inactions, taken in the good faith belief that such do not constitute a failure, during the pendency of a good faith dispute as to whether such actions or inactions constitute a failure; or

(xxxv) A final determination described in Section 3.8.01.

14.4.03 No Independent Failure To Comply. If, as a result of a failure or alleged failure to comply with a material provision of this Agreement as delineated in the foregoing subsections (i) through (xxxv) of Section 14.4.02 hereof, the Company is unable to comply with any other material provision(s) which necessarily and directly arise(s) out of said failure or alleged failure as delineated in said subsections, such inability to comply with such other provision(s) shall not be deemed to be an independent failure to comply with a material provision of this Agreement.

14.4.04 Procedures. The City shall exercise the rights provided in Section 14.4.01 hereof in accordance with the procedures set forth below:

(i) The City shall notify the Company, in writing, of an alleged failure to comply with a material provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within fifteen (15) business days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure

or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(ii) The City shall determine (a) whether a failure to comply with a material provision has occurred; (b) whether such failure is excusable; and (c) whether such failure has been cured or will be cured by the Company. In connection with such determination, the City may consider the Company's performance during or prior to the term of this franchise to substantiate a pattern or practice of the Company's failure to comply with such material provision.

(iii) If the City determines that a failure to comply with a material provision has occurred and that such failure is not excusable and has not been or will not be cured by the Company in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City may take any of the actions provided in Section 14.4.01 hereof. In the event the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.

(iv) Notwithstanding the foregoing Section 14.4.04(iii), the City may revoke the franchise immediately, by providing written notice to the Company of such revocation and the concomitant termination of this Agreement, in the event that any of the actions described in Sections 11.1 and 11.2 hereof which require prior consent of the City are completed without the prior express written consent of the City or if any of the events described in Sections 14.4.02(xxviii) through (xxxii) hereof shall occur. Termination of the franchise shall be effective immediately upon such event.

14.5 Rights Upon Termination

14.5.01 Operation of System. In the event of any termination of this Agreement, the City may: (i) direct the Company to operate the System on behalf of the City pursuant to the provisions of this Agreement and such additional terms and conditions as are equitable to the City and the Company, for a period of up to twelve (12) months; (ii) authorize any other Person to operate the System on behalf of the City; or (iii) order the Company to cease all construction and operational activities in a prompt and workmanlike manner.

14.5.02 Return of Security Fund. Within one hundred twenty (120) days after the termination of this Agreement due to the expiration of the term of the franchise granted herein, the Company shall be entitled to the return of the Security Fund deposited pursuant to Section 14.2.01 hereof, or portion thereof as remains on deposit with the Comptroller at said termination, provided that all offsets necessary to compensate the City for any uncured failure to comply with any provision of this Agreement have been taken by the City. Notwithstanding the

foregoing sentence, if the Company continues to operate the System following the termination of this Agreement, the Company shall not be entitled to a return of the Security Fund until one hundred twenty (120) days after the end of such continued operation. In the event of a termination or acceleration of the term of this Agreement for cause due to a material breach by the Company pursuant to Section 14.4 or otherwise, such Security Fund shall become the property of the City to the extent necessary to satisfy the purposes of the Security Fund as set forth in Section 14.2.03 hereof, including the covering of any costs, loss or damage incurred by the City as a result of such termination or material breach, provided that any amounts in excess of such costs, loss or damage shall be refunded to the Company, and provided further that, to the extent the City actually withdraws from such Fund amounts used to reimburse the City for such costs, losses or damages, such withdrawn amounts shall not also be considered in determining "equitable price" pursuant to Section 14.6.03 hereof.

14.6 City's Right To Order Removal or To Acquire or Effect a Transfer of the System

14.6.01 Removal. The City and the Company intend that the System be permanent. However, in the event of unforeseen circumstances that may arise upon a termination, the City, in addition to its rights under Section 14.5.01 hereof, may, in its sole discretion, but shall not be obligated to, direct the Company to remove, at the Company's sole cost and expense, all or any portion of the System from all Streets and other public property within the City, subject to the following: (i) this provision shall not apply to underground cable, which cannot be removed; (ii) in removing the System, or part thereof, the Company shall refill and compact, at its own expense, any excavation that shall be made by it and shall leave all Streets and other property in as good condition as that prevailing prior to the Company's removal of the System and without affecting, altering or disturbing in any way any electric, telephone or other utility cables, wires or attachments (except to the extent such affecting, altering or disturbing is permitted by an agreement between the Company and the applicable owner of the cable, wires or attachments); (iii) the City shall have the right to inspect and approve the condition of such Streets and public property after removal; (iv) the Security Fund, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Streets and other public property; and (v) removal shall be commenced within thirty (30) days of the removal order by the City and shall be completed within twelve (12) months thereafter including all associated repair of all Streets and other public property. Notwithstanding the foregoing, the Company may dispose of any portion of the System not designated by the City for removal during such twelve (12) month period, provided, however, that if the Company fails to complete the removal of the portion(s) of the System designated for removal by the City within such period, then all such portion(s) of the System not disposed of and all amounts collected for any portion(s) of the System disposed of by the Company during such period shall belong to the City, with no price due to the Company.

If, in the reasonable judgment of the Commissioner, the Company fails to substantially complete such removal, including all associated repair of Streets and other public property within twelve (12) months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to: (a) declare that all rights, title and interest to the System belong to the City with all rights of ownership, including, but not limited to, the right to operate the System or to effect a transfer of the System to another Person for operation; or (b) authorize removal of the System, at the Company's cost, by another Person; and (c) to the extent not inconsistent with applicable law, any portion of the System not designated by the City for removal shall belong to and become the property of the City without compensation to the Company and the Company shall execute and deliver such documents, as the Commissioner shall request, in form and substance acceptable to the Commissioner, to evidence such ownership by the City. The Company shall not be required to assign to the transferee proprietary information in the System, but shall provide, to the maximum extent feasible and practicable, a perpetual (or at least until the later of the end of the term of the Franchise or operation of the System), royalty free license to use such proprietary information, provided that no such license shall be required with respect to proprietary information that was uniquely developed for use in the Company's and/or its Affiliate's cable systems and is not so integral to the operation of the System that the System cannot be operated on a commercially reasonable basis without such information, and provided further that the transferee shall be obligated to use all reasonable efforts to develop or acquire information to substitute for such proprietary information, and upon the development or acquisition, and use, of such substitute information, such license shall terminate.

14.6.02 Acquisition or Transfer. Upon any termination and as an alternative to ordering removal of the System, the City shall have the right to, and may, in its sole discretion, acquire or effect a transfer to a third party acceptable to the City of all or any part of the System and all components thereof necessary to maintain and operate the System pursuant to the terms of this Agreement. The Company shall not be required to assign to the transferee proprietary information in the System, but shall provide, to the maximum extent feasible and practicable, a perpetual (or at least until the later of the end of the term of the Franchise or operation of the System), royalty free license to use such proprietary information, provided that no such license shall be required with respect to proprietary information that was uniquely developed for use in the Company's and/or Affiliate's cable systems and is not so integral to the operation of the System that the System cannot be operated on a commercially reasonable basis without such information, and provided further that the transferee shall be obligated to use all reasonable efforts to develop or acquire information to substitute for such proprietary information, and upon the development or acquisition, and use, of such substitute information, such license shall terminate.

14.6.03 Price. The price to be paid to the Company upon an acquisition or transfer by the City to the City or a third party acceptable to the City shall depend upon the nature of the termination. If the franchise terminates at the

scheduled end of the Term and renewal of the franchise is denied, then the price shall be fair market value, determined on the basis of the System valued as a going concern but with no value allocated to the franchise itself (i.e., the fair market value of the System valued as a going concern, with a deduction for the value allocable to the franchise itself), but the price shall in no event exceed the price the City is permitted to pay under the City Charter, unless otherwise preempted by applicable law. If the termination is due to the revocation of the franchise for cause, including, but not limited to, revocation due to a material breach of this Agreement by the Company as provided in Section 14.4 hereof or otherwise, then the price shall be an equitable price, determined with due regard to the injury to the City and its residents and with no value allocable to the franchise itself, which price shall in no event exceed the price the City is permitted to pay under the City Charter, unless otherwise preempted by applicable law. If the City effects an acquisition of the System for any reason, and subsequently transfers the System to a third party or the City effects a transfer of the System directly to a third party, the Company shall have no right to any amounts payable to the City by such third party in excess of the price to be paid to the Company for the System as described above.

14.6.04 Valuation Date. The date of valuation for purposes of the price determination pursuant to Section 14.6.03 shall be as of a date no later than the day before the City preliminarily elects to acquire or to effect a transfer of the System. For the purpose of determining such valuation, the City shall select a qualified appraiser to compute the purchase price in accordance with the aforementioned standards. If the termination is due to an Abandonment of the System by the Company, then there shall be no price due to the Company, except to any extent to which the City is expressly required by law to make a payment to the Company.

14.7 Company's Obligations. In the event of any acquisition, transfer or Abandonment pursuant to Section 14.6 hereof, the Company shall:

(i) cooperate with the City or any third party in maintaining continuous and uninterrupted distribution of Services over the System;

(ii) promptly execute all appropriate documents to transfer to the City or third party, free of any Liabilities, title to the System, all components thereof necessary to operate and maintain the System pursuant to the terms and conditions of this Agreement, as well as all contracts, leases, licenses, permits, rights-of-way, and any other rights, contracts or understandings necessary to maintain the System and the distribution of Services over the System; provided that such transfers shall be made subject to the rights, under Article 9 of the Uniform Commercial Code as in effect in the State of New York and, to the extent that any collateral consists of real property, under the New York Real Property Law, of banking or lending institutions which are secured creditors or mortgagees of the Company at the time of such transfers; and provided that, with respect to such creditors or mortgagees, the City shall have no obligation following said transfers to

pay, pledge, or otherwise commit in any way any general or any other revenues or funds of the City, other than the net operating revenues received by the City from its operation of the System, in order to repay any amounts outstanding on any debts secured by the System which remain owing to such creditors or mortgagees; and provided, finally, that the total of such payments by the City to such creditors and mortgagees, from the net operating revenues received by the City from its operation of the System, shall in no event exceed the lesser of: (a) the fair market value of the System on the date of the transfer of title to the City or (b) the outstanding debt owed to such creditors and mortgagees on said date. Nothing in this Section 14.7 shall be construed to limit the rights of any such banking or lending institutions to exercise its or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts due pursuant to the applicable debt instruments; and

(iii) promptly supply the Commissioner with all necessary records to reflect the City's or third party's ownership of the System and to operate and maintain the System, including, without limitation, all Subscriber records and plant and equipment layout documents.

14.8 Other Provisions. The City and the Company shall negotiate in good faith all other terms and conditions of any such acquisition or transfer, except that, in the event of any acquisition of the System by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System in any manner.

Section 15 **SUBSEQUENT ACTION**

15.1 Procedure for Subsequent Invalidity. In the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of competent jurisdiction: (i) declares this Agreement invalid, in whole or in part, or (ii) requires the Company either to: (a) perform any act which is inconsistent with any provision of this Agreement or (b) cease performing any act required by any provision of this Agreement, including any obligations with respect to compensation or other financial obligations pursuant to this Agreement, then the Company shall promptly notify the Commissioner of such fact. Upon receipt of such notification, the City, acting in good faith, shall determine whether such declaration or requirement has a material and adverse effect on this Agreement. If the City, acting in good faith, determines that such declaration or requirement does not have a material and adverse effect on this Agreement and that compliance with such declaration or requirement by the Company would not materially frustrate or impede the ability of the Company to carry out its obligations pursuant to, and the purposes of, this Agreement, then the Company shall comply with such declaration or requirement. If the City, acting in good faith, determines that such declaration or requirement does have such an effect

or that compliance with such declaration or requirement by the Company would materially frustrate or impede the ability of the Company to carry out its obligations pursuant to, and the purposes of, this Agreement, then the Company and the City shall enter into good faith negotiations to amend this Agreement, so as to enable the Company to perform obligations and provide Services for the benefit of the City and others equivalent to those immediately prior to such declaration or requirement, to the maximum extent consistent with said declaration or requirement. In connection with such negotiations, the City and the Company shall consider whether the circumstances existing at that time are such that the Company should continue to perform such obligations or their equivalent. If the Company fails to negotiate in good faith to produce an agreement which is reasonably acceptable to both the City and the Company, then the City may accelerate the term of this Agreement so that the term shall expire on a date determined by the City not less than thirty-six (36) months after such determination.

15.2 Waiver. In addition to complying with Section 15.1 hereof, in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of competent jurisdiction: (i) declares this Agreement invalid, in whole or in part, or (ii) requires the Company either to: (a) perform any act which is inconsistent with any provision of this Agreement or (b) cease performing any act required by any provision of this Agreement, then the Company expressly agrees nevertheless to comply with the terms of this Agreement to the maximum extent permitted by law and expressly waives, to the maximum extent permitted by law, any claim it may then or thereafter have as to the validity or enforceability of the terms of this Agreement. To the fullest extent it may effectively do so under applicable law, the Company waives any provision of law which renders any provision hereof invalid, illegal or unenforceable in any respect.

15.3 Reservation of Rights. To the extent that any statute, rule, regulation, ordinance or any other law is enacted, adopted, repealed, amended, modified, changed or interpreted in any way during the term of this Agreement so as to enhance the City's ability to meet the cable-related needs and interests of the community, the Company and the City shall enter into good faith negotiations so as to modify this Agreement and/or regulate the System, as applicable, to reflect such enactment, adoption, repeal, amendment, modification, change or interpretation and the Company agrees to comply with any such modifications or regulations arising out of such negotiations. If the Company fails to negotiate in good faith to produce such modifications and/or such regulations which are reasonably acceptable to both the City and the Company, then the City may accelerate the term of this Agreement so that the term shall expire on a date determined by the City not less than thirty-six (36) months after such determination. Any substantial failure of the Company to comply with the material terms of any such modifications or regulations shall be deemed to be a material breach of this Agreement pursuant to Section 14.4.02 hereof. This Section 15.3 shall not apply to laws that substantially increase the franchise fees the City is authorized to charge, which as of the Effective Date under the Cable Act are limited to five percent (5%) of gross revenues or which similarly increase the compensation

which the City, in its proprietary capacity, is authorized to charge in connection with this franchise.

15.4 Matching

15.4.01 Matching Provision. If the City grants, renews or renegotiates one or more franchises for the operation of a Cable Communications System in the District pursuant to the Cable Act ("Other Cable Franchise") and the Company believes the agreement (hereinafter the "Other Cable Franchise Agreement") pursuant to which such Other Cable Franchise is granted bestows benefits and imposes burdens on the franchisee which, on balance, are materially more advantageous to such third party than the benefits bestowed and burdens imposed on the Company by this Agreement are to the Company, then, at any one time after each such grant, renewal or negotiation but not sooner than six (6) months after the effective date of such event, the Company may request that the City make a determination to such effect and, in the event of such a determination, renegotiate the terms and conditions of this Agreement as provided below.

15.4.02 Procedure. In the event of such a request, the City shall reasonably determine, under its standard procedures, whether the Other Cable Franchise Agreement bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits and burdens imposed by this Agreement are to the Company.

In making a determination under this subsection, the City may consider factors such as, but not limited to: (i) the term of each franchise; (ii) the franchise fee to be paid by each franchisee, including the Company; (iii) the number and density of dwelling units to be served; (iv) differences in construction, operational and maintenance costs; (v) differences in required system characteristics, including state-of-the-art requirements; (vi) differences in service obligations, including Access Channel and institutional service requirements; (vii) differences in permitted Company fees and charges; and (viii) such other factors and considerations as it considers to be relevant to an inquiry into the overall economic comparability of the agreements.

If the City determines that the Other Cable Franchise Agreement bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits bestowed and burdens imposed by this Agreement are to the Company, then upon the Company's request, the City and the Company shall enter into good faith negotiations to modify this Agreement to bestow benefits and impose burdens which, on balance, create overall economic comparability between this Agreement and the Other Cable Franchise Agreement. In the negotiations, the parties may also consider whether the Company is in substantial compliance with the material provisions of this Agreement.

The term "Other Cable Franchise" as used in this Section 15 shall not include open video systems, video dialtone systems, or similar systems, or agreements in connection therewith.

15.4.03 Additional Matching Provision. In addition to the foregoing, if the City renews the current franchises for the operation of a Cable Communications System held by Cablevision Systems New York City Corporation ("Cablevision") ("Cablevision Franchises") and the Company believes the agreement (hereinafter the "Cablevision Franchise Agreement"), pursuant to which the Cablevision Franchise is granted, bestows benefits and imposes burdens on Cablevision (other than with respect to provisions for funding for Public Access, Governmental Access and Institutional Network, provisions that are based on upgrading the cable system and provisions that are based on the characteristics of the franchise area or the franchisee and its Affiliated Persons) ("Excluded Issues") which, on balance, are materially more advantageous to Cablevision than are the benefits bestowed and burdens imposed on the Company by this Agreement, then at the Company's request, at any one time within six (6) months after the renewal of the Cablevision Franchise the City and the Company shall enter into good faith negotiations to modify this Agreement to bestow benefits and impose burdens (other than with respect to Excluded Issues) which, on balance, create overall economic comparability between this Agreement and the Cablevision Franchise Agreement.

Section 16 **MISCELLANEOUS**

16.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification hereof, except as specified in such Appendices or elsewhere in this Agreement.

16.2 Action Taken by City. Any action to be taken by the City and/or the Commissioner pursuant to this Agreement shall be taken in accordance with the applicable provisions of the City Charter, as said Charter may be amended or modified throughout the term of this Agreement. Whenever, pursuant to the provisions of this Agreement, the City, the Company, or any other Person is required or permitted to take any action, including, without limitation, the making of any request or the granting of any consent, approval, or authorization, the propriety of said action shall be measured against a standard of reasonableness. For the purposes of all proceedings before the Commissioner or the City pursuant to this Agreement, wherever this Agreement requires that an action be taken or not be taken by the Company or the City, on the basis that such action is Economically and Technically Feasible and Viable or Commercially Impracticable, the Company shall have the burden of demonstrating the existence or lack thereof, as applicable in the case of a

particular provision of this Agreement, of such action being Commercially Impracticable or Economically and Technically Feasible and Viable.

16.3 Compliance with Agreement. In any dispute, claim or proceeding before the City between the parties to this Agreement, the Company shall have the burden of demonstrating its compliance with each material term and condition of this Agreement for all purposes. In any administrative proceeding under the Cable Act (including one before the City) and in any dispute, claim or proceeding other than one before the City, the customary rules applicable to which party bears the burden in such action shall apply. From time to time upon the request of the Commissioner, the Company shall have the burden of demonstrating for all purposes that it is in compliance with, and has complied with, any material term and condition of this Agreement specified by the Commissioner.

16.4 Entire Agreement. This Agreement, including all Appendices hereto, embodies the entire understanding and agreement of the City and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the City and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any Appendix to this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the City or the Company, provided, however, that (i) prior to the Effective Date, the Company shall comply with the terms and conditions of the existing Franchise Contract dated June 28, 1990 as amended.

16.5 Delays and Failures Beyond Control of Company. Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, sabotage or other events, provided the Company has exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the control of the Company and such causes or events are without the fault or negligence of the Company. In the event that any such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The Company agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall notify the Commissioner in writing of the occurrence of an event covered by this Section 16.5 within five (5) business days of the date upon which the Company learns of its occurrence.

16.6 Notices. Every notice, order, petition, document, or other direction or communication to be served upon the City or the Company shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt

requested. Every such communication to the Company shall be sent to its office located at 120 East 23rd Street, New York, NY 10010, Attention: President, or to such other location in New York City as the Company may designate, from time to time, with a copy to the Company's counsel, Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064, Attention: Allan J. Arffa. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to "the City," in which case such communication shall be sent to the Commissioner of DoITT at 75 Park Place, New York, New York 10007. A required copy of each communication from the Company shall be sent to Corporation Counsel, New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division. Except as otherwise provided herein, the mailing of such notice, direction, or order shall be equivalent to direct personal notice and shall be deemed to have been given three (3) days after mailing. Any notice the Commissioner is required to give to the Company pursuant to Section 14.2 hereof for which a cure period is ten (10) days or less must be served by personal delivery, overnight mail service or facsimile transmission.

16.7 Questionnaires. In accordance with the City's right to effectively enforce the provisions of this Agreement, if requested by the Commissioner after consultation with the Company, the Company shall, at its own cost and expense, print and mail copies of questionnaires or conduct a survey by other means reasonably selected by the Commissioner (such as by telephone) (i) from time to time, but no more frequently than three (3) times during the Term, to a statistically significant sampling of Subscribers, the number and general characteristics of such sampling to be selected by the Commissioner and (ii) from time to time but not more frequently than twice during the Term, to all or any Subscribers as may be designated by the Commissioner, provided that the Commissioner shall not require more than one (1) questionnaire or survey under (i) and (ii) in the same calendar year. All such questionnaires or surveys shall be in such form and contain such detail as may be specified by the Commissioner. Such questionnaires may solicit responses regarding the Company, the System, or its operation. Each such mailed questionnaire shall be accompanied by an envelope (postage prepaid by the Company) addressed as directed by the Commissioner. In addition, the Company shall pay, within five (5) days after the receipt by the Company of a request for payment by the Commissioner, all reasonable costs and expenses for any third party(ies) selected by the Commissioner, after consultation with the Company, to assist with the design, surveying, tabulation and analysis of such questionnaires or surveys. The Company agrees that the costs and expenses described in this Section 16.7 or the Company's payment thereof are not within the meaning of the term "franchise fee" as defined by Section 622(g)(1) of the Cable Act (47 U.S.C. § 542(g)(1)), and are within one or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) (47 U.S.C. § 542(g)(2)(A)-(D)) of the Cable Act. The Company further agrees that such costs and expenses shall not be deemed to be: (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by the Company pursuant to Section 9.1

hereof, or (ii) part of the compensation to be paid to the City by the Company pursuant to Section 9.1 hereof.

16.8 Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Closing:

16.8.01 Organization, Standing and Power. The Company is a general partnership duly organized and validly existing under the laws of the State of Colorado and is duly authorized to do business in the State of New York and in the City. The Company has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Company's constituent documents, as amended to date, have been delivered to the Commissioner, and are complete and correct. The Company is qualified to do business and is in good standing in each jurisdiction in which it conducts business.

16.8.02 Authorization; Non-Contravention. The execution, delivery and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the Guarantor and the Company has furnished the City with a certified copy of the resolutions of its Board of Directors or other governing body (if there is no Board of Directors) authorizing the execution and delivery of this Agreement. This Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and the Guarantor and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company and the Guarantor, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms, subject to the qualifications that the availability of the remedy of specific enforcement, of injunctive relief or of other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought, and that the enforcement of the rights and remedies created hereby is subject to bankruptcy, insolvency, reorganization, and similar laws of general application affecting the rights and remedies of creditors and secured parties, provided that nothing in the foregoing qualifications is intended to diminish or affect the waivers and other covenants set forth in Section 16.13 and elsewhere in this Agreement and the City's other rights and remedies as provided in this Agreement. The Company and the Guarantor, as applicable, have obtained the requisite authority to approve, authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to approve and authorize the execution and delivery of this Agreement and the

consummation of the transactions contemplated hereby. Neither the Company nor the Guarantor has made any representations, warranties, or agreements inconsistent with or with respect to the subject matter of this Agreement. Neither the execution and delivery of this Agreement by the Company or the Guarantor nor the performance of their obligations contemplated hereby, by the Company or the Guarantor, will:

(i) conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (a) any governing document of the Company or the Guarantor or, to the Company's and Guarantor's knowledge, any shareholders' agreement or other similar agreement among security holders or other owners of the Company or the Guarantor or (b) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company or the Guarantor is a party or by which it (or any of its properties or assets) is subject or bound;

(ii) result in the creation of, or give any party the right to create, any material lien, charge, encumbrance or security interest upon the property and assets of the Company or the Guarantor; or

(iii) terminate, modify or accelerate, or give any third party the right to terminate, modify or accelerate, any provision or term of any contract, arrangement, agreement, license agreement or commitments, except for any event specified in (a) or (b) above which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Company, the Guarantor or the System.

16.8.03 Consent. Except as provided in Section 16.17 hereof, no consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority (including, without limitation, the FCC, the PSC or any other federal agency or any state, country, or municipal agency, authority, commission or council, and, if applicable, public utility commissions and other entities) on the part of the Company or the Guarantor is required for the valid execution and delivery of this Agreement or any other agreement or instrument executed or delivered in connection herewith.

16.8.04 Compliance with Law. The Company and the Guarantor are in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the System and has obtained all government licenses, permits, and authorizations necessary for the operation and maintenance of the System, except approval by the PSC.

16.8.05 Litigation; Investigations. Except as disclosed in the certificate approved by the Commissioner and the Corporation Counsel and required by Section 2.2.01(vi) of this Agreement, there is no civil, criminal, administrative, arbitration or other proceeding, investigation or claim (including, without limitation,

proceedings with respect to unfair labor practice matters or labor organization activity matters), pending or threatened against the Company, the Guarantor or other Affiliated Person, at law or in equity, or before any foreign, federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, including, without limitation, matters involving the granting of a temporary or permanent injunction against the Company, the Guarantor or any Affiliated Person that, if granted, would have a material adverse effect on the business, operation, properties, assets or financial condition of the Company or the Guarantor, or the System, or which questions the validity or prospective validity of this Agreement, or of any essential element upon which this Agreement depends, or of any action to be taken by the Company, the Guarantor or any Affiliated Person. To the best of the Company's knowledge after due inquiry, no investigation or review by any governmental entity with respect to the Company, the Guarantor or any Affiliated Person, or relating to the System or any of the transactions contemplated hereby is pending against the Company, the Guarantor or any Affiliated Person or is threatened, nor has any governmental entity indicated to the Company, the Guarantor or any Affiliated Person an intention to conduct the same, except for PSC review of this Agreement. Neither the Company nor the Guarantor or Affiliated Person is subject to any outstanding order, writ, injunction or decree which materially and adversely affects the business, operation, properties, assets or financial condition of the System.

16.8.06 Full Disclosure. Without limiting the specific language of any other representation and warranty herein, all information furnished by the Company to the City in connection with this Agreement, or otherwise related to cable television matters by authorized officers of the Company, is accurate and complete in all material respects, and includes all material facts required to be stated therein and does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements therein not misleading. There is no fact known to the Company or the Guarantor which materially and adversely affects or in the future could reasonably be expected to materially and adversely affect the business, operations, properties, assets or financial condition of the System, or any part thereof, which has not been set forth in this Agreement or the other documents, certificates, and instruments delivered to the City by or on behalf of the Company and the Guarantor specifically for use in connection with the transactions contemplated by this Agreement.

16.8.07 Fees. The Company has paid all franchise, license or other fees and charges which have become due pursuant to any franchise or permit and has made adequate provisions for any such fees and charges which have accrued.

16.8.08 Licenses and Permits. The Company has duly secured all necessary permits and licenses in connection with the design, construction, operation, maintenance, upgrade or repair of the System, or any part thereof, from, and has filed all required registrations, applications, reports and other documents with, the FCC, the PSC, and if applicable, public utilities commissions and other

entities exercising jurisdiction over the provision of cable services or the construction of delivery systems therefor. Further, no event has occurred which could (i) result in the revocation or termination of any such license or authorization, or (ii) materially and adversely affect any rights of the Company or the Guarantor. No event has occurred which permits, or after notice or lapse of time or both would permit, revocation or termination of any such license or which materially and adversely affects or, so far as the Company and the Guarantor can now foresee, will materially and adversely affect the System or any part thereof. The Company has obtained all leases, easements and equipment rental or other agreements necessary for the maintenance and operation of the System as now conducted.

16.8.09 Ownership Interests. Appendix G represents a complete and accurate description of the ownership structure of the Company, and a complete and accurate list of all Persons which hold, directly or indirectly, a ten percent (10%) or greater interest in the Company, and all Persons in which the Company, directly or indirectly, holds a ten percent (10%) or greater interest.

16.9 Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the franchise granted herein, the Company and the Guarantor, as applicable, agree that it or they will comply with the following affirmative covenants, unless the City otherwise consents in writing:

16.9.01 Compliance with Laws; Licenses and Permits. The Company shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the PSC and the FCC) and any other federal, state agency or authority of competent jurisdiction; and (ii) all local laws and all rules, regulations, orders, or other directives of the City, and the Commissioner, issued pursuant to this Agreement. Such compliance shall include, without limitation, compliance with the first sentence of 47 C.F.R. § 76.630(a), unless a written waiver has been issued and is applicable and in effect pursuant to said Section 76.630(a). The Company shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, upgrade, replace or repair the System, or any part thereof. The Company shall comply with the provisions of New York City Administrative Code § 6-115 and 6-115.1 and all rules and regulations promulgated thereunder, as such provisions, rules and regulations may be amended, modified or succeeded from time to time. Notwithstanding that said provisions, rules or regulations may not apply on their face to the Company as a franchisee, the Company shall comply in all respects therewith.

16.9.02 Maintain Existence. The Company will preserve and maintain its existence, its business, and all of its rights and privileges necessary or appropriate in the normal conduct of said business, unless any such change shall not have a material adverse impact on the Company's ability to construct, operate, maintain and upgrade the System as provided herein or fulfill its obligations

hereunder. The Company shall maintain its good standing in the state of formation and continue to qualify to do business and remain in good standing in each foreign jurisdiction in which it conducts business. The Company shall conduct business in accordance with its governing documents, and shall comply with the material terms of all mortgages, indentures, leases, contracts and other agreements and instruments binding upon it, the failure to comply with which would materially affect its ability to perform its obligations under this Agreement, except where contested in good faith and by appropriate proceedings.

16.9.03 Financial Condition. The Company and the Guarantor shall throughout the term of this Agreement and thereafter, for as long as the Company is required to construct, operate, maintain and upgrade the System pursuant to this Agreement, maintain adequate financial resources to perform all obligations pursuant to this Agreement. Upon request, the Company shall provide to the Commissioner a report addressing such matters and in such detail and containing such substance as the Commissioner may reasonably determine, demonstrating that it and the Guarantor can perform, on a timely basis, all obligations pursuant to this Agreement and the other agreements to which it is or becomes a party in connection herewith. The Company and the Guarantor shall supplement any such report as the Commissioner may reasonably request. The request for a report shall not be made more often than once every two (2) years unless the City reasonably believes that there is a material risk that the Company or the Guarantor in light of their financial resources and obligations will not or may not fully perform the obligations of this Agreement, in which case the City may immediately request such a plan from the Company or the Guarantor.

16.9.04 Good Faith Negotiations. If, based upon any one or more of such reports contemplated by Section 16.9.03 and such additional information as the Commissioner shall consider, including any plans submitted as contemplated by Section 16.9.03, the Commissioner reasonably determines that there is a material risk that the Company or its Guarantor will or may not perform fully its or their obligations pursuant to this Agreement or such other agreements, then the Company, the Guarantor and the Commissioner shall enter into good faith negotiations to amend this Agreement or negotiate terms and conditions which will ensure that the Company and the Guarantor will carry out their respective obligations under this Agreement or such other agreements. If the Company or the Guarantor declines to negotiate or such negotiations fail to produce an agreement that fully addresses the financial risks, then the City may accelerate the term of this Agreement so that the term shall expire on a date determined by the City not less than thirty-six (36) months after such determination. The remedies of this Section 16.9.04 are expressly made nonexclusive and nothing shall affect the City's rights to enforce this Agreement or otherwise exercise any other remedies granted hereunder.

16.9.05 Compliance with Agreement. Consistent with Section 16.13 hereof, the Company shall at all times comply with all provisions herein and all amendments and modifications hereto, and the Company and its Guarantor shall not

challenge, in any judicial proceeding or any administrative proceeding involving this Agreement (other than general administrative proceedings such as rulemaking proceedings or modification proceedings pursuant to Section 625 of the Cable Act (47 U.S.C. § 545)), the validity or enforceability of said provisions herein, under applicable law at the Effective Date, all amendments and modifications hereto, under applicable law at the Effective Date, and all proceedings in connection with the negotiation or approval hereof, under applicable law at the Effective Date, including proceedings before the PSC or the FCC.

16.9.06 Condition of System. All of the material properties, assets and equipment of the System are, and all such items added in connection with any upgrade will be maintained in good repair and proper working order and condition throughout the term of this Agreement.

16.9.07 Restriction on Advertisements. To the fullest extent permitted by applicable law, the Company shall use reasonable efforts to exclude from distribution over the System any advertisement, or the advertisement of any product or service, that solicits or facilitates incest or sexual abuse.

16.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement apply to the Company, its successors, and assigns, and to the extent that the City exercises its rights with respect to the Guaranty, the Guarantor.

16.11 No Waiver; Cumulative Remedies. No failure on the part of the City or the Company to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, and nothing contained in this Agreement shall impair any of the rights of the City or the Company under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City or the Company at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City or the Company at any other time. In order for any waiver of the City or the Company to be effective, it must be in writing. The failure of the City or the Company to take any action in the event of a material breach by the other party shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City or the Company to take any action permitted by this Agreement at any other time in the event that such material breach has not been cured, or with respect to any other material breach by the other party.

16.12 Other Cable Communications System. If: (i) no franchise is awarded or renewed by the City for the construction, operation, maintenance and upgrade of a Cable Communications System in any particular area of the City; or (ii) the City, at

any time, either terminates any other agreement granting a franchise to construct, operate, maintain and upgrade a Cable Communications System in any particular area of the City or determines that the franchisee under any such other agreement has materially breached said other agreement, then the Company agrees that it shall construct, operate, maintain or upgrade, as appropriate, a Cable Communications System in such other area of the City upon the order of the City, following negotiations with and receipt of consent from the Company. The City and the Company shall exercise good faith in connection with said negotiations. Said order of the City shall specify the terms and conditions under which the Company shall construct, operate, maintain or upgrade a Cable Communications System in such other area of the City. Such terms and conditions shall not impose upon the Company obligations greater than those set forth in this Agreement without the consent of the Company and shall ensure that the Company's continued performance of its obligations pursuant to this Agreement and the construction, operation, or maintenance of such Cable Communications System in such other area of the City (i) are Economically and Technically Feasible and Viable; (ii) will enable the Company to derive a reasonable profit with respect to each franchise area; (iii) will not prevent the Company from complying with the terms of this Agreement; and (iv) will not be Commercially Impracticable. In the event that the requirements of this Section 16.12 are imposed upon the Company with respect to any area for which the City has either terminated any other agreement or determined that the franchisee thereof has materially breached its agreement, then the terms and conditions specified in the City's order shall authorize the Company to undertake the construction, operation, maintenance and upgrade of said facility in said area: (i) through any appropriate entity, which entity may be wholly separate from the Company; and (ii) under the same terms and conditions, with respect to such matters as financing, termination, and compensation, as are set forth in such other agreement. In the event that the Company, pursuant to Section 14.4.02(xv), fails to comply with such order of the City, then the City may terminate this Agreement for cause, provided that such right to terminate this Agreement shall be stayed during the period of any judicial challenge by the Company of the validity of such order of the City.

The Company agrees that, in the event of a termination of any other agreement to construct, operate, or maintain any other Cable Communications System in the City, it shall operate such other System on behalf of the City, if and as directed by the City, on such terms and conditions as may be agreed to by the Company and the City, as provided in this Section.

16.13 No Opposition. The Company agrees that neither it nor the Guarantor shall oppose the intervention by the City in any suit, action, or proceeding involving the Company with respect to the System or its operation or any material provision of this Agreement. Except as to those matters which may subsequently be validly and finally preempted by federal or state law or regulation and which are not lawfully waivable, neither the Company nor the Guarantor will, at any time, set up against the City any claim nor institute against the City any proceeding alleging that a condition or term of this Agreement is unreasonable, arbitrary, void, or otherwise

unenforceable, under the Cable Act, 42 U.S.C. § 1983 or otherwise, all as in effect on the Effective Date, or that the City had no power or authority to make such term or condition. By execution of this Agreement, the Company and the Guarantor accept the validity of the terms and conditions of this Agreement in their entirety and hereby waive and relinquish, to the maximum extent permitted by applicable law at the Effective Date, any and all rights it (or they) has (have) or may have had at any time and may have or may at any time or in any manner subsequently acquire, in law or in equity, to assert in any manner at any time or in any forum that this Agreement, the franchise granted pursuant to this Agreement, or the processes and procedures pursuant to which this Agreement was entered into and the franchise was granted are not consistent with applicable law at the Effective Date. The use of the word "claim" above is not intended to limit the ability of the Company or the Guarantor to lobby or exercise its or their First Amendment rights pursuant to the parenthetical in Section 16.9.05.

16.14 Partial Invalidity. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Except as provided in Section 15 hereof, such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

16.15 Headings. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder," and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

16.16 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

16.17 Operating Authorizations. The Company shall submit requests for all necessary operating authorizations with the FCC and the PSC within sixty (60) days after the Effective Date of this Agreement.

16.18 Governing Law. This Agreement shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, as applicable to contracts entered into and to be performed entirely within that State.

16.19 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall survive the term of the Agreement.

16.20 Delegation of City Rights. The City reserves the right to delegate and redelegate, from time to time, any of its rights or obligations under this Agreement to any body, organization or official. Any such delegation by the City shall be effective upon written notice by the City to the Company of such delegation. Upon receipt of such notice by the Company, the Company and the Guarantor shall be bound by all terms and conditions of the delegation not in conflict with this Agreement. Any such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to this Agreement or require any consent of the Company or the Guarantor.

16.21 Claims Under Agreement. The City and the Company, on its behalf and on behalf of the Guarantor, agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. § 555), any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in New York City ("Federal Court") or in a court of the State of New York located in the City and County of New York ("New York State Court"). To effectuate this agreement and intent, the Company agrees that if the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its office in the District as required by this Agreement, or to such other address as the Company may provide to the City in writing.

16.22 Modification. Except as otherwise provided in this Agreement, any Appendix to this Agreement or applicable law, no provision of this Agreement nor any Appendix to this Agreement, shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Company.

16.23 Third-Party Beneficiaries. Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

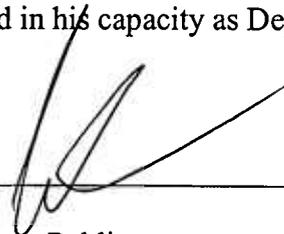
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[signatures appear on the following page]

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

I, Aaron Polak, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that Joseph Lhota, Deputy Mayor of the City of New York, party to the above instrument, personally appeared before me in said State on the 16th day of September, 1998, the said Joseph Lhota being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as Deputy Mayor of the City of New York.

AARON J. POLAK
Notary Public, State of New York
No. 02PO5023408
Qualified in New York County
Commission Expires February 7, 2022



Notary Public

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

I, Aaron Polak, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that Spencer B. Hays, Senior Vice President of KBL Communications, Inc., the General Partner of the Partnership, party to the above instrument, personally appeared before me in said State on the 16th day of September, 1998, the said Spencer B. Hays being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed.

AARON J. POLAK
Notary Public, State of New York
No. 02PO5023408
Qualified in New York County
Commission Expires February 7, 2022



Notary Public

IN WITNESS WHEREOF, the party of the first part, by its Mayor, thereunto duly authorized, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and the party of the second part, by its officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

THE CITY OF NEW YORK

By Joseph Lhotu
for Mayor Joseph Lhotu Deputy Mayor

Approved as to form:

David M. [Signature]
Acting Corporation Counsel
9/16/91

PARAGON COMMUNICATIONS,
d/b/a TIME WARNER CABLE OF
NEW YORK CITY

By Spencer B. Hays
Name: Spencer B. Hays
Title: Senior Vice President of KBL
Communications, Inc., the
General Partner of the Partnership

(Seal)

Attest
Witness:

Carlos Cuevas
Name: Carlos Cuevas
Title: C. City Clerk

