

237-05

FILE NO. 051005

ORDINANCE NO.

[Cable Television Franchise Amendments.]

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

Note: Additions are single-underline italics Times New Roman;
deletions are ~~strikethrough italics Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

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

SECTION 1. GRANT.

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

There is hereby granted the further right, power, authority, and privilege to the Grantee to lease, rent, or in any other manner obtain the use of, and use, within the corporate limits of the City, such wires, lines, poles, arms, cables, appurtenances, fixtures, and

1 other apparatus from any and all holders of public permits, public licenses or franchises
2 granted by the City or by any other source and to use such wires, lines, poles, arms,
3 cables, appurtenances, fixtures, and other such apparatus, subject to all the terms and
4 conditions of this Franchise, and to the extent that they shall not conflict with this
5 Franchise, or any such permit, license, resolutions, and regulations of the City.

6 There is also granted the right to buy, purchase, lease, erect, equip, maintain, own, or
7 operate such plants, machinery, equipment, or buildings as are necessary to maintain
8 and operate such Community Antenna System, and the right to buy, hold, own, or
9 lease any and all real estate necessary to conduct such business.

10 ~~*This Franchise, and each and every provision thereof, shall also be applicable to any and all*~~
11 ~~*facilities installed or operated by Grantee before the effective date of this Franchise.*~~

12 *During the term of this Franchise, the Grantee shall comply with the customer service*
13 *requirements in effect as of April 1, 2005, as adopted by the Federal Communications*
14 *Commission and set forth in 47 C.F.R. § 76.309(c) and incorporated in the San Francisco*
15 *Administrative Code at Section 11.51.*

16 SECTION 9. TERM/NON-EXCLUSIVITY.

17 The term of this Franchise shall extend until December 31, 2005~~9~~. This Franchise is to
18 be nonexclusive and shall be construed in accordance with all applicable laws in the
19 State of California, including the charter, ordinances, resolutions, and regulations of the City.

20 SECTION 24.3 CABLE FACILITIES CAPITAL GRANT.

21 On or before January 15 in each of the years 1997, 1998, 1999, 2000, and 2001 the
22 Grantee shall pay to the City fifty thousand dollars (\$50,000) and on or before January
23 15 in each of the years 2002, 2003, 2004 and 2005, the Grantee shall pay to the City
24 twenty-five thousand dollars (\$25,000). These funds may be used by the City, in its sole
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1 and absolute discretion, for any of the following purposes, (i) to purchase and install
2 cable drops or outlets and associated equipment in Public Buildings, (ii) to purchase
3 and install any product or service offered by the Grantee (which the Grantee shall
4 provide at or below its lowest commercially available rate) or offered by any other entity
5 authorized to provide services over the Cable System, or (iii) to make any capital
6 expenditure related to the Franchise Agreement, including but not limited to
7 expenditures for facilities and equipment for the support of any PEG Channel. The City
8 acknowledges that the Grantee has paid all amounts due under this Section 24.3 in full.

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

11 (a) Within thirty (30) days after the Date of the Franchise Amendments, the Grantee
12 shall make a cash grant to the City in the amount of seven hundred and fifty thousand
13 (\$750,000) for the acquisition of equipment by the City, or by any entity designated by
14 the City to manage and control any PEG Channel or any portion thereof, to support the
15 operations of the PEG Channels. The City acknowledges that the Grantee has paid all
16 amounts due under this subsection in full.

17 (b) The Grantee shall make additional cash grants to the City for acquisition and
18 replacement of equipment to support the operations of the PEG Channels according to
19 the following schedule and in the following amounts: seven thousand dollars (\$7000) on
20 or before June 15 in each of the years 1997, 1998, 1999, and 2000; fifteen thousand
21 dollars (\$15,000) on or before June 15 in each of the years 2001, 2002, and 2003; and
22 twenty-five thousand dollars (\$25,000) on or before June 15 in 2004 ~~and 2005~~. The City
23 acknowledges that the Grantee has paid all amounts due under this subsection in full.

1 (c) Within thirty (30) days after the Date of the Franchise Amendments, the Grantee
2 shall make a cash grant to the City in the amount of four hundred thousand dollars
3 (\$400,000) for the development of a new public access production facility. The City, in
4 its sole and absolute discretion, may elect to use these funds to renovate the existing
5 production facility located at 1855 Folsom Street or to build out a public access
6 production facility in a new location. The City acknowledges that the Grantee has paid all
7 amounts due under this subsection in full.

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

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

9 (f) Commencing with 1997, the Grantee shall make an annual cash grant to the City to
10 be used for operating expenses for the PEG Channels. The amount of the grant shall
11 be four hundred and fifty thousand (\$450,000) for each of the calendar years 1997 and
12 1998; provided, however that the amount of the grant in the initial year shall be pro-
13 rated based on the number of days remaining in the year as of the date on which
14 management and control over the public access Channel is transferred pursuant to
15 Section 27.3. The annual grant payment shall be due and payable on or before
16 January 15; provided, however that the initial grant shall be due and payable on the
17 date on which management and control over the public access Channel is transferred.
18 The amount of the annual cash grant shall increase by twenty-two thousand and five
19 hundred dollars (\$22,500) every three years and throughout the period that the
20 Franchise is in effect (e.g., 1999, 2002, 2005, and 2008), but such cash grant shall not
21 exceed five hundred seventeen thousand and five hundred dollars (\$517,500) per year. The
22 Grantee agrees that these payments are not Franchise fees and are not subject to any limitation
23 on Franchise fees contained in 47 U.S.C. Sec. 542, Section 8 of the Franchise, or Applicable
24 Law. Beginning with the grant due in 2005, nothing in this Rebuild Extension Ordinance shall
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1 prohibit the Grantee from passing through to Subscribers the cost of these payments to the
2 extent otherwise permitted by Applicable Law.

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

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

22 SECTION 31. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

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

18 (j) All portions of the Rebuild Cable System, including, but not limited to, headends, hub
19 sites, weather heads, cable drops, overhead and underground trunk and distribution
20 system cables, strand, guying, anchoring, bonding, grounding, and workmanship shall
21 be constructed to comply with all lawful Federal, State, and local construction
22 requirements, including, but not limited to, the City's Municipal Code and California
23 Public Utilities Commission General Orders 95 and 128, as amended. In addition, all
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1 cable drops and other related facilities that comprise the Cable System shall be capable of
2 carrying all Upgraded Services to the home without deterioration of signal.

3 *(k) This Rebuild Extension Ordinance shall be of no force and effect unless the Settlement*
4 *Agreement is approved by the Board and Mayor and the Grantee unconditionally accepts the*
5 *terms and conditions of the Rebuild Extension Ordinance as approved by the Board and Mayor.*

6 Section 2. Sections 25, 25.5, and 27.2 of Ordinance No. 105-64, as amended by
7 Ordinance Nos. 528-88, 315-89, 42-91, 42-97, and 266-99, are hereby amended and
8 replaced to read as follows:

9 SECTION 25. REBUILD OF CABLE SYSTEM.

10 (a) The Grantee shall Complete a Rebuild of the Cable System. The Rebuilt System was originally
11 required to be Completed within forty-eight (48) months of the Effective Date of the Rebuild
12 Ordinance. In consideration for the Grantee's performance of its obligations set forth in the
13 Settlement Agreement and this Section 25, the original deadline is replaced with the deadlines in
14 subsection (b) of this Section. The Grantee understands and agrees that this Section 25 is a
15 material term of the Franchise. The City may request documents or information required to verify
16 compliance with any of the requirements in this Section 25, and the Grantee shall provide the
17 requested documents or information within thirty (30) days of a written request. It is the Grantee's
18 responsibility to ensure that it has access to all documents or information related to the Rebuild or
19 relevant to evaluating any claim by the Grantee that a force majeure event has occurred, whether
20 such documents are in the Grantee's control or in the control of any person acting on the Grantee's
21 behalf or performing work for the Grantee in connection with the Rebuild.

22 (b) The Grantee shall meet the following deadlines:

23 (1) By the Extension Date, the Cable System shall satisfy the requirements in
24 subparagraphs (1) through (4) of subsection (d) of this Section.

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

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

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

10 (i) Mail the notice required under section 3.J of the agreement between the Grantee and the
11 Department of Public Works effective June 23, 2004 (the "Power Supply Agreement") within forty-
12 five (45) days of receiving approval of a proposed site from the Department of City Planning for so
13 long as the Power Supply Agreement is in effect, except to the extent that DTIS consents in writing
14 to an extension or continuance because of the Grantee's efforts to locate PPSUs on private
15 property, which consent shall not be unreasonably withheld or delayed.

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

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

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

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

8 (c) The Grantee understands and agrees that time is of the essence with regard to the commitments
9 contained in this Section. The Grantee agrees that: (i) the City provided the Grantee with notice of
10 an alleged breach of Section 25 of the Franchise, as that Section existed on September 1, 2002;
11 and (ii) the requirements of this Rebuild Extension Ordinance establish what the Grantee must do
12 to cure that alleged breach and, by extending the time for Completing the Rebuild, provides the
13 Grantee an opportunity to Complete the Rebuilt System as set forth herein. The City acknowledges
14 that the Grantee identified matters that it alleged caused certain delays and disputed the existence
15 of any breach. The Grantee further agrees that no further notice or opportunity to cure is required
16 with respect to such alleged breach except as expressly provided herein, that the City is not
17 required to provide the Grantee additional notice or an opportunity to cure if the Grantee fails to
18 Complete the Rebuilt System as contemplated in this Section, and that the City may exercise any
19 rights it has under the Franchise or Applicable Law as if any requirement for notice and
20 opportunity to cure had been satisfied. This includes, but is not limited to, any obligation to
21 provide notice and opportunity to cure under 47 U.S.C. § 546(d). Nothing in this Section 25
22 modifies Section 7 of the Franchise and, except as expressly provided in the Franchise or in the
23 Settlement Agreement, neither the Grantee nor the City waives any rights, claims or defenses it
24 may have under the Franchise or Applicable Law.

1 (d) Upon Completion of the Rebuild, the Cable System shall satisfy the minimum requirements set
2 forth in this subsection (d). These specifications for the Cable System shall replace "system
3 requirements" set forth in Section 2(a)(1) of the Franchise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (g) (1) The Grantee's failure to comply with this Section 25 will result in damages to the City
16 that will be impractical or difficult to determine. The Grantee agrees that the liquidated damages
17 set forth in this subsection are not penalties, but rather are reasonable estimates of the damage
18 that the City will incur if the Grantee does not comply with the requirements of the Rebuild
19 Extension Ordinance. The liquidated damages set forth in this subsection are in addition to any
20 other remedies or relief that may be available to the City under the Franchise or Applicable Law,
21 provided that the City shall not be entitled to exercise any other remedy for damages resulting
22 from a particular breach once it has accepted payment of liquidated damages and has not rejected
23 and returned such payment within thirty (30) days of receipt.

1 (2) Notwithstanding the foregoing, the payment of liquidated damages under this
2 subsection shall not limit the City's authority under 47 U.S.C. § 546(c)(1) to consider the Grantee's
3 failure to comply with the requirements of this Section 25 in determining whether: (i) the Grantee
4 substantially complied with material terms of the Franchise and Applicable Law; (ii) the quality or
5 level of the Grantee's service was reasonable in light of community needs; or (iii) the Grantee has
6 the ability to provide the services, facilities, and equipment set forth in its renewal proposal.

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

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

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

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

21 (7) The Grantee shall not be obligated to pay more than sixty thousand dollars (\$60,000)
22 per month or portion thereof in liquidated damages for any breach or collection of breaches under
23 subparagraphs (4), (5), and (6) of this subsection (g) of Section 25.

1 (8) If the Grantee fails to provide any of the information required under subsections (a),
2 (e), or (k) of this Section 25, the Grantee shall pay to the City liquidated damages of one hundred
3 dollars (\$100) per day until such information is submitted.

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

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

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

18 (12) In the event that the Grantee disputes that it must pay liquidated damages, or disputes
19 the amount of liquidated damages owed, the Grantee shall pay on time and under protest the
20 maximum amount of liquidated damages that the City believes the Grantee may owe and shall
21 submit to the City with such payment a written explanation of the reasons why the Grantee believes
22 it does not owe liquidated damages or owes less than the amount remitted. Within thirty (30) days
23 of its receipt of such written explanation, the City shall review the explanation and either notify the
24 Grantee of its determination or state that it needs another thirty (30) days to review the situation.
25

1 If the Grantee disputes the City's determination, or if the City does not make a determination
2 within the period prescribed, the Grantee may pursue any remedy available to it at law or in
3 equity.

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

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

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

22 (2) In order to claim that a delay is excused under subparagraph (1) of this subsection,
23 the Grantee must notify the City of the act or omission upon which a claim is based within thirty
24 (30) days of the date that the Grantee knew or reasonably should have known that such act or
25

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

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

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

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

21 (2) The Grantee shall reimburse the City for up to eighty thousand dollars (\$80,000) in
22 the aggregate of the fees and expenses of the Independent Evaluator. The Grantee shall not be
23 responsible for any fees and expenses in excess of such amount except as otherwise expressly
24 provided in subparagraph (10) of subsection (k) of this Section. The Independent Evaluator's
25

1 work shall be performed by one or more licensed engineers who are qualified to perform the
2 tests required by the Franchise and assess plant and drop compliance with the current version
3 of applicable safety and construction codes, including but not limited to electrical codes and
4 codes or other requirements governing utility pole and ground clearances.

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

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

15 (5) No later than sixty (60) days after the Extension Date, the Independent Evaluator
16 shall commence and diligently pursue to completion (no later than ninety (90) days after
17 commencement) the following performance tests ("Tests") at up to thirty (30) Subscriber
18 network distribution locations at the tap port, using a test drop. The Subscriber network
19 distribution locations shall be selected by the City and not disclosed to the Grantee until the day
20 prior to the Tests. The Tests will be performed under the City's supervision and in accordance
21 with procedures and documentation established by the Independent Evaluator, and approved by
22 the Grantee and the City, which approval shall not be unreasonably withheld. Neither the City
23 nor the Grantee will withhold its consent to any procedures and documentation that are
24 consistent with best engineering and testing practices in the cable television industry. The
25

1 Grantee must demonstrate that the Cable System satisfies the requirements of subparagraphs
2 (1) through (5) of subsection (d) of this Section, and conforms to Federal Communications
3 Commission ("FCC") standards with respect to items (i) through (x), below, and satisfies item
4 (xi), below, as well as any additional criteria mutually agreed upon by the City and the Grantee
5 that are consistent with best engineering and testing practices in the cable television industry:

6 (i) Visual carrier levels on each activated Channel.

7 (ii) Aural carrier levels on each activated Channel.

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

10 (iv) Adjacent Channel video difference on activated Channels.

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

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

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

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

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

20 (x) Signal leakage.

21 (xi) Digital performance measurements comparable to the performance
22 measures set forth in (i) through (x), above, to determine the quality of the digital
23 transmission.

1 Within ten (10) days after performance of any Tests, the Independent Evaluator shall provide to
2 the City and the Grantee written documentation of the results of the Tests.

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

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

21 (8) On or before October 30, 2005, the Grantee shall cause the Cable System to comply
22 with the requirements of Section 31(j) of the Franchise, and all applicable federal, state and
23 local construction requirements. No later than November 30, 2005, the Independent Evaluator
24 shall commence and diligently pursue to completion (no later than ninety (90) days of
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1 commencement) inspections to determine whether the Cable System complies with the
2 requirements of Section 31(j) of the Franchise and all applicable federal, state and local
3 construction requirements. The Independent Evaluator shall inspect a minimum of ten percent
4 (10%) of outside plant miles, including, but not limited to, the Grantee's plant attached to poles,
5 pedestals and vaults of the Cable System, and a minimum of three hundred (300) cable drops at
6 Subscriber locations. DTIS will select the Subscriber locations and portions of the outside plant
7 to be inspected. The Independent Evaluator shall report its findings to the City and the
8 Grantee. If the Independent Evaluator determines that any portion of the Cable System fails to
9 comply with the applicable requirements, the Grantee shall promptly cure any such identified
10 deficiencies, including notifying third parties as necessary to accomplish the cure. The Grantee
11 shall not have complied with the October 30, 2005 deadline for the completion of such work if
12 the Independent Evaluator determines that fewer than ninety percent (90%) of: (i) plant
13 attachments, pedestals and vaults along outside plant miles inspected or (ii) cable drops at
14 Subscriber locations inspected, comply with the applicable requirements. The Grantee shall
15 undertake such actions as may be necessary to ensure its compliance and shall pay the City
16 liquidated damages as required under subparagraphs (1) through (3) of subsection (g) of this
17 Section effective from November 1, 2005. For purposes of determining whether the Grantee
18 must pay liquidated damages under this subparagraph (8), no facility shall be deemed non-
19 compliant for purposes of the ninety percent (90%) compliance standard unless the Grantee is
20 responsible for the deficiency. In no event shall the Grantee be responsible for a deficiency, for
21 purposes of the ninety percent (90%) compliance standard, if the deficiency was caused by the
22 acts or omissions of a third party; provided that, with respect to any portion of the plant
23 installed, constructed or last upgraded after January 1, 2002, the Grantee must demonstrate to
24 the City that any such deficiency resulted from the acts or omissions of such third party.
25

1 Subscriber drops shall not be included for purposes of determining compliance of outside plant
2 miles. The City and the Grantee shall develop jointly and agree upon a sampling and
3 inspection method for facilities and locations to be reviewed under this subparagraph (8)
4 consistent with generally acceptable engineering practices and sampling method; provided that,
5 if the City and the Grantee cannot reach such an agreement by November 15, 2005, the parties
6 shall engage a mutually acceptable independent engineering consulting firm with expertise in
7 the cable industry to develop the sampling and inspection method. The Grantee shall be
8 responsible for up to fifteen thousand dollars (\$15,000) of fees charged by such consultant.

9 (9) On or before October 30, 2005, the Grantee shall cause all PPSUs installed on
10 utility poles on private property, or on other property that is not on a public right-of-way
11 surface, to conform to all applicable requirements of subparagraph (5) of subsection (d) of this
12 Section and Section 31(j) of the Franchise. No later than November 30, 2005, the Independent
13 Evaluator shall commence and diligently pursue to completion (no later than ninety (90) days of
14 commencement) inspections of at least ten percent (10%) (up to twenty five percent (25%) at the
15 City's discretion) of all PPSUs installed on utility poles, on private property, or on other
16 property that is not on a public right-of-way surface, to determine whether the PPSUs conform
17 to all the applicable requirements of subparagraph (5) of subsection (d) of this Section and
18 Section 31(j) of the Franchise and all applicable federal, state, and local construction
19 requirements. The Independent Evaluator shall report its findings to the City and the Grantee.
20 If the inspections demonstrate that any portion of the Cable System tested fails to comply with
21 the applicable requirements, the Grantee shall promptly cure any such identified deficiencies.
22 If the Independent Evaluator determines that fewer than ninety percent (90%) of the PPSUs
23 tested conform to the applicable requirements, then the Grantee shall not have complied with
24 the October 30, 2005, deadline contained in subparagraph (3) of subsection (b) for the
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1 completion of such work. The Grantee shall undertake such actions as may be necessary to
2 ensure its compliance and shall pay the City liquidated damages as required under
3 subparagraphs (1) through (3) of subsection (g) of this Section effective November 1, 2005;
4 provided that if the Cable System satisfies such testing standard, but the Independent Evaluator
5 identifies any PPSU that is deficient, the Grantee shall pay to the City a one time fee of seven
6 hundred and fifty dollars (\$750) for each deficient PPSU identified.

7 (10) Within sixty (60) days from the date that the Grantee notifies the City that all of the
8 PPSUs located on a public right-of-way surface in Underground Areas have been installed, the
9 Independent Evaluator shall commence and diligently pursue to completion (no later than
10 ninety (90) days of commencement) tests of at least ten percent (10%) (up to twenty-five percent
11 (25%) at the City's discretion) of all such PPSUs in Underground Areas to determine whether
12 the PPSUs conform to all the applicable requirements of subparagraph (5) of subsection (d) of
13 this Section and Section 31(j) of the Franchise and all applicable federal, state, and local
14 construction requirements. The Independent Evaluator shall report its findings to the City and
15 the Grantee. If the Tests demonstrate that any portion of the Cable System tested fails to
16 comply with the applicable requirements, the Grantee shall promptly cure any such identified
17 deficiencies. If the Independent Evaluator finds that fewer than ninety percent (90%) of the
18 PPSUs tested conform to the applicable requirements, then the Grantee shall not have complied
19 with the deadline contained in subparagraph (4) of subsection (b) of this Section. The Grantee
20 shall undertake such actions as may be necessary to ensure its compliance and shall pay the
21 City liquidated damages as required under subparagraphs (1) through (3) of subsection (g) of
22 this Section effective from the one (1) year anniversary of the date on which the Grantee obtains
23 an excavation permit to construct the last PPSU to be installed in an Underground Area;
24 provided that if the Cable System satisfies such testing standard, but the Independent Evaluator
25

1 identifies any PPSU that is deficient, the Grantee shall pay to the City a one time fee of seven
2 hundred and fifty dollars (\$750) for each deficient PPSU identified.

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

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

20 (l) (1) The Rebuilt System shall be Complete only when the Grantee demonstrates that: (i)
21 the Grantee is offering and has widely advertised the availability of Upgraded Services as set
22 forth in subparagraph (2) of subsection (b) of this Section; (ii) the Cable System has satisfied
23 each of the requirements in subsection (d) of this Section; (iii) the Cable System is in
24 compliance with FCC signal leakage standards; and (iv) the Independent Evaluator has
25

1 determined that the Cable System satisfies the requirements of subparagraphs (5), (8), (9), and
2 (10) of subsection (k) of this Section.

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

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

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

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

18 SECTION 25.5 TECHNICAL UPGRADE OF CABLE FACILITIES

19 (a) Multiple Dwelling Units: During the construction of the Rebuilt System, until the entire
20 Rebuild is Complete, the Grantee shall inspect and repair, if necessary, the cable facilities at
21 every multiple Dwelling Unit (a building with ten (10) or more Dwelling Units) ("MDU") to
22 which it has been afforded access to determine whether such facilities comply with Section 31(j)
23 of the Franchise. On or before October 30, 2005, the Grantee shall provide DTIS with a
24 certification confirming that it has completed such inspections and repaired or upgraded all
25

1 facilities as required under this Section 25.5 and demonstrating that the Grantee has made good
2 faith and diligent efforts to contact all owners of MDUs to which it did not have access in order
3 to inspect and repair those facilities.

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

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

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

24 (e) Liquidated Damages.
25

1 (1) The Grantee's failure to comply with the provisions of this Section 25.5 and Section
2 31(j) of the Franchise will result in damages to the City that will be impractical or difficult to
3 determine. The Grantee agrees that the liquidated damages set forth in this subsection are not
4 penalties but are reasonable estimates of the damage that the City will incur if the Grantee does
5 not comply with the requirements of this Section. The liquidated damages set forth in this
6 subsection are in addition to any other remedies or relief that may be available to the City
7 under the Franchise or Applicable Law, except that the City shall not be entitled to exercise any
8 other remedy for damages for a particular breach once it has accepted payment of liquidated
9 damages and has not rejected and returned such payment within thirty (30) days of receipt. The
10 Grantee shall pay to the City liquidated damages in the following amounts: (i) two hundred and
11 fifty dollars (\$250) per non-compliant facility that the Grantee fails to bring into compliance
12 within the initial correction period provided pursuant to subsections (a) through (d) herein; and
13 (ii) five hundred dollars (\$500) per non-compliant facility per month that the Grantee fails to
14 repair within ten (10) days after a second correction notice has been issued pursuant to
15 subsections (a) through (d) herein.

16 (2) Liquidated damages shall commence on the date that performance was due and shall
17 continue until the Grantee has fully performed the applicable obligation giving rise to the payment
18 of liquidated damages. The Grantee's obligation to pay liquidated damages does not depend on a
19 demand from the City. Without limiting the foregoing, the City may demand payment of liquidated
20 damages and the Grantee shall submit such payment within thirty (30) days after the City's
21 demand. The Grantee shall continue to pay liquidated damages on a monthly basis for each
22 breach until the Grantee's underlying obligation that gave rise to the liquidated damages is
23 satisfied.

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

10 (4) Notwithstanding the foregoing, the payment of liquidated damages under this
11 subsection shall not limit the City's authority to consider the Grantee's failure to comply with the
12 requirements of this subsection in determining whether: (i) the Grantee substantially complied
13 with the material terms of the Franchise and Applicable Law; (ii) the quality or level of the
14 Grantee's service was reasonable in light of community needs; and (iii) the Grantee has the ability
15 to provide the services, facilities and equipment set forth in its renewal proposal, as provided by
16 47 U.S.C. § 546(c)(1).

17 (f) Deposit: The City acknowledges that the Grantee has deposited with the City seventy-five
18 thousand dollars (\$75,000) to guarantee the Grantee's payment of any liquidated damages that are
19 due pursuant to subsection (e) of this Section ("Deposit"). In the event that the Grantee fails to pay
20 any liquidated damages in accordance with the terms of this subsection, the City may, in its sole
21 discretion and upon ten (10) days notice to the Grantee, draw upon the Deposit. To the extent that
22 the City draws upon the Deposit, the Grantee shall replenish the Deposit to its full amount within
23 thirty (30) days.

1 (g) The Grantee understands and agrees that this Section 25.5 is a material term of the Franchise.
2 The Grantee further agrees that the City provided the Grantee with notice of a breach of Section
3 25.5 of the Franchise, as that Section existed on the Extension Date. The City acknowledges that
4 the Grantee identified matters that it alleged caused certain delays and disputed the existence of
5 any breach. The modifications to this Section 25.5 provide the Grantee an opportunity to satisfy
6 the underlying obligations of Section 25.5.

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

13 SECTION 32. DEFINITIONS.

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

16 32.1 "Affiliate" when used in relation to any Person shall mean another Person who
17 owns or controls, is owned or controlled by, or is under common ownership or control
18 with, such Person.

19 32.2 "Board" shall mean the Board of Supervisors of the City and County of San
20 Francisco.

21 32.3 "Cable Operator" shall mean any Person or group of Persons (a) who provides
22 any Cable Service over the Cable System and directly or through one or more Affiliates
23 owns a significant interest in the Cable System, or (b) who otherwise controls or is
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1 responsible for, through any arrangement, the management and operation of the Cable
2 System.

3 32.4 "Cable Service(s)" shall mean (a) the one-way transmission to Subscribers of (i)
4 video programming, or (ii) other programming service, and (b) Subscriber interaction, if
5 any, which is required for the selection or use of such video programming or other
6 programming service.

7 32.5 "Cable System" and "Community Antenna System" shall mean the facilities
8 installed, maintained or operated by the Grantee pursuant to the Franchise Agreement,
9 consisting of a set of closed transmission paths and associated signal generation,
10 reception, and control equipment that is designed to provide Cable Service which
11 includes video programming and which is provided to multiple Subscribers within the
12 geographic boundaries of the City and County of San Francisco, but shall not include
13 (A) a facility that serves only to retransmit the television signals of one or more
14 television broadcast stations; (B) a facility that serves subscribers without using any
15 public right-of-way; (C) a facility of a common carrier which is subject, in whole or in
16 part, to the provisions of title II of the Communications Act of 1934, except that such
17 facility shall be considered a Cable System other than for purposes of 47 U.S.C. 541(c)
18 to the extent such facility is used in the transmission of video programming directly to
19 subscribers, unless the extent of such use is solely to provide interactive on-demand
20 services; or (D) an open video system that complies with section 653 of the
21 Communications Act of 1934; or (E) any facilities of any electric utility used solely for
22 operating its electric utility systems.

23 32.6 "Channel" shall mean a band of frequencies in the electromagnetic spectrum
24 which is capable of delivering NTSC (i.e. 6 MHz) or digital signals.
25

1 32.7 "Construction Plan" shall mean the construction plan developed by the Grantee
2 and the City, pursuant to Ordinance No. 541-80, that governed construction completed
3 by the Grantee prior to the Date of the Franchise Amendments.

4 32.8 "Date of the Franchise Amendments" shall mean the date on which the Mayor
5 signs the ordinance contained in Board of Supervisors File Number 32-96-1.4 or, if the
6 Mayor does not sign the ordinance, ten days after the date on which the ordinance was
7 delivered to the Mayor's Office for consideration, or, if the Mayor disapproves the
8 ordinance, the date on which the Mayor's veto is overridden.

9 32.9 "Expansion Area" shall mean an area designated in Appendix F to be
10 incorporated within the Required Service Area pursuant to the terms of subsection (c)
11 of Section 26 of the Franchise Amendments.

12 32.10 "Franchise Agreement" and "Franchise" shall mean all the terms of this franchise
13 originally granted by Ordinance Number 105-64, as amended.

14 32.11 "Franchise Amendments" shall mean the additions and deletions to the
15 Franchise Agreement adopted by the ordinance contained in Board of Supervisors File
16 Number 32-96-1.4.

17 32.12 "Gross Revenue₂" shall mean:

18 (a) All cash, payments, or other consideration of any kind and in any form whatever
19 (hereafter " Amounts") received by the Grantee or by any Affiliate of the Grantee that is
20 a Cable Operator of the Cable System, including, but not limited to: (i) Amounts
21 received for the provision of any Cable Service, including basic, cable programming,
22 optional, premium, per-Channel, and per-program services; and (ii) Amounts received
23 for installation, disconnection, re-connection, change-in-service, repair, maintenance,
24 late fees, and rental or sale of equipment; and (iii) Amounts received for advertising in
25

1 program guides; and (iv) Amounts received for carriage of any programming on the
2 Cable System (including Amounts for advertising, but only as provided in subsection
3 (c)); and (v) Amounts received for carriage of home shopping Channels; and (vi)
4 Amounts received for studio and production equipment rental and personnel fees; and
5 (vii) the fair market value of any free services, except as provided in subsection (d).

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

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

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

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

14 32.13 "PEG Channel(s)" shall mean a Channel designated for transmission of public,
15 educational or governmental audio, video and/or digital signals pursuant to Section 27
16 of the Franchise Amendments.

17 32.14 "PEG Channel Origination Location" shall mean a location from which the
18 Grantee will provide the capacity to distribute signals over any PEG Channel pursuant
19 to the requirements of Section 27.1.

20 32.15 "Person" shall mean any individual, partnership, association, joint stock
21 company, trust, corporation, or governmental entity.

22 32.16 "Public Building" shall mean (i) any building identified in Appendices A through
23 D; and (ii) any school, university or public building wired for service and served by the
24 Grantee on or before July 1, 1996; and (iii) any building owned or leased and occupied
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1 by the City and County of San Francisco, the San Francisco Unified School District, or
2 the San Francisco Community College District; and (iv) any building owned or leased
3 and occupied by administrative offices of the San Francisco Housing Authority or the
4 Redevelopment Agency of the City and County of San Francisco. For the purposes of
5 this definition, a building shall be considered "occupied" by an eligible entity when the
6 entity occupies at least 50% of the rentable space, not including common areas.

7 32.17 "Rebuild Hub Service Area" shall mean an area within the City and County of
8 San Francisco identified in Appendix E.

9 32.18 "Rebuild" or "Rebuilt System" shall mean replacement, upgrade or enhancement
10 of any portion of the facilities installed by the Grantee to achieve a signal transmission
11 capacity at or exceeding 750 MHz.

12 32.19 "Required Service Area" shall mean the area designated in Appendix F, provided
13 that the Required Service Area shall also mean Expansion Areas and locations served
14 by line extensions when served or required to be served pursuant to the terms of
15 subsections (b) and (c) of Section 26 of the Franchise Amendments.

16 32.20 "Subscriber" shall mean any Person who lawfully receives any Cable Service
17 provided by the Grantee over the Cable System within the geographic boundaries of
18 the City and County of San Francisco, whether or not a fee is paid for such Cable
19 Service; provided however that Subscriber shall not mean any Person who receives
20 any Cable Service provided by the Grantee at an address within an area subject to a
21 franchise granted under Title VI of the Communications Act of 1934 by a superior
22 governmental entity.

1 32.21 "Upgraded Services" shall mean any services provided over the Rebuilt System,
2 or any portion of it, that are not provided over portions of the Cable System that have
3 not been rebuilt.

4 32.22 "Effective Date" shall mean the effective date of an enactment of the San
5 Francisco Board of Supervisors approving the Rebuild Ordinance.

6 32.23 "Rebuild Ordinance" shall mean the Ordinance adopted by the San Francisco
7 Board of Supervisors in Board File No. 990376.

8 32.24 "Comparable" shall mean equivalent to features found in three (3) of five (5)
9 Sample Cable Systems at any time between January 1, 1999 and December 31, 2001.
10 The Rebuilt System shall be Comparable to the Sample Cable Systems if it provides
11 substantially equivalent: range of services; fiber-to-the feeder trunk and feeder design
12 architecture; and stand-by powering of the headend, nodes, and the coaxial portion of
13 the system. The Sample Cable Systems shall be selected by the City from a list of all of
14 the cable systems with more than 140,000 subscribers as of the Effective Date of the
15 Rebuild Ordinance that are owned or controlled by AT&T or TCI. Grantee shall provide
16 such a list to City within thirty (30) days of the Effective Date of the Rebuild Ordinance.
17 City shall select five cable systems from the list ("Sample Cable Systems") within
18 ninety (90) days of receipt of the list and shall provide Grantee written notice of its
19 selection.

20 32.25 "Applicable Law" shall mean all applicable federal, state, and lawful City ordinances,
21 codes, rules, regulations, and orders.

22 32.26 "Complete" when used to describe the Rebuild shall mean that the Grantee has satisfied
23 each of the requirements in subparagraph (1) of subsection (1) of Section 25 of the Franchise.
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1 32.27 "Dwelling" shall mean a building, or portion thereof, containing one or more Dwelling
2 Units.

3 32.28 "Dwelling Unit" shall mean a room or rooms in any building or portion thereof that is
4 designed, built, owned, leased, let or hired out to be occupied or which is occupied as the home
5 or residence of one or more persons. For the purpose of calculating liquidated damages under
6 this Franchise, each Dwelling Unit shall be counted separately.

7 32.29 "Extension Date" shall mean the effective date of an enactment of the Board approving
8 the Rebuild Extension Ordinance.

9 32.30 "Rebuild" or "Rebuilt System" shall mean a system that conforms to the minimum
10 requirements in Section 25(d) of the Franchise, as amended.

11 32.31 "Rebuild Extension Ordinance" shall mean the amendments to the Franchise contained in
12 the Ordinance adopted by the Board in File No. 051005.

13 32.32 "Settlement Agreement" shall mean the Settlement Agreement between the parties
14 adopted by Ordinance of the Board in File No. 051005

15 32.33 "Transfer" as that term is used in Section 6 of the Franchise shall include any
16 assignment, sale, lease or transfer of assets of the Franchise and any transfer or sale of any
17 direct or indirect ownership interest in Grantee (including by force or voluntary sale, merger,
18 consolidation, receivership or any other means) that results in a change of control over the
19 affairs of Grantee or its direct or indirect parent companies.


20 Section 3. Appendix C of Ordinance No. 105-64, as amended by Ordinance Nos.
21 528-88, 315-89, 42-91, 42-97, and 266-99, is amended as follows:
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APPENDIX C

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

1 ACKNOWLEDGED AND AGREED TO BY THE PARTIES:

2
3 CITY AND COUNTY OF SAN FRANCISCO COMCAST OF CALIFORNIA III, Inc.
4 Approved By:

5  /th
6 CHRIS VEIN
7 Acting Executive Director, Department of
8 Telecommunications and Information
9 Services

 /th
RICK GERMANO
Regional Senior Vice President

9 Date: 9/12/05

Date: 9/12/05

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

12 By: 
13 WILLIAM K. SANDERS
14 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 051005

Date Passed:

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

August 9, 2005 Board of Supervisors — CONTINUED

Ayes: 10 - Alioto-Pier, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Excused: 1 - Ammiano

August 16, 2005 Board of Supervisors — CONTINUED

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin
Absent: 1 - Sandoval

September 13, 2005 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

September 13, 2005 Board of Supervisors — PASSED ON FIRST READING AS AMENDED


Ayes: 6 - Alioto-Pier, Dufty, Elsbernd, Ma, Maxwell, Peskin
Noes: 5 - Ammiano, Daly, McGoldrick, Mirkarimi, Sandoval

September 27, 2005 Board of Supervisors — FINALLY PASSED

Ayes: 6 - Alioto-Pier, Dufty, Elsbernd, Ma, Maxwell, Peskin
Noes: 5 - Ammiano, Daly, McGoldrick, Mirkarimi, Sandoval

File No. 051005

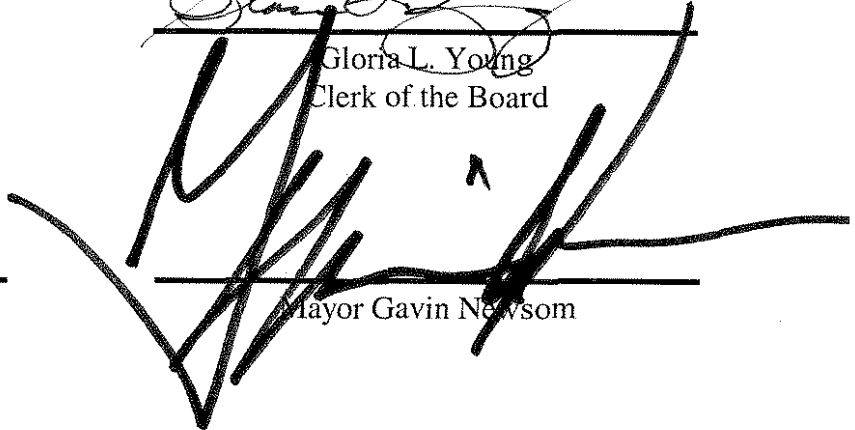
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on September 27,
2005 by the Board of Supervisors of the City
and County of San Francisco.



Gloria L. Young
Clerk of the Board

10.07.05

Date Approved



Mayor Gavin Newsom