

***CINCINNATI CABLE TELEVISION FRANCHISE
AGREEMENT BETWEEN THE CITY OF CINCINNATI***

AND

Warner Cable Communications of Cincinnati, Inc.

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**Cincinnati Cable Television Franchise
Agreement between the City of Cincinnati
and
Warner Cable Communications of Cincinnati, Inc.**

THIS CABLE TELEVISION FRANCHISE AGREEMENT IS MADE AND ENTERED INTO THIS 15th DAY OF June, 1996, BY AND BETWEEN THE CITY OF CINCINNATI, OHIO, HEREINAFTER REFERRED TO AS "CITY", AND WARNER CABLE COMMUNICATIONS OF CINCINNATI INC., HEREINAFTER REFERRED TO AS "THE COMPANY."

WHEREAS, Warner Cable Communications of Cincinnati, Inc. has requested the City to renew its cable television franchise agreement; and

WHEREAS, pursuant to that request, Cincinnati City Council passed a resolution to commence the ascertainment of the community's future cable related needs; and

WHEREAS, the cable related needs of the community have been ascertained and are evidenced in this franchise agreement; and

WHEREAS, the Company has heretofore been granted a franchise agreement to build and operate a Cable Television System in the City of Cincinnati and has requested a renewal of the franchise agreement to allow for operation of a Cable Television System in the City of Cincinnati; and

WHEREAS, it is hereby found and determined by the City Council of the City of Cincinnati that it is in the best interest of the City that a renewal of the franchise agreement be granted to the Company; and

WHEREAS, the Company proposes to upgrade the current coaxial network to a modern high-capacity state-of-the-art fiber optic/coaxial cable network capable of supporting integrated voice, video and data services. The Company's new Cable System will be capable of providing expanded cable television bandwidth, improved picture quality and reliability and will be capable of supporting future services, if developed, such as interactive data and voice services and video-on-demand; and

WHEREAS, the fiber optic/coaxial cable architecture will provide an integrated communications system that will serve as a foundation for introduction of expanded telecommunications services over the next decade. Embedded in the fiber optic/coaxial cable network will be sufficient capacity to expand services to subscribers as new services develop and subscriber demand develops; and

WHEREAS, for the reasons that the public rights-of-way to be used by the Company in the operation of its system within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to the Company allows the Company to avoid investing substantial capital in the rights-of-way and that the City incurs costs for regulating and administering the franchise agreement; and

WHEREAS, no Cable System shall be allowed to occupy or use the streets of the City or be allowed to operate without a Cable System franchise agreement; and

WHEREAS, the City Council finds that the Company has represented that it meets legal, financial, and technical qualifications, as well as all other qualifications, necessary to assure that the franchise agreement area will be provided with the best available cable service throughout the franchise agreement term and that the Company has represented that the construction plan and schedule will meet all of the qualifications and specifications and time frame referenced in this franchise agreement. NOW, THEREFORE, IT IS AGREED BY THE CITY OF CINCINNATI AND THE COMPANY:

ARTICLE I.

Grant of Franchise Agreement and General Provisions

Section 1. TITLE OF FRANCHISE AGREEMENT.

This franchise agreement shall be known and may be cited as the "Cincinnati Cable Television Franchise Agreement," hereinafter "Franchise Agreement".

Section 2. DEFINITIONS

For the purpose of this franchise agreement the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

a. "Access Channel" shall mean a channel dedicated to local programming which is not originated by the Company.

b. "Basic Cable Service" shall mean that service tier regularly provided to all subscribers which includes the retransmission of any local television broadcast channels and channels designated for Public, Governmental and Educational Access channels.

c. "Cable Channel" or "Channel" shall mean a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering an audio-video signal.

d. "Cable home wiring" shall mean the internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.

e. "Cable Service" shall mean:

1. the one-way transmission to subscribers of (i) video programming or (ii) other programming service; and

2. subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

f. "Cable Television System" or "Cable System" or "CTS" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to

multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (2) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public rights-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provision of title II of the Cable Television Consumer Protection and Competition Act of 1992, except that such facility shall be considered a Cable System (other than for purposes of section 621 (c) to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

g. "City" shall mean the City of Cincinnati, a municipal corporation, organized to do business in the State of Ohio.

h. "Company" shall mean Warner Cable Communications of Cincinnati, Inc.

i. "Converter" shall mean an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals included in the Basic Service delivered at designated converter dial locations.

j. "Council" shall mean the governing body of the City of Cincinnati.

k. "Data Transmission" shall mean any use of the Cable System involving two-way or other transmission of data between individuals or other entities.

l. "Dedicate" shall mean to make available channel space for the exclusive use of the designated user.

m. "Demarcation point" shall mean a point at (or about) twelve inches outside of where the cable wire enters the subscribers premises.

n. "Drop" shall mean a connection from feeder cable to the subscriber's cable home wiring at the demarcation point.

o. "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

p. "Gross Revenues" shall mean all revenue earned directly or indirectly by the Company from or in connection with the operation of a Cable Television System pursuant to this franchise agreement; provided, however, gross revenues shall include, but not be limited to, subscriber service monthly fees, pay service fees, installation and reconnection fees, leased access fees, converter rentals, late fees, and advertising payments. Gross revenues shall not include any taxes on services furnished by the Company herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the Company on behalf of said governmental unit or bad debts which are uncollected.

q. "Installation" shall mean the connection of the Cable Television System from the feeder cable to subscribers' terminals, excluding cable home wiring.

r. "Institutional Network" shall mean an independent Cable System for transmissions between and among various institutions.

s. "Pay Service" shall mean the delivery over the system of programming to subscribers for a fee or charge over and above the charge for Basic Cable Service, on a per program, per channel or other subscription basis.

t. "Public Property" shall mean any real property owned by the City except property under the control of the Park Board.

u. "Rights-of-Way" shall mean the surface of, and the space above and below, any public street, sidewalk, road, alley, or highway, including under or along bridges, or any other public way of any type whatsoever within the City.

v. "System Upgrade" shall mean the modifications of the Company's existing Cable System as described herein.

Section 3. Grant.

This franchise agreement grants to the Company, subject to all the terms and conditions as herein provided, the nonexclusive privilege to erect, construct, operate and maintain in the public rights-of-way and other public property a Cable System now in existence, and as may be created or established during this contract term, and any wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. The Company agrees that it will not erect its own poles in the City.

Section 4. Term.

The term of the franchise agreement shall be for a period of fifteen (15) years, unless sooner terminated as provided in this franchise agreement. The franchise agreement term shall commence on June 13, 1996 and shall expire on June 13, 2011.

Section 5. Time is of the Essence to this Franchise Agreement.

Whenever the franchise agreement shall set forth any time for an act to be performed by or on behalf of the Company, such time shall be deemed of the essence and any failure of the Company to

perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate penalty including possible revocation of the franchise agreement.

Section 6. Franchise Territory.

a. This franchise agreement is granted for the entire area of the City of Cincinnati as it exists and as its borders may from time to time be changed.

b. The City and the Company recognize that there are City residents bordering other franchise jurisdictions and being provided Cable Service from cable plant serving those other jurisdictions. The Company agrees to correct during the upgrade of the Cable System any existing boundary conditions (so that City residents are serviced by the cable plant serving the City) upon prior approval by the City. Such approval shall not be unreasonably withheld and shall be expeditiously granted. The cost of any approved correction provided for herein may be treated as an external cost pursuant to Section 76.922 of the FCC rules provided that the Company has not recklessly caused or created the condition.

c. The Company will extend the Cable System to other areas of the central business district not served on the commencement date of this franchise upon prior approval of the City. To the extent the cost of the extension exceeds the cost of the average plant extension in the City outside of the central business district, and the Company demonstrates that such cost is the lowest cost alternative to completing such extension, the Company may treat such cost as an external cost pursuant to FCC rate regulations. The Company shall upgrade Cable Service to all street addresses listed in Exhibit A which is a list of all serviceable addresses as of the effective date of this franchise agreement.

Section 7. Payment of The Franchise Fee.

a. The Company shall pay to the City an amount equal to five percent (5%) of the Company's Gross Revenue.

b. The franchise fee and any other cost or penalties assessed shall be payable quarterly to the Treasurer's Office (payable to the City of Cincinnati). The Company shall file a complete and accurate statement verified by an officer of the Company of all Gross Revenue within the City during the period for which said quarterly payment is made, and said payment shall be made to the City not later than forty-five (45) days after the expiration of the quarter when due.

c. The City shall have the right to inspect the Company's income records and the right to audit and to recompute any amounts determined to be payable under this franchise agreement; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the Company's fiscal years. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Company by the City which notice shall include a copy of the audit report.

d. In the event that any franchise agreement payment, recomputed amount, cost, or penalty is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate of twelve percent (12%).

e. In the event this franchise agreement should be terminated or forfeited prior to the end of its fifteen (15) year term, the Company shall immediately submit to the City a revenue statement prepared as required, showing the Gross Revenues of the Company for the time elapsed since the last period for which the Company has paid to the City the required percentage of Gross Revenues and the Company shall pay to the City, not later than thirty (30) days following the termination of the franchise agreement, a like percentage of such gross revenues.

Section 8. Police Powers.

In accepting this franchise agreement, the Company acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public. The Company agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

Any conflict between the provisions of this franchise agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter. Provided that any such exercise that is not of general application in the jurisdiction or applies exclusively to the Company or Cable System and which contains provisions inconsistent with this franchise agreement shall prevail only if upon such exercise the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

Section 9. Rates.

The Company's rates for Cable Services shall be regulated pursuant to the Cable Television Consumer Protection and Competition Act {47 U.S.C. 543}, FCC rules and regulations, and City of Cincinnati Ordinance No. 5-1994 passed January 5, 1994 as they now exist or may hereafter be modified or amended. The Company shall receive at least seven (7) days advance notice of any hearing conducted by the City concerning its rates.

Section 10. Notices.

All notices from the Company to the City pursuant to this franchise agreement shall be to the City Manager and the Superintendent of Telecommunications. The Company shall maintain with the City, throughout the term of this franchise agreement, an address for service of notices by mail. The Company shall also maintain with the City a local office and toll free telephone number in the Greater Cincinnati area for the conduct of matters related to this franchise agreement. The Company shall be

required to advise the City of such address(es) and telephone number and any change thereof. For purposes of this section the local office is for notices only and not customer service. The current address of the local office for notices is 11252 Cornell Park Drive, Cincinnati, Ohio 45242.

Section 11. Performance Bond

a. Within thirty (30) days after the award of this franchise agreement, the Company shall reaffirm and maintain at its cost and expense, and file with the City Treasurer, its corporate surety bond by a Company authorized to do business in the State of Ohio and found acceptable by the City Solicitor, in the amount of Five Hundred Thousand Dollars (\$500,000.00) to guarantee the full activation of the upgraded Cable System and full and timely performance of all the terms and conditions of this franchise agreement throughout the life of the franchise agreement.

The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the Company to satisfactorily complete and fully activate the upgraded Cable System throughout the franchise area where the Cable System will be available to subscribers pursuant to the terms and conditions of this franchise agreement.

b. Any extension to the prescribed time limit must be authorized by the City Council. Such extension shall be authorized only when the City Council finds that such extension is necessary and appropriate due to causes beyond the control of the Company.

c. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City, whether reserved by this franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such performance bond shall affect any other rights the City may have.

d. The performance bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent to cancel or not to renew."

e. Failure of the Company to comply with any of the terms of this franchise agreement shall entitle the City to recover on the bond.

Section 12. Liability and Insurance.

a. The Company agrees by the acceptance of this franchise agreement to indemnify, keep and save the City free and harmless from liability on account of injuries or damage to persons or property arising out of the construction, maintenance, repair and operation of its Cable Television System.

b. The Company shall maintain throughout the term of the franchise agreement general and automobile liability insurance insuring the City and the Company with regard to all damages mentioned in subsection a. in the minimum amount of:

- (1) \$500,000 for property damage to any one person;
- (2) \$2,000,000 for property damage in any one accident;
- (3) \$1,000,000 for personal injury to any one person; and
- (4) \$2,000,000 for personal injury in any one accident.
- (5) The Company shall maintain excess liability in an amount of five (5) million dollars per

accident or occurrence.

c. The insurance policy obtained by the Company in compliance with this section shall name the City as an additional named insured. The term "City of Cincinnati" shall include all authorities, boards, divisions, departments and officers of the City and the individual members, employees and agents thereof in their official capacities and/or while acting on behalf of the City. The certificate of insurance, along with written evidence of payment of required premiums, shall be filed and maintained

with the City Manager or his designee during the term of the franchise agreement, and may be changed from time to time to reflect changing liability limits. The Company shall immediately advise the City Solicitor of any litigation that may develop that would affect this insurance.

d. Neither the provisions of this section nor any damages recovered by the City hereunder shall be construed to limit the liability of the Company under this franchise agreement.

e. All insurance policies maintained pursuant to this franchise agreement shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, of registered mail, of written notice of such intention to cancel or not to renew."

Section 13. Indemnification.

The Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages alleged by third parties (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith):

a. To persons or property, in any way arising out of or through the acts or omissions of the Company, its servants, agents or employees or to which the Company's negligence shall in any way contribute;

b. Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or any other right of any person, firm or corporation (excluding claims arising out of or relating to City government access programming);

c. Arising out of the Company's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to the Company in its business hereunder, or

d. Arising out of claims related to the information identified in Article II section 2.A.2.

The foregoing indemnity is conditioned upon the following:

The City shall give the Company notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the City from cooperating with the Company and participating in the defense of any litigation by its own counsel at its sole cost and expense.

e. The Company shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Section 13. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the City Solicitor or his/her assistants or any employees of the City or its agents. The City agrees that it will not request reimbursement of attorney fees for outside counsel in excess of the rates typically paid by the City for outside counsel in similar matters. The City agrees to provide notice to the Company if the City retains outside counsel.

Section 14. Failure of the City to Enforce this Franchise Agreement, No Waiver of the Terms Thereof.

The Company shall not be excused from complying with any of the terms and conditions of this franchise agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Section 15. Rights of Individuals

a. Except as otherwise provided herein, the Company shall provide Cable Service to any property owner who requests it, provided that the Company may lawfully obtain access to said property

utilizing the rights-of-way obtained through this agreement or otherwise available under Ohio Law. The Company shall not deny service, deny access, or otherwise discriminate against subscribers, or general citizens on the basis of race, color, religion, national origin, sex, or disability. The Company shall comply at all times with all other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this franchise agreement by reference.

b. The Company shall strictly adhere to the equal employment opportunity requirements of federal, state and local regulations, and as amended from time to time. The Company shall upon request by the City provide the City with a copy of its minority and female filing with the FCC.

c. The Company shall strictly observe, protect and ensure the privacy of all subscribers and comply with all applicable laws, rules and regulations respecting privacy. Notwithstanding the generality of the foregoing, the Company shall keep all subscriber records in strict confidence and shall not develop specific data on individually identifiable subscribers, except as necessary to provide the services described herein.

d. The Company, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell, or otherwise make available to any party for purposes of any solicitations or for any other purpose:

- (i) list of the names and addresses of such subscribers, or
- (ii) any list which identifies the individual viewing habits of subscribers, or
- (iii) any information pertaining to individually identifiable subscribers to be used for any purpose other than billing without informing the subscriber of the purpose for which the information is being gathered before the subscriber is asked to respond.

e. The Company shall not develop information pertaining to individually identifiable subscribers for non-billing purposes unless and until (a) the subscriber has been advised in advance of the purpose and content of such records, and (b) the subscriber gives his or her written consent.

f. No individual may be required to waive his or her rights of privacy as a condition of becoming a subscriber.

Section 16. Public Notice

Minimum public notice of any City public meeting relating to this franchise agreement shall be in accordance with statutory requirements.

Section 17. Severability

If any section, subsection, sentences, clause, phrase or portion of this franchise agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE II.

Cable System Upgrade, Operations Standards and Procedures

Section 1. Services Availability

The Company shall provide Cable Service throughout the City pursuant to the provisions of this franchise agreement.

Section 2. Cable System Construction

A. Construction Plan and Schedule

1. At the request of the City Manager or the Superintendent of Telecommunications, the Company will provide to the City a construction plan and schedule, which shall consist of a map of the entire City and which shall delineate the proposed sequence of system upgrade areas and schedule of construction for the upgrade of the Company's Cable System. The Company shall not materially change or modify the proposed sequence of system upgrade areas without prior written approval of the City Manager or the Superintendent of Telecommunications, which approval shall not be unreasonably withheld and shall be expeditiously granted. The Company shall complete the system upgrade and schedule within 3 years of this agreement and shall have completed subscriber "converter swaps" within five years of the date of this agreement.

2. The Company represents that the construction plan and schedule referred to in the preceding paragraph is a confidential trade secret as defined at O.R.C. §1333.61 (D), the disclosure of which would be harmful to the Company. The City agrees that, to the extent authorized by law, it will not disclose the Company's construction plan and schedule. The Company shall indemnify and hold the City harmless against any cause of action seeking disclosure of the Company's construction plan.

3. In the event that any claim, suit, cause of action, or any other proceeding is initiated against the Company pertaining to this franchise agreement, the franchising or refranchising process, the award

of the franchise agreement or any other matter relating thereto, the Company following consultation with the City shall nevertheless construct and operate the system at its own risk pending the resolution of the dispute.

B. System Design Upgrade

The Company will upgrade the current coaxial network to a modern high-capacity state-of-the art fiber optic coaxial cable network capable of supporting integrated voice, video and data services. The upgraded Cable System will be capable of providing expanded cable television bandwidth, improved picture quality, reliability and will be capable of supporting future services if developed, such as interactive data and voice services and video-on-demand.

The fiber optic/coaxial cable architecture shall be an integrated communications system that will serve as a foundation for introduction of expanded telecommunications services over the next decade. Embedded in the fiber optic/coaxial cable network will be sufficient capacity to expand services to subscribers as new services develop and subscriber demand has developed.

1. General System Description

The Company shall upgrade its Cable System utilizing 750 MHZ of bandwidth. The architecture is a two-tiered fiber system, feeding a neighborhood coaxial Cable System.

The first tier of fiber shall connect the Blue Ash headend with 16 other hubsites in the Greater Cincinnati area. Four (4) hubsites are in the City of Cincinnati. This "supertrunk" network shall have two (2) features for greater reliability: route diversity and electronic redundancy.

The network shall be route diverse by using a ring design. The network shall be electronic redundant by utilizing 100% spare electronics at each hubsite.

The second tier of fiber shall connect the hubsites to the coaxial plant. This shall be an AM fiber system where one laser can feed multiple "cells" or "nodes":

The coaxial plant of the cell shall be a combination of amplifiers, power supplies, cables and taps.

A. The active components of the upgraded System such as amplifiers have a bandwidth of 750 MHz. Taps and connectors have a bandwidth of 1000 MHz. The upgraded system shall be designed for 750 MHz, with the first 550 MHz initially activated for analog services, and the last 200 MHz reserved for future expansion.

1. The upgraded System shall utilize an upstream spectrum from 5 to 40 MHz.

2. The upgraded System shall receive all programming at the Blue Ash headend.

3. The central facility at Blue Ash shall be a multi-thousand square foot facility capable of serving both the original QUBE system as well as any new system components.

B. Backup powering shall be used at the Blue Ash headend and the hubsites. Blue Ash shall have three (3) levels of backup power; a full-time Uninterruptible Power Supply (UPS) system for each row of racks, a main generator, and a secondary generator. Each hubsite shall have two levels of backup power; a full-time UPS for the hubsite electronics and a backup generator. Each hubsite generator shall be capable of running by means of two (2) types of fuel: natural gas and (in the case of a gas outage) liquid propane.

C. Each hubsite can serve an unlimited amount of cells. The Company's plan is to serve approximately 60 cells per hubsite. Hubsite locations are planned and installed in the following areas: Hyde Park, Carthage, Knob Hill, and Central Parkway.

Six fibers shall be installed to each cell. Extra fibers shall be installed into areas where growth of the system is a factor.

The cell shall consist of a maximum cascade of four (4) trunk type amplifiers, one (1) trunk/bridger, and three (3) line extenders.

D. All programming originating with closed-captioning shall be retransmitted by the system including the closed captioned signal. The Company shall have TDD/TTY (or equivalent) equipment at an office serving the greater Cincinnati area. The office shall have a publicly listed toll-free number.

E. Emergency Alert

The Company shall comply with all applicable rules of the Federal Communications Commission (FCC) regarding carriage of emergency communications by cable television operators. In addition, the City and the Company agree to work together to develop mutually acceptable procedures for the use of the emergency override capability in times of local crises and emergencies.

2. Converter

The converter devices shall comply with all FCC rulemakings, decisions, and reports addressing consumer compatibility between consumer electronics and the converters. Illustrative features of the converter may be:

Wireless Remote Control

Volume Control

Parental Control

VCR Timer for unattended channel change

Off/On Switch

A. Early Construction and Extensions

Nothing in this section shall prevent the Company from upgrading the Cable System earlier than planned. However, any delay in the System upgrade beyond the completion time shall require application to and consent by the City.

B. Commencement of Construction

Construction shall commence as soon after the grant and acceptance of the franchise agreement as is reasonably possible.

C. Underground and Overhead Construction

In the City's public property and rights-of-way where the cables, wires or other like facilities of public utilities are placed underground, the Company shall place its cables, wires, or other like facilities underground. If at any time the City determines that existing wires, cables, or other like facilities of public utilities anywhere in the City shall be changed from an overhead to an underground installation, the Company shall also, at the Company's sole expense, convert its own Cable System to an underground installation jointly with such public utilities, unless a request for an exception shall be made to and approved by the Director of Public Works. If utilities are compensated for going underground, the Company shall be compensated.

D. Extension of the Cable System

1. If the Company is required to acquire a private easement in order to reach the property of a new customer living on a private street or in a condominium, the Company may require the customer to pay the Company's cost of acquiring the private easement. Where the Company believes the compensation requested for the private easement is unreasonable the Company shall commence judicial proceedings seeking a declaration and determination of fair compensation for the easement. The Company's obligation to provide service to the new customer shall be held in abeyance pending resolution of the judicial proceeding. To the extent allowed by FCC rules, the costs of such proceedings not paid by the customer shall be treated as an external cost for purposes of rate calculations.

2. In cases of new construction or property development where utilities are to be placed underground, if the developer or property owner does not give the Company reasonable notice of such

construction or development, and of the particular date on which open trenching will be available for the Company's installation of conduit, pedestals and/or vaults, and laterals, the Company may request that the cost of installation be treated as an external cost pursuant to Section 76.922 of the FCC rules.

3. The Company is not required to provide service to a property owner who demands compensation from the Company as a condition for providing service.

Section 3. Company Services

The Company shall provide at least the following services:

a. **Standard Installation**

Standard installation shall consist of an aerial drop to the subscriber demarcation point, not exceeding one hundred fifty (150) feet from the single pole attachment to the customer's residence. Drops in excess of one hundred fifty (150) feet, concealed wiring, and all underground drops shall be charged according to the Company's rate schedule.

b. **Deposits**

No converter deposit shall be required. The Company may require an advance deposit of a part or all of the estimated costs for installation.

c. **Additional Outlets.**

The Company shall provide additional outlets as customers may request according to the rate schedule or as determined by the FCC or the 1992 Cable Act.

d. **Courtesy Services**

The Company shall continue to provide courtesy services to public, nonprofit and parochial schools and colleges, municipal buildings or County buildings, owned or leased in whole or in part by the City or County, public libraries and other Institutional Network users, as identified in Attachment IV of Exhibit

B. Courtesy services shall be provided as follows:

- 1) The Company shall provide one (1) standard drop of Basic Cable Service without initial or monthly charge.
- 2) The Company shall provide, free of charge, one (1) converter for reception of Cable Service to each institution, and a maximum of three (3) converters to each school. Wiring beyond the demarcation point may be done on a time and materials basis.
- 3) With regard to any school building or institutional facility as described above, constructed within the City subsequent to the effective date of this franchise agreement, the following shall apply: The Company shall install one (1) outlet of Basic Service without initial or monthly charge provided the institution has given the Company notice and provided the conduit, or other similar means for the Company to install its cable. Such construction must be within one thousand (1,000) feet of the Company's existing system. In the event such construction is not within one thousand (1,000) feet, the cable drop shall be constructed and installed on a cost-sharing basis with the institution responsible for one half the costs in excess of one thousand feet. In the event an institution does not provide proper notice or conduit to the Company, any drops in excess of one hundred fifty (150) feet from the Company's existing system shall be done on a cost-sharing basis with the institution responsible for one half of those costs in excess of one hundred fifty (150) feet. Any internal wiring beyond one outlet shall be the responsibility of the institution.
- 4) Institutional Network locations not connected to the I - Net as of the commencement date of this franchise agreement, and new Institutional facilities or school buildings shall be responsible for any cost of installation of I - Net service in excess of the standard drop cost.

e. Transfers

When a current customer moves from one address within the franchised area to a second address within the franchised area and there is no lapse in service or change in the level or amount of service, the Company shall transfer service at a rate according to the rate schedule, FCC regulation or the 1992

• Cable Act.

f. Customer Service Standards

The Company shall, at a minimum, comply with the Customer Service Standards adopted June 29, 1993 by the City, as they now exist or may hereafter be modified or amended by mutual agreement. The Company agrees to automatically comply with any changes in the Customer Service Standards as a result of any action by the FCC.

h. Public Access Payment

(1) The City and the Company agree that subscribers will benefit from transmission over the Company's Cable System of Public and Educational (PE) Access programming providing a diversity of information not otherwise available to the Company's subscribers. In lieu of the Company directly providing the facilities, equipment and services required to provide PE Access programming, the Company promises to pay to the City a "Public Access Payment" of \$.96 per month per Cincinnati subscriber through the term of this Agreement.

(2) The Company acknowledges that the City will be relying to its detriment upon the Company's agreement to collect and pay the Public Access Payment through, *inter alia*, acquiring equipment and entering into contracts or other obligations to provide PE Access programming.

(3) The Public Access Payment shall be paid by the Company by separate check each calendar quarter at the time of the Company's Franchise Fee payment. The Company shall provide a statement indicating the manner in which the fee was calculated.

(4) The City shall utilize all Public Access Payments only for the support of PE Access programming to be cablecast exclusively over the Company's Cable System.

(5) If authorized by law to do so, the City agrees to charge other multi-channel video programming distributors in the City either a franchise fee or a fee in lieu of a franchise fee and, in addition, if

authorized by law to do so, agrees to require multi-channel video programming distributors to collect from their subscribers for Public and Educational Access an amount equal to the amount per subscriber collected by the Company for Public and Educational Access. The City may reduce the amount paid by the Company as a result of requiring other multichannel-video program distributors to pay an amount to the City in support of Public and Educational Access. This paragraph does not apply to satellite master antenna television providers in business in the City as of the effective date of this franchise agreement.

(6) During the term of this agreement the City will not dispute the Company's right to separately itemize on its monthly invoice to customers the \$.96 per month Public Access Payment as long as it is not in addition to the Basic Cable Rate approved by the City in Ordinance # _____ passed on the date of the adoption of this agreement.

(7) The Company's promise to collect and pay the Public Access Payment may cease upon the occurrence of any of the following events, and upon thirty (30) days notice from the Company to the City of such event:

(i) Grant by the City of any franchise to any other multi-channel video programming distributor which does not require such distributor to pay a franchise fee or Public Access Payment equivalent on a per subscriber basis to the fees required of the Company by this Agreement. This subparagraph does not apply to satellite master antenna television providers operating in the City on the effective date of this Agreement. At the Company's request, the City shall provide to the Company any Franchises granted to any multi-channel video programming distributors.

(ii) Reduction of the Company's Basic Cable Service subscribers to a number below 54,500 for a period of no less than three consecutive months. (The Company hereby represents that it provided Basic Cable Service to 59,383 subscribers as of March, 1996.) The Company shall provide written

notice to the City following the first month when the number of subscribers falls below 54,500. Termination of the Public Access Payment under this subparagraph shall occur at the next scheduled quarterly payment following notice from the City if the number of subscribers falls below 54,500 for three consecutive months in subscribership. If terminated due to this reason, payment will not resume until the number of subscribers reaches 57,000 for three consecutive months.

IF subscribers fall below 54,500 for 3 months then TWC can terminate PA P until TWC gets 57,000 members for 3 months

(iii) An order of the FCC or a Court of competent jurisdiction

the Public Access Payment and directing an equivalent reduction in the Company's rates, if such order has not been stayed pending appeal. The Company shall diligently appeal such an order and seek a stay pending appeal. Should such an order be reversed or vacated, the Company's obligation to collect and pay the Public Access Payment shall resume.

8. In the event that the Company ceases collection and payment of the Public Access Payment under the preceding paragraph, any Public Access Payments collected by the Company from subscribers before collection of the Public Access Payment can be terminated will be paid to the City.

Section 4. Initial and Continuing Tests; Inspections

A. Upon completion of each cell, the Company shall fully sweep the Cable System to verify performance. The Sweep shall cover the fiber optics from the hubsite to every end of line in the coaxial plant of the cell. Test point locations shall be established for the semi-annual FCC Proof of Performance Tests. Test points shall be based upon mutual agreement between the Company and the City of Cincinnati. The City reserves the right to observe the semi-annual Proof of Performance tests.

Section 5. Construction Maintenance and Technical Standards

a. Compliance with Construction Maintenance and Technical Standards.

The Company shall construct, install, operate and maintain its Cable System in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards and such other standards specifically identified in this franchise agreement. In addition, the Company shall provide the City with a written report of the results of the Company's semi-annual Proof-of-Performance tests conducted pursuant to FCC standards and requirements within thirty (30) days of test completion.

b. Additional specifications.

Construction, installation and maintenance of the Cable System within the City shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled in accordance with the highest engineering considerations. The Company shall at all times comply with:

- National Electric Safety Code as prepared by the Institute of Electrical and Electronics Engineers;
- National Electrical Code of the National Fire Protection Association;
- Bell Telephone System's Code of Pole Line Construction;
- Requirements of City in regard to various electrical wiring necessary to the operation of City functions including, but not limited to, traffic control signalization, street lighting, fire lines, and communications lines;
- Applicable FCC or other federal, state and local regulations;
- Cincinnati Municipal Code and Regulations;
- Tower Standards EIA-RS-222-A; and
- FAA Tower Standards

In any event, the Cable System shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Company may have equipment located.

Any antenna structure used in the City's Cable Communication System shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.

All working facilities and conditions used during construction, installation and maintenance of the Cable System shall comply with the standards of the Occupational Safety and Health Administration.

c. Utility Protection and Coordination

The Company shall provide annual proof of a full participating membership in the "Ohio Utilities Protection Service" to the Director of Public Works upon request. Proof of membership shall be provided to and in the form required by the Central Permitting Office of the Department of Public Works.

The Company shall fully participate with the City of Cincinnati's Infrastructure Coordinating Committee as determined by the Director of Public Works and the Superintendent of Telecommunications.

d. The Company shall maintain a 24-hour, around-the-clock, four-hour emergency maintenance response for downed cable lines within the public rights-of-way once the Company's Customer Service Department has been notified.

e. In the event of a dispute between the City and the Company concerning compliance with FCC maintenance or FCC technical standards, the City will first utilize any enforcement procedures available through the FCC to obtain compliance with FCC standards. Provided, however, if the FCC fails to resolve the dispute within six (6) months following the commencement of any enforcement proceeding by the City, the City may utilize any other means available at law to enforce this section of the Agreement.

Section 6. Use of The Rights-of-Way

The Company shall meet with appropriate representatives of City departments to coordinate its work on the system necessary to obtain all required permits and/or approvals.

a. Interference with Persons and Improvements

The Company's system, poles, wires, and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

b. Minimum Interference with Public Ways

All transmission and distribution structures, lines and equipment erected by the Company for which a permit is required and any construction and maintenance performed thereon within the City shall be so located, as provided by the permit, as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

c. Restoration to Prior Condition

In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed, in accordance with generally applicable standards for such work set by the Director of Public Works.

d. Relocation of the Facilities

In the event that at any time during the period of this franchise agreement, the City shall lawfully

elect to alter, or change the grade of any street, alley or other public ways, the Company, upon reasonable notice by the City shall remove or relocate as necessary its poles, wires, cables, underground conduits, and manholes and other fixtures at its own expense, unless utilities are compensated in which case the Company shall be compensated. If the City lawfully finds it necessary to install cable or other hardware on existing poles or pole lines occupied by the Company's Cable System, and such installation requires the repositioning of the Company's Cable System on the existing poles or pole lines, the Company, upon reasonable notice by the City, shall reposition its own cable, equipment and/or appurtenances as required, at its own expense, unless otherwise preempted by applicable federal or state law.

e. Interference with Utilities

The Company shall not place poles, conduits, wires, equipment, appurtenances, transmission and/or distribution structures or other fixtures where the same will interfere with any gas, electric or telephone facilities, traffic control signalization, street lights, fire lines or communications lines, or obstruct or hinder in any manner the various utilities serving the residents of the City. All such poles or other fixtures shall be placed in any street, alley, bridge, or public way, and in such manner as not to interfere with the usual travel on said streets, alleys, public ways and in accordance with standards and requirements set forth in the permit.

If any such attachment or attachments require the adjustment or relocation of any wires, equipment or appurtenances owned by the City, the City's costs of adjustment or relocation, including costs of extension or replacement of poles, if necessary, shall be borne by the Company unless otherwise preempted by applicable Federal or State law.

When the City desires to place traffic control cable on poles occupied by the Company, but cannot, by virtue of the Company's presence, then the Company shall bear the City's incremental expenses of

make ready directly attributable to the Company's presence, unless otherwise pre-empted by applicable Federal or State law.

The Company's overhead wiring, equipment, appurtenances or transmission and/or distribution structures shall be subject to all existing restrictions.

f. Easements

All necessary easements over and under private property shall be arranged for by the Company with the property owners.

g. Cooperation with Building Movers

The Company shall, on the request of any person holding a building moving permit or a permit to move an oversized load issued by the City, temporarily raise or lower its wires to permit the moving of buildings or oversized loads. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

h. Tree Trimming

The Company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without prior consent of the City. The Company shall be responsible and shall defend and hold City harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any trees, whether such tree is trimmed or removed.

Section 7. System Design

A. The Company shall provide to the City no later than January 1, 1997, a general Cable System level design plus representative design maps for the first area to be constructed to insure

consistency with specifications in this franchise agreement.

B. Provision of As-Built Maps. The Company shall, within 60 days of completion of the System Upgrade, provide as-built system design maps to the City.

C. Construction Reports. During the System Upgrade, the Company shall provide a monthly construction report to the City in a form acceptable to the City.

Section 8. Continuity of Service Mandatory

A. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Company are honored. In the event that the Company elects to overbuild, rebuild, modify, or gives notice of the Company's desire to sell the System, or the City gives notice of intent to terminate or fails to renew this franchise agreement, the Company shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of the franchise agreement, or in the event a third party acquires the system, the Company shall cooperate with the City, new franchisee or operator in maintaining continuity of service to all subscribers.

B. In the event the Company fails to operate the System for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the System or designate an operator until such time as the Company restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Company, the Company shall reimburse the City for all reasonable costs or damages in excess of revenues from the System received by the City that are the result of the Company's failure to perform.

Section 9. Transfer of Ownership or Control

A. The Company may not sell, assign or transfer the rights, privileges, and franchise agreement

granted hereunder, in whole or in part, and control of the Company may not be transferred to any other person without the prior written consent of City expressed by resolution or ordinance, and then only under such conditions as may therein be prescribed. No assignment or transfer in law or otherwise shall be effective until the City has consented and the assignee or transferee has filed with the City Manager an instrument, duly executed, reciting the fact of such assignment or transfer, accepting the terms of this franchise agreement, and agreeing to comply with all of the provisions hereof.

B. The Company shall file FCC Form 394 or its successor with the City Manager requesting City approval of any transfer. The application shall detail the terms of the transfer and all applicable qualifications of the assignee or transferee relating to fulfilling the terms of the franchise agreement. Upon receipt of such application, the City Manager shall diligently investigate the application and place the request on the City Council agenda at the earliest practicable time. The City reserves the right to ask the Company for additional information concerning the proposed transfer, and Company shall comply with any such request. The City Council shall proceed to act on the request within one hundred and twenty (120) days or such other period as applicable law may provide. In the event the City Council does not deny its approval within said period of time, the request shall be deemed approved.

C. In reviewing a request for assignment, the City may inquire into the legal, technical and financial qualifications of the prospective assignee. The City may also inquire into the Company's compliance with the terms of this franchise agreement and the ability of the Company or its assignee or transferee to cure any non-compliance with this franchise agreement. The City may also inquire into any matter relative to the public interest. The Company and its assignee or transferee shall assist the City or its agent in any inquiry. The City may condition said assignment upon such terms and conditions as it deems reasonably necessary, provided such terms and conditions are in the public interest or related to the qualifications of the assignee. The City shall not unreasonably withhold its approval.

D. Upon an assignment by the Company of this franchise, all escrow accounts and bonds required under this franchise agreement shall transfer to the assignee, and the assignee shall assume all of the responsibilities and obligations of the Company under this franchise agreement.

E. The Company may not assign, transfer, lease or sublease its Cable System to any other legal entity without the prior written consent of the City, excluding leased access programming as defined by federal law.

F. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this franchise agreement.

G. Notwithstanding anything to the contrary, no such prior consent shall be required for any transfer or assignment of the Cable System or the franchise granted hereunder to any entity controlled by Time Warner, Inc. For the purpose of this paragraph, "controlled by" means the power or authority to direct or cause the direction of the management and policies of the transferee or assignee.

Section 10. Availability of Books and Records

The City shall have the right to inspect the books, records, maps, plans and other like materials of the Company applicable to the Cincinnati Cable System, at any time during normal business hours, where necessary in the opinion of the City to determine the Company's compliance with the franchise agreement. The Company shall fully cooperate expeditiously in providing this information.

Section 11. Other Petitions and Applications

The Company shall, upon request, file with the City a copy of all petitions, applications, communications and reports submitted by the Company to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise agreement. Copies of such filings will be provided within 5 working days of the City's

request. Notice of any petitions, applications, communications, or any reports pertaining specifically to the operations of the Cincinnati Cable System shall be provided to the City upon filing.

Section 12. Books and Records of the Company; Audit

a. The acceptance by the City of the Gross Revenue statements or franchise payments shall be without prejudice and shall not constitute a waiver of the City's right to claim a deficiency in the payment of the franchise fee or to audit the Company's books and records. The Company agrees to prepare, keep and maintain for a period of not less than three (3) years following the expiration of each calendar year, complete and accurate books of account relating to the operation of the Cable System. All such books of accounts and records shall be accessible at the Company's principal office in the franchise area during regular business hours.

b. Upon at least fifteen (15) days prior written notice to the Company, the City shall have the right to inspect such documents and supporting documentation or cause a partial or complete audit to be made of all information of the Company where necessary in the opinion of the City to ascertain the Company's compliance with the franchise agreement.

The City Manager, or his/her duly designated officers, agents or representatives, shall have access to all Company books of accounts and records and related supporting documentation for the purpose of ascertaining the correctness of any and all reports required by this franchise agreement or required by the FCC, or of ascertaining the Company's compliance with this franchise agreement or any other applicable federal, state and local law, and may examine its officers and employees under oath in respect thereto. Access shall be given by the Company to such officers, agents, or representatives at all reasonable times not only concerning the Company's financial records, but also to all of the Company's plans, contracts, engineering, planning, statistical, customer and subscriber service complaint records relating to the operation of the Cable System and to all other records and reports

required to be kept or which are kept by the Company.

c. A Gross Revenue Report shall be filed by the Company with the City Manager c/o Superintendent of Telecommunications within ninety (90) days following the end of each calendar year, or portion thereof, during which this franchise agreement is in effect.

The report shall be certified by the chief executive officer of the Cincinnati Division. The report shall also include the number of homes passed in the City, number of subscribers in the City, miles of plant in the City, number of tiers and channel lineup offered to subscribers, construction plans, and related maps for the City and shall be issued to the City Manager, c/o Superintendent of Telecommunications at the same time as the other parts of this report. The City may request any additional information related to the enforcement of the franchise agreement or applicable federal, state or local law.

d. Any false entry in the books or accounts and records of the Company or false statement in the reports to the City as to a material fact, knowingly made by or with the knowledge of an officer of the Cincinnati Division of the Company, shall constitute a violation of a material provision of this franchise agreement.

e. To the extent permitted by law, the City agrees to hold in confidence any information obtained from the Company regarding the operation of the Cable System which may be obtained from the Company or by means of an audit of Company's books and records.

Section 13. Removal of The Cable System or Inactive Wiring

Upon non-renewal (or the failure of the Company to request renewal), termination, or abandonment of this franchise agreement the Company shall forthwith, upon notice by the City, remove at its own expense all designated portions of the Cable System from all highways, sidewalks, easements, dedications and public property within the City. If the Company fails to remove the Cable System, the

City may perform the work at the Company's expense.

The City may demand removal of inactive wiring upon thirty (30) days notice to the Company at the Company's expense. Upon the Company's failure to remove said abandoned or inactive wiring, the City may charge the City expense against the performance bond.

Section 14. Services and Facilities

A. Distinct Tiers of Service.

The Company shall have the flexibility to offer one or more service tiers; however, at a minimum the company shall provide and maintain Basic Cable Service as defined herein.

B. Parental Control Devices.

Parental control devices shall be available for subscribers to lease or purchase at the Company's cost at every level of service. These parental control devices shall permit the subscriber to block out, at the subscriber's discretion, programming shown over the Cable System.

C. Public, Educational, Government (PEG) and Institutional Network (INET) Services

The Company shall provide those services set forth in Exhibit B for Public, Educational, Government Access, and the Institutional Network (I-Net).

D. Most Favored Customer

The Company shall provide other services offered on the Cable System as requested by the City and not specifically identified in this contract on a most favored customer basis (terms no more costly to the City than the most favorable rates or charges offered by the Company to other customers). This applies to monthly recurring charges, installation and any other costs normally incurred in buying the service.

ARTICLE III.

Administration and Regulation

Section 1. Rules and Regulations.

In addition to the inherent powers of the City to regulate and control this franchise agreement, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers provided such regulations shall not unreasonably alter the Company's obligation or unreasonably restrict its rights under this franchise agreement.

Without limitation upon the rights which the City might otherwise have, the City does hereby expressly reserve the following rights, powers and authorities:

- A. To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the said City.
- B. To determine through its City Council any question of fact relating to the meaning, terms, obligations, or other factors of this franchise agreement, subject to those appeals allowed under Federal or Ohio Law.
- C. To exercise any other rights, powers or duties of the City whether required or merely authorized, by federal law, the Constitution of the State of Ohio, the laws of Ohio, or the City Charter.

Section 2. Performance Evaluation Reviews.

a. The City and the Company shall participate in a performance evaluation review within thirty (30) days of the 5th and 10th anniversary dates of the Company's award of the franchise agreement and as required by Federal and State law.

b. Special evaluation reviews may be held at any time during the term of the franchise agreement at the request of the City or the Company.

c. Evaluation review hearings shall be open to the public and will be announced in a newspaper of general circulation in accordance with legal notice.

d. Topics which may be discussed within scheduled or special evaluation reviews may include, but not be limited to, service rate structures; franchise fees; penalties; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this franchise agreement; judicial and FCC rulings; line extension policies; and City rules.

e. During the review and evaluation by the City, the Company shall fully cooperate with the City and shall provide such information and documents as the City may need to perform the review.

Section 3. Supervision of the Franchise Agreement.

It is the intent of the City to provide day-to-day administration and enforcement of the provisions of this franchise agreement by delegating the responsibility to the City Manager or his designee.

Section 4. Liquidated Damages.

1. Damages

For the violation of any of the following provisions of this franchise agreement, damages shall be chargeable to the performance bond, as set forth in this franchise agreement as follows:

a. For failure to complete system construction in accordance with the construction plan, unless the Council specifically approves the delay by motion or resolution, the Company shall pay six hundred dollars (\$600.00) per day for each violation that occurs or continues.

b. For failure to provide data, documents, reports, or information or to cooperate with the City during an application process or performance evaluation review, the Company shall pay Two Hundred Fifty Dollars (\$250.00) per day each violation occurs or continues.

c. For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise agreement, the Company shall pay to the City Three Hundred Dollars (\$300.00) per day for each day, or part thereof, that such noncompliance continues.

d. For failure to comply with any section of Article II, Section 2, the Company shall pay Three Hundred Dollars (\$300.00) per occurrence except for an occurrence under paragraph (1.a) of this section.

e. For failure to respond to downed cable lines or inactive wiring within the public rights-of-way, the Company shall pay three hundred dollars (\$300.00) per occurrence.

f. It is understood that the damage amounts set forth in this section shall be adjusted upward on the anniversary date of this franchise agreement in the fifth and tenth year as follows:

Penalty Amount	5th year	10th year
\$250.00	\$300.00	\$330.00
\$300.00	\$400.00	\$450.00
\$600.00	\$700.00	\$800.00

2. Procedure for Imposing Liquidated Damages

Whenever the City believes that the Company has violated one (1) or more terms, conditions or provisions of this franchise agreement, and wishes to impose liquidated damages, a written notice shall be given to the Company informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Company an opportunity to remedy the violation. The Company shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may impose liquidated damages unless the parties mutually agree

the violation is of such a nature so as to require more than thirty (30) days to cure the violation in which case the Company must proceed diligently within the thirty (30) days to correct the violation, or as promptly as possible thereafter to correct the violation. In any case where the violation is not cured within sixty (60) days of notice from the City, or such other time as the Company and the City may mutually agree to, the City may proceed to impose liquidated damages.

3. **Dispute of Violation.** The Company may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Company to the City shall specify with particularity the matters disputed by the Company and shall stay the running of the thirty- (30) day cure period pending Council decision as required below. The City Council shall hear the Company's dispute. The Company must be given at least five (5) days notice of the hearing. At the hearing, the Company shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the City Manager shall provide the Company with a copy of the City Council's action, along with supporting documents. In the event the City Council upholds the finding of a violation the Company shall have thirty (30) days subsequent to such finding, or such other time period as the Company and the City may mutually agree, to correct the alleged violation.

4. **Reservation of Rights.** The rights reserved to the City under this section are in addition to all other rights of the City whether reserved by this franchise agreement or authorized by law or equity, and no action, proceeding or exercise of a right with respect to liquidated damages shall affect any other right the City may have.

5. **Force Majeure.** The City shall stay or waive the imposition of any liquidated damages set forth above upon a finding that any failure or delay is a result of an act of God or due to circumstances beyond the reasonable control of the Company.

Section 5. Forfeiture and Termination.

a. In addition to all other rights and powers retained by the City under this franchise agreement or otherwise, the City reserves the right to forfeit and terminate the franchise agreement and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the Company shall include, but shall not be limited to, the following:

1. Violation of any material provision of the franchise agreement or any material rules, order, regulation or determination of the City made pursuant to the franchise agreement;
2. Attempt to dispose of any of the facilities or property of its Cable System to prevent the City from purchasing it, as provided for herein;
3. Attempt to evade any material provision of the franchise agreement or the practice of any fraud or deceit upon the City or its subscribers or customers;
4. Failure to begin or complete System Upgrade as provided under the franchise agreement.
5. Failure to provide the types of services promised herein;
6. Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City; or
7. Material misrepresentation of fact in the application for or negotiation of the franchise agreement.
8. Failure to maintain the technical standards and quality of service set forth in this franchise agreement which failure has not been resolved within six months of the commencement of any available FCC proceeding.

a. The foregoing shall not constitute a substantial breach if the violation occurs but it is without fault. If the Company claims that a violation is without fault of the Company, the Company shall, within

three (3) days of the violation, provide a detailed written explanation to the City. The Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

b. The City may make a written demand that the Company comply with any provision, rule, order, or determination under or pursuant to this franchise agreement. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of termination of the franchise agreement before the City Council. The City shall cause to be served upon the Company, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider.

d. The City Council may hear and consider the issue and may hear any person interested therein, and may determine in its discretion, whether or not any violation by the Company has occurred.

e. If the City Council shall determine the violation by the Company was the fault of the Company and within its control, the Council may, by resolution, declare that the franchise agreement of the Company shall be forfeited and terminated.

Section 6. Foreclosure.

At least sixty (60) days prior to the foreclosure or other judicial sale of all or a substantial part of the Cable System, or upon the termination of any lease covering all or a substantial part of the Cable System, the Company shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of this franchise agreement governing the consent of the City Council to such change in control of the Company shall apply.

Section 7. Receivership.

The City Council shall have the right to cancel this franchise agreement after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding. The City Council shall also have the right to cancel this franchise agreement if the Company becomes insolvent, unable or unwilling to pay its debts; or, all or part of the Company's facilities should be sold under an instrument to secure a debt, and are not redeemed by the Company within 30 days from said sale.

Section 8. Compliance with Federal, State and Local Laws.

Notwithstanding any other provisions of this franchise agreement to the contrary, the Company shall at all times comply with all local, state and federal government laws and regulations; provided, however, if any such federal, state or local laws or regulations shall require the Company to perform any service, or shall permit the Company to perform any services, or shall prohibit the Company from performing any service, in conflict with the terms of this franchise agreement or of any law or regulation of the City, then as soon as possible following knowledge thereof, the Company shall notify the City Solicitor, City Manager and Superintendent of Telecommunications of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or this franchise agreement.

If the City Council determines that a material provision of this franchise agreement is affected by any subsequent action of the federal, state or local government, the City Council and the Company shall negotiate and modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this franchise agreement.

Section 9. The Company Will Not Contest Validity of Franchise Agreement

The Company agrees by the acceptance of this franchise agreement that it will not at any time set up against the City in any suit, claim, or proceeding any contention that any condition or term of this

franchise agreement is unreasonable, arbitrary or void or otherwise contrary to law or that the City had no power or authority to make such term or condition. The Company shall be required to accept the validity of the terms and conditions of this franchise agreement in their entirety.

Section 10. Parent Guarantee

At the time of acceptance of this franchise agreement, the Company shall deliver to the City a guaranty from Time Warner Entertainment Co., L.P. (hereinafter "TWE") under which TWE shall guaranty the full and complete performance by the Company of the terms and conditions of this franchise agreement. Said guaranty shall be in a form identical to that set forth in Exhibit C.

Section 11. Broadcast of Stadium Events.

No Cable System or other forms of television transmission commonly known as "pay television" of home games or performances at Cincinnati Riverfront Stadium shall be permitted without the prior written consent of the City, for so long as the City owns or operates Riverfront Stadium.

ARTICLE IV.

Purchase of Cable System by City.

Section 1. Rights to Purchase.

In the event the Company forfeits or the City terminates this franchise agreement pursuant to provisions of this franchise agreement, or in the event the Company's renewal is denied, the City shall have the right of first refusal to purchase the Cable System or assign its right to a third party.

Section 2. Franchise Valuation

a. The value of the Cable System shall be the replacement value of tangible assets in the event the Company forfeits or the City terminates. If a requested renewal of the franchise agreement is denied upon normal expiration and the City acquires ownership of the Cable System or effects a transfer of ownership of the Cable System to another person any such acquisition or transfer shall be at fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the franchise agreement itself upon normal expiration. The purchase price will be determined by an appraiser mutually accepted by both parties.

b. "Replacement value" shall be calculated by determining the cost to replace the system with equivalent equipment reduced by existing depreciation. Equivalent equipment shall mean that the capacity of the Cable System shall be equivalent.

c. "Going concern value" shall be determined by the appraiser and shall be the benefits, if any, acquired by the City (along with the tangible assets) attributable to the Company's operation

of the Cable System under this franchise agreement. No value shall be assigned to either the franchise itself or any right, privilege or expectancy arising to the Company out of the right to transact business under the franchise agreement. No value shall be assigned to the business as if it were ongoing nor be allowed for any increase in value arising out of any expectation of the Cable System revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.

d. The date of valuation shall be the day following the date of expiration or termination.

Section 3. Relocation.

In the acceptance of this franchise agreement, Company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

Section 4. Transfer to The City.

Upon exercise of this option and the payment of the above sum by the City and its service of official notice of such action upon the Company, the Company shall immediately transfer to the City possession and title to all facilities and property, real and personal of the Cable System, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above; and the Company shall execute such warranty deeds or other instruments of conveyance to the City as shall be necessary for this purpose.

ACCEPTANCE

Warner Cable Communications of Cincinnati, Inc. accepts and hereby agrees to be bound by all the terms and conditions of this franchise agreement.

BY: Lloyd D. Dyer
John F. Shirey
City Manager
Binding City Manager 6/17/96

Virgil M. Reed
Virgil M. Reed
President & General Manager
6/17/96

Recommended by:

Public Works Department

Joseph S. Charlton
Joseph S. Charlton
Acting Director of Safety

John Hamner
John Hamner
Director of Public Works

Paula Knecht
Paula Knecht
Superintendent of Telecommunications

CERTIFICATION OF FUNDS NOT REQUIRED

Approved as to form:

Nancy G. Summers Ja Dawson
City Solicitor

JUN 17 1996

Date: